

Massachusetts General Laws (MGL) Chapter 372, ACTS, 1984

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## Chap. 372. AN ACT PERTAINING TO THE METROPOLITAN WATER DISTRICT AND THE METROPOLITAN SEWER DISTRICT OF THE METROPOLITAN DISTRICT COMMISSION.

Whereas, The deferred operation of this a-A would tend to defeat its purpose, which is to immediately establish the Massachusetts Water Resources Authority, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

## SECTION 1. It is hereby determined that:

- (a) Providing water supply services and sewage collection, treatment and disposal services to areas of the commonwealth made up of the cities and towns now served by the metropolitan district commission is an essential public purpose. The preservation and improvement of the health, welfare and living conditions of the citizenry, the promotion and enlargement of industry and employment and all other aspects of commerce, the protection, conservation, management and development of water supplies and the environment depend upon the sound maintenance, operation and improvement of an adequate water supply distribution system and an adequate sewage collection, treatment and disposal system. The financing requirements for such water supply and sewage collection, treatment and disposal systems are substantial and require independent financial resources, including the ability to rely on user charges to recover costs of providing such services and the ability to fund capital programs without undue reliance on the general obligation credit of the commonwealth.
- (b) It is in the best interests of the commonwealth and its citizens to create an authority to achieve the following goals, purposes and objectives:
  - (i) efficient and economical operation of water delivery and sewage collection, disposal and treatment systems including programs for leak detection and reduction of infiltration and inflow for the service areas of the Authority;
  - (ii) repair, replacement, rehabilitation, modernization and extension of the delivery of water sewage collection, disposal and treatment systems for the service areas of the Authority, including the financing on a self-sustaining basis of capital and operating expenses relating thereto;
  - (iii) establishment and administration of equitable charges, consistent with the objectives of this act to conserve water and improve the quality of the environment, for water delivery and sewage collection, disposal and treatment services;
  - (iv) professional and productive management of and systemwide planning for the delivery of water and sewage collection, disposal and treatment services; all of which are declared to be for the public benefit, to necessitate the creation of the authority, and to make it necessary and expedient to vest in the authority the powers granted by this act.

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(c) The commonwealth faces important needs for fostering efficient use of water, for efficient planning and improvement of the delivery of water and sewage collection, disposal and treatment services to which end an authority should be established and vested with extensive operating, financing and regulatory powers to provide appropriate means for addressing these needs.

Therefore, it is declared to be in the best interest of the commonwealth and its inhabitants, to promote the general health and welfare, to improve commerce and living conditions, to conserve water, and to develop and protect in the public interest the natural resources of the commonwealth, that there be established the Massachusetts Water Resources Authority empowered to operate, regulate, finance, and improve the delivery of water and sewage collection, disposal and treatment systems and services, and to encourage conservation, as provided in this act.

This act may be cited as the Massachusetts Water Resources Authority Act.

SECTION 2. As used in this act, unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

- (a) "Advisory Board", the advisory board established by section twenty-three;
- (b) "Authority", the Massachusetts Water Resources Authority created by section three;
- (c) "Bonds", bonds, notes or other evidences of indebtedness of the Authority;
- (d) "Cost", as applied to any project of the Authority any or all costs, whenever incurred, or carrying out and placing such projects in operation, including, without limiting the generality of the foregoing, amounts for the following: acquisition, construction expansion improvement and rehabilitation of facilities; acquisition of real or personal property; demolitions and relocations; labor, materials, machinery and equipment; services of architects, engineers and environmental and financial experts and other consultants; feasibility studies, plans, specifications and surveys; interest prior to and during the carrying out of any project and for a reasonable period thereafter; reserves for debt service or other capital or current expenses; costs of issuance; and working capital, administrative expenses; legal expenses and other expenses necessary or incidental to the aforesaid, to the financing thereof and to the issuance therefor of bonds under the provisions of this act;
- (e) "Costs of issuance", any amounts payable or reimbursable directly or indirectly by the Authority and related to the sale and issuance of bonds and the investment of the proceeds thereof and of revenues securing the same including, without limiting the generality of the foregoing, printing costs, filing and recording fees, fees and charges of trustees, depositories, authenticating agents and paying agents, legal and auditing fees and charges, financial consultant fees, costs of credit ratings, premiums for insurance of the payment of bonds and fees payable for letters or lines of credit or other credit facilities securing bonds, underwriting or placement costs, fees and charges for execution, transportation and safekeeping of bonds, costs and expenses of refunding and other costs, fees and charges in connection with the foregoing;

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- (f) "Current expenses", the authority's current expenses, whether or not annually recurring, of maintaining, repairing and operating the systems and engaging in other activities authorized by this act including, without limiting the generality of the foregoing, amounts for administrative expenses of the division including costs of salaries and benefits, as provided in this act, cost of insurance, payments for engineering, financial, accounting, legal and other services rendered to the authority, taxes upon the authority or its income, operations or property and payments in lieu of such taxes, costs incurred or payable by the authority with respect to the system real property, costs of issuance not financed in the cost of a project, and other current expenses required or permitted by law to be paid by the authority, including the funding of reasonable reserves for upgrading, maintenance, repair, replacements, insurance, emergency contingencies or operations;
- (g) "Division", the division of watershed management established by section forty-two.
- (h) "Local body", a city, town, district, commission or other political subdivision or instrumentality of the commonwealth responsible for providing by itself or through an officer, board, department or division thereof local water supply or local sewer services; except as otherwise expressly provided herein, in any case where local water supply or local sewer services within the territorial boundaries of a local body are provided in whole or in part by a political subdivision or public instrumentality of the commonwealth separate from such local body, the term "local body" as used in this act shall mean, within the service area thereof, that political subdivision or public instrumentality.
- (i) "MDC sewer system", the sewers and other works of the metropolitan district commission which comprise the system of sewage disposal of the metropolitan sewage district on the effective date of this act, including all interests in real and personal property, equipment, appurtenances, structures and facilities held by the commonwealth or the metropolitan district commission in connection with the ownership, maintenance and operation thereof;
- (j) "MDC water system", the water works of the metropolitan district commission which comprise the system of metropolitan water works of the metropolitan water district on the effective date of this act, including all interests in real personal property, equipment, appurtenances, structures and facilities held by the commonwealth or the metropolitan district commission in connection with the ownership, maintenance and operation thereof;
- (k) "Person", any natural or corporate person, including bodies politic and corporate, public departments, offices, agencies, authorities and political subdivisions of the commonwealth, corporations, societies, associations and partnerships, and subordinate instrumentalities of any one or more political subdivisions of the commonwealth;

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- (l) "Project", any undertaking or other activity by or on behalf of the Authority to maintain or improve the systems, including, without limiting the generality of the foregoing, any extension, expansion or addition thereto, any acquisition, construction, reconstruction or alteration of any part thereof and any other investment therein;
- (m) "Revenues", all charges and other receipts derived by the Authority from operation of the waterworks and sewer systems and from all other activities or properties of the Authority including, without limiting the generality of the foregoing, proceeds of grants, gifts or appropriations to the Authority, investment earnings and proceeds of insurance or condemnation, and the sale or other disposition of real or personal property;
- (n) "Safe yield", that amount of water that can be safely withdrawn from a water supply source without impairing the ability of such source to supply said amount of water on an average annual basis, as determined by the division of watershed management and commented on by the division of environmental protection within the department of the attorney general;
- (o) "Sewer system", the sewer system of the Authority, consisting of (i) the system personal property formerly a part of the MDC sewer system transferred to the Authority in accordance with section four, (ii) the interest of the Authority created by this act in the system real property which was a part of the MDC sewer system immediately prior to the effective date of this act, (iii) all extensions, enlargements, improvements and additions to the former MDC sewer system acquired, constructed or operated by or on behalf of the Authority, and (iv) each other system for collection, treatment or disposal of sewage acquired or constructed by or on behalf of the Authority in accordance with the provisions of this act or as otherwise authorized by law. The sewer system shall include, without limiting the generality of the foregoing, sewers, pipes, conduits, pump stations, force mains, interceptors, treatment works and other structures, devices, appurtenances and facilities utilized for sewage collection, disposal and treatment and franchises privileges, plant, equipment and real and personal property and rights and interests of every kind relating thereto;
- (p) "System" the sewer system and the waterworks system of the Authority and the watershed system of the division.
- (q) "System personal property", all personal property held by or on behalf of the commonwealth in the MDC sewer system and the MDC water system, including, without limitation, all equipment, machinery, vehicles and appliances.
- (r) "System real property", all real property held by or on behalf of the commonwealth immediately prior to the effective date of this act in and for the MDC sewer system and the MDC water system, including all land, easements, and other interests in real property, including, without limitation, real property interests in buildings, structures and improvements and in sources of water supply.

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- (s) "Transfer date", for those employees being transferred to the Authority, July first, nineteen hundred and eighty-five; for those employees being transferred to the division, January first, nineteen hundred and eighty-five.
- (t) "Users", local bodies, utilizing water or sewer services of the Authority;
- (u) "Watershed system", (i) all real and personal property interests held by or on behalf of the commonwealth immediately prior to the effective date of this act in and for the MDC water system which were part of or appurtenant to the Quabbin watershed, Quabbin Reservoir, Ware River watershed, Wachusett watershed, Wachusett Reservoir, North and South Sudbury watersheds, Sudbury Reservoir, Framingham reservoirs 1, 2 and 3, Blue Hills Reservoir, Bear Hill Reservoir, Spot Pond Reservoir, Fells Reservoir, Weston Reservoir, Norumbega Reservoir, Chestnut Hill Reservoir, including land, easements, buildings, structures, all equipment, machinery, vehicles, and appliances, improvements, water rights and rights in sources of water supply and, (ii) all enlargements and additions to the former MDC water system acquired or constructed by the division for the purposes of the watershed system, including land, easements, building structures, equipment, machinery, vehicles, and appliances, improvements, reservoirs, dams, water rights and rights in sources of water supply; but excluding in each case the waterworks system as defined herein;
- (v) "Waterworks system", (i) all real and personal property interests in the system of waterworks held by or on behalf of the commonwealth immediately prior to the effective date of this act in and for the MDC water system, including all plants, works, connections, aqueducts, mains, pipe lines, pumping plants and facilities, waterworks buildings and structures, standpipes, tanks and appurtenances, all equipment, machinery, vehicles, and appliances, and all lands and easements directly appurtenant or incident to the maintenance or operation thereof, and (ii) all extensions, enlargements, improvements and additions to the former MDC water system acquired, constructed or operated by the authority including all plants, works, connections, aqueducts, mains, pipe lines, pumping plants and facilities, waterworks building and structures, standpipes, tanks and appurtenances, all equipment, machinery, vehicles, and appliances, and all lands and easements directly appurtenant or incident to the maintenance or operation thereof;

**SECTION 3.**

- (a) There is hereby created and placed in the executive office of environmental affairs a body politic and corporate and a public instrumentality to be known as the Massachusetts Water Resources Authority, which shall be an independent public authority not subject to the supervision or control of the executive office of environmental affairs or of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth except to the extent and in the manner provided in this act. The exercise by the Authority of the

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powers conferred by this act shall be deemed to be the performance of an essential public function.

- (b) The powers of the Authority shall be exercised by or under the supervision of a board of directors consisting of eleven members. One member of the board of directors shall be the secretary of the executive office of environmental affairs, serving ex officio, one member of the board of directors who is a resident of a Connecticut river basin community who represents water resources protection interests shall be appointed by the governor and shall serve coterminous with the governor, one member of the board of directors who is a resident of a Merrimack river basin community who represents water resources protection interests shall be appointed by the governor and shall serve coterminous with the governor, one member of the board of directors shall be appointed by the governor upon the recommendation of the mayor of Quincy in accordance with the procedure set forth in paragraph (c) and shall serve a term of four years, one member of the board of directors shall be appointed by the governor upon the recommendation of the board of selectmen of the town of Winthrop by majority vote, in accordance with the procedure set forth in paragraph (c) shall serve a term of four years; provided however, that one of the previous named five members shall be a minority person; three members of the board of directors shall be appointed by the mayor of the city of Boston and shall serve conterminous with the mayor, and three members of the board of directors shall be appointed by the advisory board as provided in section twenty-three of this act. Members appointed by the advisory board shall serve for terms of six years, provided, however, that, of the members first appointed by the advisory board, one shall serve for a term expiring on June thirtieth, nineteen hundred and eighty-six, one shall serve for a term expiring on June thirtieth, nineteen hundred and eighty-eight, and one shall serve for a term expiring on June thirtieth, nineteen hundred and ninety, with the term of each to be designated by the advisory board at the time of appointment. Persons appointed to terms succeeding the terms of members initially appointed by the advisory board, shall be appointed to terms of six years. For the purposes of this paragraph a Connecticut river basin community shall include any city or town in the commonwealth lying in whole or in part in the drainage area of the Connecticut river or its tributaries, a Merrimack river basin community shall include any city or town in the commonwealth lying in whole or in part in the drainage area of the Merrimack river or its tributaries, and a minority person shall be as set forth in the definition of "minority" contained in section forty C of chapter seven of the General Laws.
- (c) The members of the board of directors to be appointed by the governor upon the recommendation of the mayor of the city of Quincy and the board of selectmen of the town of Winthrop shall be chosen by the governor from a list of three qualified persons submitted to the governor by said mayor and a list of three qualified persons submitted by said board.

The governor shall make such appointment within fourteen calendar days after receiving said list. If there should exist a vacancy in a position on the board of directors which is to be appointed in this manner, said vacancy shall be filled through the procedure set forth herein.

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- (d) Each member of the board of directors shall serve until his successor is appointed and qualified and each appointed member of the board of directors shall be eligible for reappointment. Each member of the board of directors appointed to fill a vacancy on the board shall be appointed for the unexpired term of the vacant position. Each member of the board of directors before entering upon his duties shall take an oath before the governor to administer the duties of office faithfully and impartially and a record of such oaths shall be filed in the office of the secretary of the commonwealth. Any member of the board of directors may be removed by the appointing authority for misfeasance, malfeasance or willful neglect of duty upon the filing by the appointing authority with the secretary of the commonwealth of a statement of facts and circumstances which form the basis for such removal. The secretary of the executive office of environmental affairs shall be the chairman of the Authority. The board of directors annually shall elect one of its members as vice-chairman. Six members of the board of directors shall constitute a quorum and the affirmative vote of six members shall be necessary and shall suffice for any action taken by the board of directors. Any action of the board may take effect immediately and need not be published or posted unless otherwise provided by law. No vacancy in the membership of the board of directors shall impair the right of a quorum to exercise the powers of the board of directors. The members of the board of directors shall serve without compensation but each member shall be reimbursed for all reasonable expenses incurred in the performance of his duties. The board of directors shall be deemed to be a governmental body for purposes of and shall be subject to section eleven A and one-half of chapter thirty A of the General Laws. The Authority shall be deemed to be an agency for all other purposes under said chapter thirty A. The Authority shall also be subject as an authority of the commonwealth to section forty-two of chapter thirty and section ten of chapter sixty-six of the General Laws. The Authority shall be deemed to -be a public body and all monies of the Authority shall be deemed to be public funds for purposes of chapter twelve A of the General Laws.
- (e) Notwithstanding any other provision of general or special law to the contrary, any member of the board of directors who is also an officer or employee of the commonwealth or of a city or town or other public body shall not thereby be precluded from voting for or acting on behalf of the Authority, the commonwealth or such city or town or other public body on any matter involving the Authority, the commonwealth or that city or town or other public body and any member, officer, employee or agent of the Authority shall not be precluded from acting for the Authority on any particular matter solely because of any interest therein which is shared generally with a substantial segment of the public. The Authority shall be deemed to be a state agency for purposes of chapter two hundred and sixty-eight A of the General Laws and a governmental body for purposes of chapter two hundred and sixty-eight B of the General Laws.

## SECTION 4.

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- (a) On July first, nineteen hundred and eighty-five, ownership, possession and control of the system personal property as it relates to the sewer and waterworks system shall pass to and be vested in the Authority without consideration or further evidence of transfer and shall thereafter be in the ownership, possession and control of the Authority. All records in custody of the metropolitan district commission under chapter one hundred and seventy-two of the acts of nineteen hundred and thirty-nine shall remain in the metropolitan district commission. All books, maps, papers, plans, records and documents of whatever description pertaining to the design, construction, operation, and affairs of the MDC sewer system and the MDC water system, exclusive of those pertaining to the MDC watershed system, which are in the possession of the metropolitan district commission on January first, nineteen hundred and eighty-five, or which thereafter come into the possession of the metropolitan district commission also shall be transferred and delivered to the Authority to its use, ownership, possession and control. All such system personal property as it relates to the watershed system shall remain in the metropolitan district commission and be assigned to the watershed management division.
- (b) As of July first, nineteen hundred and eighty-five, the commonwealth grants to the Authority, subject to limitations under other law in force on the effective date of this act and limitations contained in this act, the exclusive right for so long as the Authority shall not have been terminated in accordance with section twenty-one to utilize for water supply purposes all such quantities of water as may be safely yielded from the watershed system or as otherwise may have been provided by the general court for the watershed system. The Authority's right to utilize the watershed system shall include the delivery, distribution and sale of water thereof by the Authority and the receipt by the Authority as its revenues of the Authority's charges therefor.
- (c) The ownership of the system real property, as it relates to the sewer and waterworks systems shall not be transferred to the Authority under this act, but the Authority, as of July first, nineteen hundred and eighty-five, shall have the rights to enter, use, improve, operate, maintain and manage that portion of the system real property in accordance with this act, such right to be subject to revocation by the commonwealth through legislation enacted by the general court. The commonwealth hereby covenants that in the event such rights are revoked by the general court, such rights shall be transferred to such other public body as the general court shall designate, and the commonwealth further covenants that whatever public body assumes such rights shall discharge and provide for the satisfaction of all the obligations of the Authority, including, but not limited to, its obligations to provide for payment of the bonds of the Authority. The ownership of the system real property as it relates to the watershed system shall remain in the commonwealth and the watershed management division of the metropolitan district commission shall manage all such properties provided for by this act. Under this act (i) no lands or easements taken or acquired for the purposes authorized by article ninety-seven of the Amendments to the Constitution of the Commonwealth shall be used for other purposes or disposed of, and (ii) no lands devoted to the public use shall be diverted to another inconsistent public use,



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except in all instances in accordance with the laws and the Constitution of the Commonwealth.

- (d) On July first, nineteen hundred and eighty-five, all proceeds, exclusive of such amounts for the purposes of equipment, capital project needs, or land acquisition and improvements of that portion of the MDC water system comprising the watershed system, if any, of bonds referred to in section eleven and grants and other aid which are held by the commonwealth at the effective date of this act shall then and thereafter be deemed to be held in trust for, and shall upon demand of the Authority be transferred to the Authority to be applied by the Authority to projects for which such bonds, grants or other aid was authorized. On July first, nineteen hundred and eighty-five, all proceeds, if any, of bonds referred to in said section eleven and grants and other aid which are for the equipment, capital project needs, or land acquisition and improvements of that portion of the MDC water system comprising the watershed system, shall then and thereafter be expended by the division on projects for which such bonds, grants or other aid was authorized. All proceeds if any, of bonds, grants or other aid referred to herein, which shall be so held in trust and transferred upon demand, shall be in the amount as certified by the commissioner of the metropolitan district commission to the state treasurer.
- (e) The requirements respecting budgets of the Authority in paragraph (b) of section eight shall first be effective commencing with current expenses and costs paid or incurred on and after July first, nineteen hundred and eighty-five. The charges of the Authority provided for in section ten shall first become effective on July first, nineteen hundred and eighty-five. During the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-four, the commonwealth may make, enforce and receive assessments and charges relating to the MDC sewer and water systems, comprising the sewer system, watershed system, and waterworks system as defined in this act, with provisions of chapter ninety-two of the General Laws in effect immediately prior to the effective date of this act only as follows: (i) with respect to all expenses and costs other than debt service which shall have been expended for operation of the MDC sewer system in the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-three; (ii) with respect to debt service relating to the MDC sewer system which shall be incurred in the fiscal year of the commonwealth commencing July first nineteen hundred and eighty-four; (iii) with respect to all costs and expenses including debt service which shall be incurred for operation of the water supply system for the fiscal year of the commonwealth commencing July first nineteen hundred and eighty-four. No repeal or amendment of laws pursuant to sections thirty through seventy two of this act shall revoke the obligation of any person to make payments to the commonwealth, including, without limitation, charges or assessments under chapter ninety-two of the General Laws and section twenty of chapter fifty-nine of the General Laws, made prior to July first, nineteen hundred and eighty-four, pursuant to the authorization contained in the preceding sentence and during the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-four, and all amounts received by the commonwealth on account of charges or assessments to be made under the authority of the preceding

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- sentence and any other amounts derived from or related to the operation of said systems during the fiscal year of the commonwealth commencing July first nineteen hundred and eighty-four shall be received and held as funds of the commonwealth and shall not be transferred to the Authority. Notwithstanding any other provision of this act or other law, commencing on July first, nineteen hundred and eighty-five, all amounts of any kind received by the commonwealth, exclusive of amounts derived from or related to the activities authorized in section forty-two, which are derived from or related to the operation of the systems including the former MDC sewer system or MDC water system, exclusive of that portion of the MDC water system comprising the watershed system as defined in this act, shall be deemed to be held in trust for and shall be transferred and paid over to the Authority when received without further appropriation to be applied to the purposes of the Authority. For purposes of this section, all references to funds received by the commonwealth shall be deemed to include receipt of funds by the metropolitan district commission.
- (f) All rules, regulations, licenses and permits duly promulgated by or on behalf of the metropolitan district commission respecting the MDC sewer system and the MDC water system, exclusive of that portion of the MDC water system comprising the watershed system as defined in this act, shall remain in full force and effect to the extent consistent with this act until revised or rescinded by the Authority. All such rules, regulations, licenses and permits respecting that portion of the MDC water system comprising the watershed system shall remain in full force and effect to the extent consistent with this act, including regulations promulgated pursuant to chapter seven hundred and thirty-seven of the acts of nineteen hundred and seventy-two. All contractual rights and liabilities of the metropolitan district commission pertaining to either the MDC sewer system, and the waterworks functions of the MDC water system, or the watershed functions of the MDC water system, shall continue in full force and effect and all benefits, obligations and duties assumed by and imposed upon the Authority and the division, respectively, so far as consistent with the powers granted to the Authority and said division under this act. No liability in tort, or for water pollution under a statutory or other basis, arising prior to July first, nineteen hundred and eighty-five, however, shall be imposed upon the Authority and this sentence shall apply to all actions or proceedings, including those commenced prior to the effective date of this act. Except as expressly excepted by the previous sentence, actions and proceedings against or on behalf of the metropolitan district commission, pertaining to either the MDC sewer system and the waterworks functions of the MDC water system, or the watershed system functions of the MDC water system, shall continue unabated and may be completed against or by the Authority or by the division, respectively.
- (g) On July first, nineteen hundred and eighty-five, each employee of the metropolitan district commission paid as of the effective date of this act from funds derived from the accounts of the metropolitan sewerage district or the metropolitan water district shall become an employee of the Authority without impairment of civil service status and seniority and without reduction in compensation, notwithstanding any change in job titles or duties and without loss

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- of accrued rights to holidays, sick leave, vacation and benefits, and shall thereafter perform his or her duties under the direction, control and supervision of the Authority, provided, however, that any employee subject to transfer under the foregoing provision of this sentence whose existing duties and responsibilities are determined by the commissioner of the metropolitan district commission to relate directly and primarily to functions of the metropolitan district commission not passing to the Authority under this act and for whom a position at the metropolitan district commission is funded in whole or in part by items 2410-1000 or 2460-1000 of section two of chapter two hundred and thirty-four of the acts of nineteen hundred and eighty-four and any employee, so determined, to be transferred to the division of watershed management shall remain an employee of the commission, without change in civil service status, if any, without any reduction in seniority, compensation, salary, and without any loss of accrued rights to holidays, sick leave, vacation and other benefits of employment, and shall continue to perform duties under the direction, control and supervision of the metropolitan district commission, under funding arrangements not thereafter derived from the accounts of the metropolitan sewerage district or the metropolitan water district. It is the intention of the general court in the implementation of this provision that each employee of the metropolitan district commission whose compensation is funded from funds derived from the accounts of the metropolitan sewerage district or the metropolitan water district shall, upon the implementation of the foregoing provisions, then hold employment at the Authority or the metropolitan district commission, as the case may be, subject, so far as concerns the Authority, to the terms and conditions of employment established by this act, and so far as concerns the metropolitan district commission, to such rights as may now and hereafter be lawfully protected and provided. Terms of office of employees of the metropolitan district commission transferred to the Authority shall not be deemed to be interrupted by such transfer provided that all employees shall be governed by the provisions in section seven for retirement, pension and group insurance benefits and for protection and preservation of retirement and pension rights based on their prior service. Rights and obligations under collective bargaining agreements with respect to employees transferred from the metropolitan district commission, except to the extent expressly inconsistent with this act, shall be assumed by and imposed upon the Authority pursuant to section seven (c). Every employee transferred to the Authority under this paragraph who immediately prior to such transfer holds a permanent appointment classified under chapter thirty-one or has tenure by reason of section nine A of chapter thirty of the General Laws shall be entitled to the rights and benefits of and shall be subject to the provisions relating to tenured employees under chapter thirty-one or section nine A of chapter thirty, respectively, with respect to that position.
- (h) The deputy commissioner of capital planning and operations shall assist and cooperate with the Authority in making suitable office arrangements, exclusive of the office premises in the building located at twenty Somerset street in Suffolk county, in the city of Boston, for the administrative offices of the Authority including, without limitation of the foregoing, temporary arrangements in office

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premises of the commonwealth which may include such reduced rents prior to the transfer date as the deputy commissioner shall deem appropriate.

## SECTION 5.

- (a) Notwithstanding any other provision of this act, on January first, nineteen hundred and eighty-five or as soon thereafter as a quorum of the board of directors may be appointed, the Authority shall undertake the following: (i) appoint an executive director and such additional staff as shall be necessary for the purposes of this section; (ii) develop its rules and regulations, including charges for implementation on July first, nineteen hundred and eighty-five; (iii) provide for the implementation of permanent financing and; (iv) any such other powers necessary for the provision of water delivery and sewer services on July first, nineteen hundred and eighty-five. Until the appointment and qualification of members of the board of directors of the Authority constituting a quorum of the board all such rights and powers authorized by the provisions of this section may be exercised by personnel of the metropolitan district commission with the approval of the secretary of the executive office of environmental affairs.
- (b) An amount equal to all requirements incurred in the MDC Sewer Fund and the MDC Water Fund to the extent and in amounts expended for the purposes of the sewer and waterworks systems for the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-four and all amounts appropriated by the commonwealth for such period shall be repaid to the commonwealth by the Authority and credited on the books of the commonwealth as of no later than June thirtieth, nineteen hundred and eighty-six. The Authority shall also reimburse the commonwealth to be credited on the books of the commonwealth as of no later than June thirtieth, nineteen hundred and eighty-six for all then outstanding and unreimbursed cash advances of funds of the commonwealth made on or prior to that date for the funding of projects for MDC sewer system or the MDC water system and, from January first, nineteen hundred and eighty-five through June thirtieth, nineteen hundred and eighty-five, for costs of projects of the Authority for the waterworks system and the sewer system, to the extent of and in amounts expended for the purposes of the sewer and waterworks systems. All amounts transferred between the commonwealth and the Authority under sections four and five shall be subject to adjustment upon final audit to be completed within two years of the effective date of this act.
- (c) In order to provide funds in addition to amounts appropriated by the commonwealth for current expenses of the sewer and waterworks systems during the period from the effective date of this act until December thirty-first, nineteen hundred and eighty-five the state treasurer, on behalf of the commonwealth, is hereby authorized and directed to loan to the Authority through investment in a note or other appropriate instrument of the Authority, and the Authority is authorized to borrow from the state treasurer, at any time and from time to time on or prior to December thirty-first, nineteen hundred

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and eighty-five, on such terms and conditions as the state treasurer and the Authority shall agree, an amount not in excess of sixty-five million dollars. Any amount so borrowed by the Authority, with interest thereon at such reasonable rate as the state treasurer and the Authority shall agree, shall be repaid to the commonwealth to be credited on the books of the commonwealth as of no later than June thirtieth, nineteen hundred and eighty-six. Of the amount so loaned, the Authority may transfer to the state treasury such amounts as it deems appropriate to be administered in trust for the purpose of the water and sewer divisions of the metropolitan district commission; provided, however, that such amounts may be expended only after transfer to and subject to the wording of the appropriate line-item appropriations of said divisions, all outside sections pertaining to said items, and all other laws regulating the expenditures of state funds. For purposes of the first sentence of paragraph (b) amounts expended from such transfers to the state treasury shall not be deemed requirements incurred in the metropolitan district commission sewer fund or the metropolitan district commission water fund. Said transfers shall be approved by the secretary of environmental affairs.

- (d) The Authority is also authorized to issue at one time or from time to time prior to June thirtieth, nineteen hundred and ninety, notes of the Authority in the aggregate principal amount of six hundred million dollars outstanding at any one time, excluding notes refunded by other notes issued under this paragraph, for the purpose of providing funds for: (i) meeting the obligations of the Authority to repay or reimburse the commonwealth for all amounts described in paragraph (b) of this section; (ii) repaying the commonwealth for any amounts borrowed by the Authority from the commonwealth including interest thereon pursuant to paragraph (c); (iii) meeting the obligations of the Authority as required by section forty-two of this act ; (iv) paying all or part of the cost of the Authority's projects undertaken at any time prior to December thirty-first, nineteen hundred and eighty-nine; (v) paying all or any part of the current expenses of the Authority in anticipation of receipt of revenues of the Authority, but in no event shall the aggregate amount of notes outstanding for this purpose exceed one-half of the budgeted current expenses of the Authority for the fiscal year in which such notes are outstanding; and, (vi) paying all or any part of the interest payable on any notes of the Authority issued under this paragraph. Notes issued by the Authority in accordance with this paragraph shall be issued for such term or terms as the Authority shall determine and may be renewed from time to time; provided, however, all such notes and any renewals thereof shall mature and be payable no later than June thirtieth, nineteen hundred and ninety except that notes issued in anticipation of revenues shall be payable and shall mature no later than one year from their date. Notes issued by the Authority in accordance with this paragraph, except notes issued in anticipation of revenues, shall be issued in anticipation of bonds to be issued by the Authority pursuant to section twelve. All notes issued pursuant to this paragraph shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to, section twelve and the other provisions of this act relating to bonds; provided, however, that notes

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issued under this paragraph shall be issued at a fixed rather than a variable rate or rates of interest.

- (e) The commonwealth, acting by and through the secretary of administration and finance with the approval of the governor, upon application of the Authority, shall guarantee the principal of and interest and notes of the Authority issued in accordance with paragraph (d). The secretary of administration and finance with the approval of the governor and without further authority may approve the form, terms and conditions of, and may execute and deliver on behalf of the commonwealth such guaranty and any related agreements with or for the benefit of the holders of such notes containing such terms, conditions and covenants of the commonwealth as the secretary of administration and finance may deem reasonable including provision for the payment of notes not paid or refunded by the Authority by application of the proceeds of the loan authorized in paragraph (f). Without limiting the generality of the foregoing, such guaranty may take the form of an agreement to reimburse the issuer of a letter of credit or other credit facility which relates to such notes. The full faith and credit of the commonwealth shall be pledged for the guaranty provided for in this paragraph. The total principal amount of notes to be guaranteed under this paragraph shall not exceed six hundred million dollars in the aggregate; provided, however, that any note being refunded by the issuance of a guaranteed note shall not, and the refunding note shall, be included within such total amount.
- (f) If the Authority shall fail or otherwise be unable to refund or pay when due any guaranteed note or notes, or the interest thereon, issued by the Authority in accordance with paragraph (e), such notes, and the interest thereon, upon presentation to the state treasurer, shall be paid by the commonwealth. For the purpose of providing funds to pay any such guaranteed notes and interest or to reimburse the treasury for any such payments the state treasurer shall, upon the request of the governor, issue and sell bonds of the commonwealth in an amount specified by the governor from time to time, but not exceeding in the aggregate the sum of six hundred million dollars for principal and ninety million dollars for interest. Bonds issued by the commonwealth under this paragraph shall be designated on their face, Massachusetts Water Resources Authority Loan, Act of 1984. Such bonds shall be issued for such maximum term or terms not exceeding twenty years as the governor may recommend to the general court in accordance with section three of Article LXII of the Amendments to the Constitution of the Commonwealth. The Authority shall reimburse the commonwealth in accordance with a schedule to be determined by the secretary of administration and finance at the time such bonds are issued, from any moneys of the Authority which are available for such purposes, including funds provided from charges of the Authority in accordance with paragraph (a) of section ten. Bonds and interest thereon issued by the commonwealth under the authority of this section shall, notwithstanding any other provisions of this act, be general obligations of the commonwealth, in anticipation of the receipt of proceeds of such bonds, the treasurer may issue and sell temporary notes and renewals thereof in an

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amount outstanding at one time not in excess of the amount of bonds specified by the governor pursuant to this paragraph, for a term not to exceed three years, including any renewals thereof. The principal of and interest on such notes may be paid from the proceeds of said renewal notes or bonds and to the extent not so paid shall be paid from any other funds or receipts; provided, however, that if and to the extent that the principal amount of such notes is paid from other than the proceeds of said renewal notes or bonds, the principal amount of said bonds which may be issued under this section shall be reduced by a like amount. Such notes and any renewals thereof shall be general obligations of the commonwealth.

- (g) The state treasurer may borrow, from time to time, on the credit of the commonwealth such amounts as may be necessary to make any loans required of the commonwealth under paragraph (c) and to pay any interest or other charges incurred in borrowing such money, and may issue notes of the commonwealth therefor, bearing interest payable at such times and at such rates as shall be fixed by him. No note issued under this paragraph shall mature more than one and one-half years from its date but notes may be refunded one or more times. Such notes shall be issued for such maximum term of years, not exceeding one and one-half years, as the governor may recommend to the general court in accordance with section three of Article LXII of the Amendments to the Constitution of the Commonwealth.
- (h) The obligations of the Authority to make repayments and reimbursements to the commonwealth as described in paragraphs (b) and (c) and section forty-two shall be reduced by the sum of all amounts received by the commonwealth of account of operations of the system conducting in the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-four including, without limitation, all amounts so received on account of charges and assessments for purposes described in clauses (ii) and (iii) of the third sentence of paragraph (f) of section four. Attribution of charges and assessments received by the commonwealth during such year shall be made on a consistent basis with the certifications made to the state treasurer by the metropolitan district commission which are the basis of such charges. Except as otherwise expressly provided in this act, no amount to be repaid or reimbursed to the commonwealth by the Authority under this section five shall bear interest prior to such repayment or reimbursement. All amounts received by the commonwealth on account of operations of the system conducted in the fiscal year of the commonwealth commencing July first, nineteen hundred and eighty-four and all amounts repaid or reimbursed to the commonwealth by the Authority under this section and section forty-two shall be accounted for as appropriate on the books of the commonwealth in the Metropolitan Sewerage District Fund and the Metropolitan Water District Fund and such funds shall be closed on the books of the commonwealth as of the close of the fiscal year ending June thirtieth, nineteen hundred and eighty-six.

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SECTION 6. The Authority shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including without limiting the generality of the foregoing, the powers:

- (a) to adopt and amend by-laws for the regulation of its affairs and the conduct of its business;
- (b) to adopt an official seal and alter the same at pleasure;
- (c) to maintain an office at such place or places as it may determine;
- (d) to adopt a fiscal year to conform with the fiscal year of the commonwealth;
- (e) to adopt and enforce procedures and regulations in connection with the performance of its functions and duties and without limitation on other reasonable means of enforcement, to establish reasonable penalties for violation of its regulations commensurate with the seriousness of the violation; provided, however, that no penalty may exceed ten thousand dollars for each such violation but the Authority may in the case of a continuing violation, make each day's violation a separate violation;
- (f) to sue and be sued, to prosecute and defend actions relating to its properties and affairs, and to be liable in tort in the same manner as a private person except that the Authority and its members, employees and agents shall be immune from tort liability for acts and omissions constituting (i) the exercise of a legislative or judicial function, (ii) the exercise of an administrative function involving the determination of fundamental governmental policy or (iii) the exercise of a discretionary function or duty; provided, however, that property of the Authority, other than, in actions to enforce payment of bonds, the revenues and funds pledged to the payment of bonds, shall not be subject to attachment nor levied upon by execution, and, provided further, that the Authority is not authorized to become a debtor under the United States Bankruptcy Code;
- (g) to employ personnel as hereinafter provided and to engage architectural, engineering, accounting, management, legal, financial and environmental consulting and other professional services;
- (h) to receive and apply its revenues to the purposes of this act without appropriation or allotment by the commonwealth or any political subdivision thereof;
- (i) to maintain, repair, operate, extend, enlarge, and improve the sewer and waterworks systems, to investigate, design, construct and acquire improvements and additions to said systems; to engage in activities, programs and projects on its own behalf or jointly with other public bodies; to provide technical assistance to local bodies and the division in furtherance of the management or improvement of water supply and sewage collection, disposal and treatment services; and to provide for the cost of activities, programs and projects from grants, the proceeds of bonds, or from other revenues available to the Authority for such purposes;
- (j) pursuant to the provisions of section nine, to acquire and take and hold title in its own name, by purchase, lease, leasepurchase, sale and leaseback, mortgage, exchange, gift or otherwise, or to obtain options for the acquisition of, and to dispose of, any property, real or personal, improved or unimproved,



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- tangible or intangible, or any interest therein, and to exercise the power of eminent domain;
- (k) to establish, adjust, collect and abate charges for services, facilities and commodities furnished or supplied by it;
  - (l) to borrow money and issue bonds and to pledge or assign or create security interests in funds or revenues of the Authority to pay or secure such bonds;
  - (m) to obtain insurance and to enter into agreements of indemnification necessary or convenient to the exercise of its powers under this act;
  - (n) to apply for, receive, administer and comply with the conditions and requirements respecting any grant, gift or appropriation of property, services or moneys;
  - (o) to enter into contracts, arrangements and agreements with other persons in all matters necessary or convenient to the operation of this act including, without limiting the generality of the foregoing, matters of technical cooperation, planning, management, administration and operations and to execute and deliver instruments necessary or convenient to the exercise of its powers under this act;
  - (p) to apply for and to hold permits, licenses, certificates or approvals as may be necessary or desirable to construct, maintain and operate the sewer and waterworks systems;
  - (q) to appear in its own behalf before other public bodies, including, without limiting the generality of the foregoing, the Congress of the United States and the general court of the commonwealth, in all matters relating to its powers and purposes;
  - (r) to do all things necessary, convenient or desirable for carrying out the purposes of this act or the powers expressly granted or necessarily implied by this act. Specification elsewhere in this act of powers of the Authority with respect to the Authority's regulations, charges and operations shall not limit the generality of the powers granted in this section and in section ten or powers the Authority may exercise under any other special or general law insofar as it relates to the purposes of this act.

## SECTION 7.

- (a) An executive director, who shall be a person professionally skilled and experienced in law, finance, public works or public utility programs, or public administration with significant experience in wastewater pollution abatement, shall be appointed by the board of directors for a term not to exceed five years as chief executive officer of the Authority, and shall so serve until his successor is appointed and qualified and each such executive director shall be eligible for reappointment for like five year terms. An executive director may be removed at any time by the board for misfeasance, malfeasance or willful neglect of duty upon the filing by the board with the secretary of the commonwealth of a statement of facts and circumstances which form the basis for such removal. The executive director shall administer the affairs of the Authority, including, without limiting the generality of the foregoing, matters relating to contracting,

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- procurement, personnel and administration, under the supervision of the board of directors in accordance with such authorizations as the board of directors may from time to time reasonably adopt and continue in force. The Authority shall also appoint persons to hold the offices of secretary and treasurer to the Authority. The secretary shall be the custodian of the seal and of the books and records of the Authority and shall keep a record of the proceedings of the board of directors. The secretary may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under its official seal to the effect that such copies are true copies and all persons dealing with the Authority may rely upon such certificates. The treasurer shall have charge of the books of account and accounting records of the Authority and shall be responsible under the supervision of the executive director for financial control for the Authority. Upon the recommendation of the executive director, the board of directors shall also appoint and establish reasonable compensation, benefits and other terms of employment for other officers and other employees of the Authority as it deems necessary, including assistant secretaries and assistant treasurers in whom may be vested any of the powers of the secretary and the treasurer, respectively, and including architects, engineers, accountants, lawyers, planners and other management and professional personnel. Except as otherwise hereinafter provided for the appointment of said executive director, other officers and employees of the Authority shall serve at the pleasure of the board of directors or under collective bargaining agreements or contracts of employment; provided, however, that no contract of employment, except for that of the executive director, shall exceed a term of three years, which may be renewed upon the expiration thereof.
- (b) The Authority may indemnify any present or past director, officer, employee or agent of the Authority and any member, officer, employee or agent of the retirement board established pursuant to paragraph (d) against liabilities, claims, costs and expenses, including legal expenses, in connection with any actual or threatened proceeding, including any settlement thereof approved by the Authority, arising by reason of any act or omission within the scope of his duties for the Authority; provided, however, that no indemnification shall be provided to a person concerning a matter as to which such person is finally adjudicated to have acted either without the belief held in good faith that his or her conduct was in the best interests of the Authority or with reason to understand that his or her conduct was unlawful. Costs and expenses may be paid prior to a final disposition upon receipt of an undertaking, which the Authority may accept without regard to the financial resources of the person indemnified, that the person receiving the benefit of payments shall repay such payments if he shall be finally adjudicated not to be entitled to indemnification hereunder. The Authority may purchase insurance on behalf of itself and any of its directors, officers, employees or agents and any member, officer, employee or agent of the retirement board established pursuant to paragraph (d) against any liability arising out of such person's status as such, whether or not the Authority would have the power to indemnify such person against such liability.
- (c) The Authority and its employees shall be subject to the provisions of chapter one hundred and fifty E of the General Laws, and for purposes of said chapter, the

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- Authority shall be deemed to be an employer or public employer and a legislative body. The Authority may designate a representative to act in its interest in labor relations matters with its employees. Rights and obligations under collective bargaining agreements with respect to employees transferred from the metropolitan district commission, except to the extent expressly inconsistent with this act, shall be assumed by and imposed upon the Authority, and employees transferred to the Authority who are subject to such agreements shall continue to be represented by the employee organizations that are parties to such agreements until such time as they elect to be otherwise represented in accordance with the provisions of chapter one hundred and fifty E. Existing bargaining units as determined by the state labor relations commission for metropolitan district commission employees shall remain in full force and effect for those employees transferred to the Authority until the expiration date of collective bargaining agreements covering such employees. No collective bargaining agreement entered into by the Authority, however, shall limit inherent management rights which shall include, without limiting the generality of the foregoing, the following: (i) employment, assignment, and promotion of employees and the determination of standards therefor, (ii) termination and discharge of employees, provided that any collective bargaining agreement may protect employees against such actions on arbitrary, capricious or unreasonable grounds, (iii) determination of the Authority's levels of service, levels of staffing, and the methods, means and personnel for performing operations, (iv) supervision, control, and evaluation and establishment of productivity standards for employees, and (v) use of part-time regular employees and of independent contractors or vendors. Notwithstanding the foregoing, each collective bargaining agreement in force on the effective date of this act covering former employees of the metropolitan district commission transferred to the employment of the Authority under section four, shall continue to be a valid collective bargaining agreement in effect with respect to such employees until the date which is two years subsequent to the stated date of expiration of such agreement; provided, however, that the Authority shall negotiate in good faith pursuant to the provisions of chapter one hundred and fifty E of the General Laws with respect to wages, hours, and other terms in conditions of employment to become effective as of the stated date of expiration of such agreement for the balance of the term of such agreement as herein extended.
- (d) All employees of the Authority not employed by the metropolitan district commission prior to July first, nineteen hundred and eighty-five shall become members of a contributory retirement system to be referred to as the Massachusetts Water Resources Authority Retirement System, hereinafter referred to as the "Authority Retirement System", which shall be a separate system from the state employees' retirement system and which shall be established and maintained in accordance with sections one to twenty-eight L, inclusive, and section one hundred and two of chapter thirty-two of the General Laws and for all purposes thereunder shall be deemed to be a contributory retirement system of a governmental unit governed by the provisions thereof for the state employees' retirement system except as otherwise expressly provided herein. The Authority Retirement System shall become effective without further

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acceptance by the Authority on July first, nineteen hundred and eighty-five. The Authority Retirement System shall be administered by a separate retirement board established by the Authority which shall consist of three persons and which shall have custody of the funds of the Authority Retirement System and shall have the general powers and duties set forth in subdivision five of section twenty of chapter thirty-two of the General Laws. One member of the retirement board shall be the secretary of the Authority, serving ex officio. The second member of the retirement board shall be initially appointed by the Authority for a term expiring June thirtieth, nineteen hundred and eighty-six and thereafter the second member shall be a person elected by members in service and members retired from service in the Authority Retirement System from among their number to serve for a term expiring June thirtieth, nineteen hundred and eighty-nine and for successive triennial terms thereafter. The third member of the retirement board shall be appointed by the Authority for successive triennial terms; provided, however, that the term of the member first appointed shall expire on June thirtieth, nineteen hundred and eighty-eight. Members of the retirement board shall serve until their successors are duly qualified and shall be eligible for re-election or reappointment. Members of the retirement board shall serve without compensation but each member may be reimbursed for all reasonable expenses incurred in the performance of his duties. Without limitation of other provisions of general law applicable by terms thereof to the retirement board, the retirement board shall be deemed to be a governmental body for purposes of and shall be subject to section eleven A and one-half of chapter thirty A of the General Laws and the members thereof shall be deemed to be state employees subject to chapter two hundred and sixty-eight A of the General Laws. Whenever a person, other than an employee of the metropolitan district commission transferred to the Authority under the provisions of this act, who is a member of a retirement system under chapter thirty-two of the General Laws shall become a member of the Authority Retirement System by virtue of employment by the Authority, that person shall be entitled to all creditable service and all rights and benefits to which he was entitled as a member of such prior retirement system. Within ninety days of such employment, the amounts of the accumulated total deductions, including accumulated interest on such deductions, credited to such employee's accounts in the annuity savings fund and pension reserve fund of the prior retirement system shall be transferred and credited to the employee's accounts in the annuity savings fund and pension reserve fund of the Authority Retirement System. The amounts required to finance pension benefits earned by employees of the Authority in a given year shall be determined by the retirement board and shall be paid over by the Authority. Funds paid into the Authority Retirement System pursuant to this section shall cease to be funds of the Authority and shall be used solely for the purposes of the Authority Retirement System. This provision shall be deemed to constitute a contractual right and benefit on behalf of members of the Authority Retirement System who are or may be retired pursuant to said chapter thirty-two, and no amendment or alteration shall be made which would result in a diversion of the funds of the Authority Retirement System from the purposes thereof. Nothing in this act shall be deemed in any way to decrease

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or abridge the annuities, pensions, retirement allowances, refunds or accumulated total deductions or any right or benefit to which an employee transferred to the Authority retirement System pursuant to this act has become entitled by virtue of membership in any of the systems in the state retirement system prior to transfer to the Authority's employment, and the liability therefor shall become the liability of the Authority Retirement System upon the transfer of funds provided for in this paragraph. All persons transferred to the Authority on July first, nineteen hundred and eighty-five who are members of the state employees' retirement system on account of employment by the metropolitan district commission prior to said date shall continue to be members of the state employees' retirement system and subject to the laws applicable thereto, and neither the Authority nor the Authority Retirement System shall have any liability for retirement allowances to or on account of such persons.

The Authority shall not be liable for retirement allowances to or on account of metropolitan district commission employees who are not transferred to the Authority pursuant to the provisions of this act, except for the costs of retirement contributions of employees of the watershed management division properly chargeable to the Authority.

- (e) Subject to the last sentence of this paragraph, every employee who upon employment by the Authority is covered by the group insurance provided by chapter thirty-two A of the General Laws shall continue in uninterrupted coverage and all other employees of the Authority are hereby made eligible for said group insurance to the same extent as if they were employees of the commonwealth. The share of the commonwealth of the cost of such insurance, with respect to the employees of the Authority, shall be borne by the Authority, but with respect to persons retired from service with the metropolitan district commission who have not been employees of the Authority, shall continue to be borne by the commonwealth. The Authority shall forward its contribution, together with all amounts withheld from the salaries or wages of its employees as provided in paragraph (a) of section eight of said chapter thirty-two A and all amounts paid by an employee as provided in paragraph (b) of said section eight, to the state employees group insurance commission at such time and in such manner as said commission may reasonably prescribe. The Authority is authorized to enter into reasonable alternative and substitute group insurance arrangements providing benefits to its employees substantially equivalent to or superior to benefits under said chapter thirty-two A, and thereupon may cease its arrangements for such benefits under said chapter thirty-two A.
- (f) The Authority may contract, to the extent permitted by and in accordance with applicable requirements of the United States Internal Revenue Code, with any of its employees (i) to defer a portion of the employee's compensation and to invest such amounts under a deferred compensation program and (ii) to make contributions from amounts otherwise payable as an employee's current compensation to an individual retirement account; hereinafter referred to as IRA. Investments of deferred compensation may be made in a life insurance or annuity contract, mutual fund or bank investment trust and investments of IRA amounts may be made in the foregoing or in other investments authorized by the Internal

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Revenue Code. The treasurer of the Authority, before making any such investment of deferred compensation or making any deductions from compensation for purposes of an IRA, shall solicit sealed bids to be opened at a time and place designated by the treasurer from insurance companies authorized to conduct business within the commonwealth pursuant to chapter one hundred and seventy-five of the General Laws, mutual fund managers and banks. As applicable to investment of deferred compensation and IRA amounts, as the case may be, bids shall clearly indicate the interest rate which shall be paid, any commissions for salesmen, any load imposed for purposes of administration, mortality projections, expected payments, tax implications for employees and such other information as the treasurer may require. For IRAs, upon the treasurer's determining which provider offers the product or products most beneficial to the employee in each category for which bids were solicited, the treasurer may offer such employee the opportunity to establish an IRA with one or more such providers. The employee who wishes to invest his IRA funds with any such provider, or combination of providers, may authorize the treasurer to deduct from amounts otherwise payable to the employee, at one time or on a periodic basis, amounts to be paid into the employee's IRA. If the employee so elects, the treasurer shall pay to the providers the amount designated by the employee, in the name of the employee, to the employee's IRA. Amounts so paid to the providers for the employee's IRA account shall belong exclusively to the employee. Except as otherwise provided herein, the treasurer may restrict an employee's right to contract to have contributions made to an IRA through deductions and payments by the treasurer to those providers selected as the result of the competitive bidding process outlined herein, but the authority conferred upon the treasurer shall not be construed to restrict or limit the right of any employee to establish one or more IRAs with such banks, insurance companies, or similar authorized institutions as the employee may choose in any manner other than through an authorized deduction by the treasurer of a portion of the employee's compensation as outlined herein. Notwithstanding any provisions to the contrary, the treasurer shall not be required to solicit bids from providers of investment products for deferred compensation investments or IRA contributions, provided: (i) the treasurer elects to invest such deferred compensation in, or is authorized by the employee to pay IRA contributions into, the same investment products as provided through a deferred compensation or IRA plan for employees of the commonwealth administered by the state treasurer, or a deferred compensation plan for employees of the Authority administered by the treasurer, provided such plan resulted from the solicitation of bids in accordance with bidding requirements comparable to those required under this section; or (ii) the treasurer elects to invest such deferred compensation in, or is authorized by the employee to pay IRA contributions into investment products offered pursuant to a deferred compensation plan or an IRA investment option program, developed through a competitive selection process resulting from the solicitation of bids by a group of any combination of three or more city, town, county or public authority treasurers acting as a Common Group for purposes of soliciting such proposals in accordance with bidding requirements comparable to those required under this

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section. Any contract entered into between an employee and the Authority pursuant to this section shall include all information in terms the employee can reasonably be expected to understand. Such deferred compensation and IRA programs shall be in addition to and not a part of the retirement program or pension system as provided under the Authority Retirement System, under said chapter thirty-two or under any other benefit program provided by law for such employee. Any compensation deferred under such a plan and any compensation contributed by an employee to an IRA under such plan shall continue to be included as regular compensation, as defined in section one of said chapter thirty-two, for the purpose of computing the retirement and pension benefits earned by any such employee, but any compensation so deferred shall not be included in the computation of any taxes withheld on behalf of any such employee. For purposes of this paragraph, the word "employee" shall have the same meaning as "employee" in section one of chapter thirty-two of the General Laws and shall also include consultants and independent contractors who are natural persons paid by the Authority and whose duties require that their time be devoted to the service of the Authority during regular business hours.

- (g) The Authority shall not be subject to the jurisdiction of the division of personnel administration established by section four A of chapter seven of the General Laws and shall not be governed by sections forty-five, forty-six, forty-six C to forty-six G, inclusive, of chapter thirty, and sections twentysix, twenty-seven and twenty-seven A to twenty-seven E, inclusive, of chapter one hundred and forty-nine of the General Laws. No employee of the Authority shall be covered by section nine A of chapter thirty of the General Laws or by chapter thirty-one of the General Laws except for certain former employees of the metropolitan district commission transferred to the Authority from the metropolitan district commission under section four, to the extent of the rights provided for those employees in said section four; provided, however, that a veteran transferred to the Authority under said section four shall be entitled to include his service at the metropolitan district commission toward the three years of service provided for in section nine A of chapter thirty, and if he completes such term of service at the Authority, he shall be entitled to rights under and shall be subject to the provisions of chapter thirty. All provisional employees who are transferred to the Authority and who are labor service employees as defined in section one of chapter thirty-one and who are not eligible for an examination as provided for in section twenty-six of chapter seven hundred and sixty-seven of the acts of nineteen hundred and eighty-one and who have worked in such positions for a period of one year prior to January first, nineteen hundred and eighty-five shall be made permanent employees.

The Authority shall engage consultants to perform only those services for the Authority which regular employees of the Authority are unable to perform owing to lack of special expertise or other inability to perform such services on the schedule or in the manner required by the Authority. The Authority shall be subject to section four of chapter one hundred and fifty-one B of the General Laws, shall be deemed to be an agency of the commonwealth for purposes of section two of said chapter, and shall be subject to the enforcement jurisdiction of the commission against discrimination under said chapter. The Authority shall

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develop policies and programs for affirmative action in employment, procurement and contracting in accordance with law and consistent with general policies and programs of the commonwealth.

The Authority shall also appoint a special assistant for affirmative action and compliance and provide appropriate support staff. The special assistant shall report directly to the chairman of the Authority and shall develop, supervise, monitor and provide for the enforcement of affirmative action plans for employment, procurement and contracting activities of the Authority. The chairman shall take such steps and impose such sanctions as may be appropriate to ensure enforcement. A quarterly report shall be filed at the close of each quarter with the state office of affirmative action and each member of the general court requesting a copy of such report on actions taken during the preceding quarter to implement the Authority's affirmative action plan and programs.

- (h) The Authority shall establish an internal special audit unit which, under the direct supervision of the executive director, shall monitor the quality, efficiency and integrity of the Authority's operating and capital programs and make periodic recommendations and reports to the executive director and the board of directors. Employees of the Authority serving in the internal special audit unit shall devote their full-time efforts to the unit and shall not be assigned direct operating responsibilities.

SECTION 8. Without limiting the generality of the powers granted to the Authority under other provisions of this act, the following provisions are made for the operation, improvement and enlargement of the sewer and waterworks systems by the Authority and for the attainment of the Authority's other purposes:

- (a) The operations of the Authority specifically related to the separate functions of sewage collection, treatment and disposal and delivery of water shall be organized respectively into a sewer division and a waterworks division. The Authority shall maintain, except to the extent otherwise permitted in this act, segregated accounts for each of its divisions with respect to the revenues, expenses, assets and funds pertaining to the operation thereof. The board of directors may act to provide specified administrative or technical support services on a combined basis when, in the board's opinion, it would be more efficient to do so, in which event the board shall provide for a fair and equitable allocation of the costs to the accounts of the divisions in accordance with generally accepted accounting principles.
- (b) The Authority shall adopt an annual budget for its current expenses which budget the Authority shall have submitted for comment and recommendation to the advisory board not less than sixty days prior to the adoption thereof. Except in case of an emergency, no current expenses may be incurred in excess of those shown in the annual current expense budget. The Authority may from time to time adopt amendments to current expense budgets which the Authority shall have submitted for comment and recommendation to the advisory board not less than thirty days prior to the adoption thereof. The Authority periodically shall also adopt and revise capital facility programs for the sewer system and waterworks system and capital expenditure budgets based thereon. The current expense



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- budgets, capital expenditure budgets and the capital facility programs of the Authority shall be deemed not to be regulations or adjudications for purposes of chapter thirty A of the General Laws. The Authority shall consult in the preparation of its capital facility programs for the sewer and waterworks systems with the advisory board and the executive office of environmental affairs, and may consult with other agencies of federal, state and local government concerned with the programs of the Authority. Proposed capital facility programs and capital expenditure budgets for said systems shall be submitted to the advisory board for such consultation no less than sixty days prior to adoption or revision by the Authority. The Authority shall prepare a written response to reports respecting its finances submitted to it by the advisory board which response shall state the basis for any substantial divergence between the actions of the Authority and the recommendations contained in such reports of the advisory board. The Authority shall file copies of its capital facility programs with the deputy commissioner of capital planning and operations in accordance with section thirty-nine C of chapter seven of the General Laws, shall prepare and file long-range capital facility development plans in accordance with section seven A of chapter twenty-nine of the General Laws, and shall be deemed to be a public agency subject to the recordkeeping and reporting requirements of paragraph (4) of section forty A of chapter seven of the General Laws.
- (c) The sewer division of the Authority shall provide main sewer services for the area consisting of the following political subdivisions: Arlington, Ashland, Bedford, Belmont, Boston, Braintree, Brookline, Burlington, Cambridge, Canton, Chelsea, Dedham, Everett, Framingham, the north sewer district of Hingham, Holbrook, Lexington, Malden, Medford, Melrose, Milton, Natick, Needham, Newton, Norwood, Quincy, Randolph, Reading, Revere, Somerville Stoneham, Stoughton, Wakefield, Walpole, Waltham, Watertown, Wellesley, Westwood, Weymouth, Wilmington, Winchester, Winthrop and Woburn. The Authority may also enter into (i) arrangements for a limited term with any person within or outside the foregoing political subdivisions to provide sewage treatment, collection or disposal services not involving extension of the sewer system; provided, however, that no such arrangement shall continue for a period in excess of six months, including any renewals thereof, unless it shall have been approved by the advisory board created by section twenty-three, and (ii) arrangements with any local body pursuant to which a sewage collection, treatment or disposal system or any part thereof shall become a part of the sewer system, provided that no extension of the sewer system shall be made to local bodies not listed in the previous sentence unless the Authority shall obtain the approval of the advisory board and the department of environmental quality engineering, after due consideration of feasible alternatives to such extension, and the Authority shall find (1) the safe capacity of the sewer system as extended will be sufficient to meet ordinary wet weather demand, (2) all feasible actions have been taken and shall continue to be taken by any local body to which the system is extended to minimize infiltration and inflow, and (3) an industrial pretreatment program is in effect within any such local body in accordance with applicable laws and regulations. Any local body within the limits of which any main sewer under the

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control of the Authority is situated shall connect its local sewers with such main sewers subject to the direction, control and regulation of the Authority and the Authority may also connect private sewers with such main sewers under such terms and conditions as the Authority may prescribe. Notwithstanding the foregoing, no new local body will be added to the sewer service area without prior approval of the governor and the general court.

- (d) The waterworks division of the Authority shall provide water for local water systems of the following political subdivisions: Arlington, Belmont, Boston, Brookline, Cambridge, Canton, Chelsea, Chicopee, Clinton, Dedham, Everett, Framingham, Leominster, Lexington, Lynn, Lynnfield Water District, Malden, Marblehead, Marlborough, Medford, Melrose, Milton, Nahant, Needham, Newton, Northborough, Norwood, Peabody, Quincy, Revere, Saugus, Somerville, Southborough, South Hadley Water District No. 1, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weston, Wilbraham, Winchester, Winthrop, Woburn and Worcester. The provisions of special acts and contracts in effect on January first, nineteen hundred and eighty-four under which water is supplied by the MDC water system shall continue in full force and effect under the respective terms thereof, subject to all rights of the Authority as successor to the metropolitan district commission. Continuation of delivery of water to local water systems supplied on a contractual basis on the effective date of this act upon the expiration of such contractual obligations, service to be supplied under willingness-to-service contracts on the effective date of this act and new communities entering the system, shall be made to the foregoing political subdivision on such reasonable terms and charges as the Authority may determine, provided that in each such instance the Authority shall find: (1) the safe yield to the watershed system, only on, advice of the division, is sufficient to meet projected demand; provided, however, that a local body receiving water on a contractual basis as of the effective date of this act which meets the requirements of having no local water supply capable of being developed under the provisions of clause (5), in this subsection, shall not be denied such continuation; (2) no existing or potential water supply source for the local body has been abandoned unless the department of environmental quality engineering has declared that the source is unfit for drinking and cannot be economically restored for drinking purposes; (3) a water management plan has been adopted after approval by the water resources commission established by section eight A of chapter twenty-one A of the General Laws; (4) effective demand management measures have been established, including but not limited to the establishment of a leak detection and other appropriate water system rehabilitation program; (5) a local water supply source feasible for development has not been identified by the local body or the department of environmental quality engineering; and (6) a water use survey has been completed which identifies all users in the area of the local body that consume in excess of twenty million gallons per year. Any provision for supply of water under special act in effect on the effective date of this act, and any contract for the supply of water by the metropolitan district commission in effect on the effective date of this act which does not provide for a specific term may be terminated by the Authority on or after, but not before, the fifth anniversary of the

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effective date of this act, in which case continuation of service shall thereafter be governed by the provisions of the preceding sentence. Subject to the approval of the advisory board established by section twenty-three and regulatory bodies within the executive office of environmental affairs with jurisdiction in the matter as a result of other general or special laws applicable to the Authority, the Authority may extend the waterworks system to additional local bodies on such reasonable terms as the Authority may determine; provided, however, that in each instance the Authority shall find: (1) the safe yield of the watershed system, only on the advice of the division, is sufficient to meet such new projected demand; (2) no existing or potential water supply source for the local body has been abandoned unless the department of environmental quality engineering has declared that the source is unfit for drinking and cannot be economically restored for drinking purposes; (3) a water management plan has been adopted after approval by the water resources commission established by section eight A of chapter twenty-one A of the General Laws; (4) effective demand management measures have been established including, but not limited to, the establishment of a leak detection and other appropriate water system rehabilitation program; (5) a local water supply source feasible for development has not been identified by the local body or the department of environmental quality engineering; and (6) a water use survey has been completed which identifies all users in the area of the local body that consume in excess of twenty million gallons per year; and provided further that no new local body will be added to the water service area without prior approval of the governor and the general court. Connections to the water system shall be under the direction and control of the Authority, provided, however, that water shall be delivered by the Authority under sufficient pressure for use without local pumping, unless delivered in some other manner by agreement. The Authority may also enter into arrangements not involving the extension of the waterworks system to provide the delivery of water to any local body, any institution, agency or facility of the commonwealth or any institution, agency or facility of the United States provided (i) that as a condition to the entry into such arrangement the Authority shall find and declare that the demand on the waterworks system from the Authority's performance of the arrangement is not reasonably expected to jeopardize the delivery of water provided by the Authority to the inhabitants of the political subdivisions listed in the first sentence of this paragraph, after taking account of other water supply, resources reasonably available to such political subdivisions, and (ii) no such arrangement shall extend for a period in excess of six months, including any renewals thereof, unless it shall have been approved by said advisory board. Subject to the provisions of section forty of chapter forty of the General Laws, in case of any emergency as determined by the department of environmental quality engineering, any local body deriving its water supply in whole or in part from the waterworks system may provide a connection and a supply of water to any adjoining local body having an inadequate water supply of water subject to reasonable provision for payment to the Authority and for approval by the Authority of the means of connection. No local body or private water company shall abandon any local water supply source and substitute for it water from the waterworks system unless

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- the department of environmental quality engineering has declared that the water supply source abandoned or to be abandoned is unfit for drinking and cannot be economically restored for drinking purposes. Any local body which derives all or part of its water supply on the effective date of this act under a contract with the metropolitan district commission which contains a minimum purchase requirement may elect, upon such reasonable prior notice as the Authority may require, to terminate such minimum purchase requirement.
- (e) In order to attain its statutory purposes to promote water conservation, protect the adequacy of a pure water supply, reduce wastewater flow and improve environmental quality, the Authority is authorized and directed: (i) to promote water conservation and environmental quality through its schedule of charges, to which end, without limiting the generality of the foregoing and the generality of the regulatory powers conferred on the Authority under section six and the powers to establish charges under section ten, the Authority shall prepare and publish no later than the second anniversary of the effective date of this act a comprehensive study of environmental, social and economic impacts of its charges to serve as a basis for the implementation of charges fully consistent with the objectives of this act, and shall consult with the division for the determination of such environmental impact; (ii) to conduct public programs of education and technical assistance in support of water conservation and environmental quality objectives; (iii) to terminate as promptly as feasible, and thereafter not to institute or reinstitute, any charge or charges for the waterworks system by which the unit price declines as volume of use increases; (iv) to identify and consider demand management and water conservation solutions to new and existing water consumption requirements and, wherever reasonably practicable, to implement such solutions in preference to solutions which would increase water withdrawals from any natural or artificial source of ground or surface waters; and (v) to prepare and submit an annual report to the governor, the general court and the water resources commission stating the means by which future water requirements of the Authority's service areas within the safe yield of the watershed system of the division, pursuant to any such determination made by the division. Nothing contained in paragraphs (c) and (d) shall require a city or town not presently served by the Authority to accept an extension of the Authority's sewer and water works without a majority vote by the city council if a city or a majority vote of town meeting of a town.
- (f) Officers or agents of the Authority may enter at reasonable times any public or private property, connected directly or indirectly to the sewer system, for purposes of (i) inspecting, sampling and gauging any sewage, drainage, substances or wastes conveyed through such a connection, (ii) inspecting any monitoring equipment or procedures maintained with respect to discharges thereof, (iii) examining any records or matters pertaining to such discharges or to the operation of pretreatment works, and (iv) determining any matter of compliance with requirements under this act. Officers or agents of the Authority may also enter any public or private property supplied directly or indirectly by the waterworks system for purposes of (i) inspecting water works or fixtures, (ii) determining water usage, (iii) preventing improper use or waste of water, (iv)

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- determining any matter of compliance with requirements under this act. Entry upon private property for purposes of this section shall be made (i) under warrant, including, without limitation, warrants for administrative inspection upon a probable cause showing of a reasonable and valid public interest in the effective enforcement of matters governed by this act in accordance with a general plan justifying administrative inspection of premises specified in the application for such warrant, or (ii) under procedures for warrantless entry of non-residential premises during business hours conducted by administrative inspectors in accordance with regulations which the Authority shall adopt to further the urgent governmental interest in environmental protection committed to the Authority. This section shall not limit entries and administrative inspections, including seizures of property, without a warrant (1) with the consent of the owner or person in charge of the premises, (2) in situations presenting imminent danger to health or safety, (3) in any other exceptional or emergency circumstances where time or opportunity to apply for a warrant is lacking, or (4) in all other situations in which a warrant is not required by the laws and constitutions of the commonwealth or the United States.
- (g) The Authority shall be deemed to be a public agency for purposes of, and shall be subject to, sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine of the General Laws, section thirty-nine M of chapter thirty of the General Laws and sections thirty B to thirty M, inclusive, of chapter seven of the General Laws, and shall comply with requirements applicable to an independent public authority for publication of contract information in the central register established under section twenty A of chapter nine of the General Laws. The Authority shall not be subject to supervision under section twenty-two of chapter seven of the General Laws, but may enter into agreements under section twenty-two A and twenty-two B of chapter seven of the General Laws and in all respects not governed by general or special laws expressly made applicable to the Authority shall adhere to good business practices to be determined by the Authority in its procurement of equipment, materials, property, supplies and services.
- (h) In operating its systems and performing its projects in relation thereto, the Authority may construct and maintain buildings, machinery, roads, conduits, pipes, sewers and aqueducts, may alter grades or directions of watercourses and may conduct aqueducts over or under any watercourse, railroad, pipeline, cable, or way, restoring the same to as good order and condition as practicable. Persons who sustain injury in their property by the entry upon or use thereof by the Authority under this section may recover their damages under chapter seventy-nine of the General Laws, unless a lawful alternative provision for such damages is otherwise made by the Authority.
- (i) The Authority and the division shall be subject to the provisions of, and to regulation by the department of environmental quality engineering and any division thereof as may be duly exercised over an independent public authority of the commonwealth pursuant to sections fourteen, twenty-seven, thirty A to thirty-four C, inclusive, thirty-seven, forty and forty-two to forty-six A, inclusive, of chapter twenty-one A of the General Laws, sections four, six, seven and nine of

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chapter twenty-one C of the General Laws, sections three, six, seven, nine and ten of chapter twenty-one E of the General Laws, chapter ninety-one of the General Laws and sections two B, two C, five E, five G, seventeen, thirty-one D, one hundred and forty-two A to one hundred and forty-two E, inclusive, one hundred and fifty A, one hundred and fifty B, one hundred and sixty, one hundred and sixty A, one hundred and sixty B, one hundred and sixty-two and one hundred and sixty-five of chapter one hundred and eleven of the General Laws.

The Authority shall be deemed to be a public entity under section twenty-six A of chapter twenty-one of the General Laws and shall be eligible for grants and other assistance under the Massachusetts Clean Water Act and any other program of federal or state assistance for waterworks, wastewater treatment or related purposes to the most liberal extent of the eligibility of an agency of the commonwealth, a political subdivision of the commonwealth, or any other public body of the commonwealth. The Authority shall be subject to section four A and sections eight A to eight F, inclusive, of chapter twenty-one A of the General Laws, sections three, four, seven, ten and fourteen of chapter twenty-one D of the General Laws and sections one hundred and forty-two A to one hundred and forty-two E, inclusive, of chapter one hundred and eleven of the General Laws.

The Authority shall be deemed to be an agency of the commonwealth for purposes of, and shall be subject to, section one hundred and fifty A and section one hundred and fifty B of chapter one hundred and eleven of the General Laws. Without limitation on other public health or environmental regulation over the Authority exercisable pursuant to other law without conflict with the Authority's purpose of serving critical public needs on a broad geographic basis as a public instrumentality of\* the commonwealth, the Authority also shall be subject to sections forty and forty A of chapter one hundred and thirty-one of the General Laws, to sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws and to sections twenty-six C and twenty-seven C of chapter nine of the General Laws. The Authority and the division shall be subject to sections thirteen to sixteen, inclusive, and section eighteen of chapter one hundred and thirty-two A of the General Laws. In accordance with section eleven D of chapter twelve of the General Laws, the Authority shall give written notice to the attorney general of all adjudicatory proceedings or public hearings conducted by it or to which it is a party in which damage to the environment is or may be at issue.

- (j) All powers to be exercised under this act, including powers to be exercised by the division of watershed management and the Authority, shall be subject to provisions regulating interbasin transfers as set forth in sections eight B to eight D, inclusive, of chapter twenty-one of the General Laws, including without limitation all approvals therein required to be obtained from the water resources commission and to provisions for the protection of scenic and recreational rivers and streams as set forth in section seventeen B of chapter twenty-one of the General Laws and in section two of chapter nine hundred and eighty-four of the acts of nineteen hundred and seventy-three, including without limitation all approvals respecting water diversions therein required to be obtained from the general court.

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- (k) Notwithstanding any rule or regulation or any provision of any general or special law to the contrary, the commissioner of public safety or his designee in the division of inspection of the department of public safety shall have exclusive jurisdiction and responsibility with respect to projects or operations of the Authority for inspection, approvals, enforcement, permitting and licensure authorized or required by (i) chapter one hundred and forty-three of the General Laws or (ii) any regulation adopted pursuant to chapter eight hundred and two of the acts of nineteen hundred and seventy-two.
- (l) Notwithstanding the provisions of chapters one hundred and thirty-four and one hundred and forty-seven of the General Laws, if money, goods or other property which has been abandoned, mislaid or lost comes into the possession of the Authority and remains unclaimed in its possession for a period of one hundred and twenty days, the Authority may sell the same, excepting money so unclaimed, at public auction after notice of such sale has been published in a newspaper published in the city or town where such sale is to take place. The net proceeds of such sale, after deducting the cost of storage and the expenses of such sale, and all money so unclaimed, shall become revenues of the Authority. If in the opinion of the Authority any such property in the possession of the Authority and unclaimed in its possession for a period of one hundred and twenty days is of the value of one hundred and fifty dollars or less, the Authority may donate the same to a charitable organization.
- (m) The powers of the Authority shall include the powers to be exercised by procedures, regulations, incentive and other charges, and licenses and permits to require persons who are users of the sewer system or of any tributary system to the sewer system to comply with applicable provisions of federal and state law respecting (i) toxic waste and pretreatment standards, (ii) construction, operation and maintenance of pretreatment facilities, (iii) monitoring, recordkeeping and reporting of discharges to the sewer system, (iv) notification of proposed new discharges or substantial changes in discharges to the sewer system, and (v) user charges in accordance with law, and to regulate the nature and quantity of discharge of sewage, drainage, substances or wastes by any person into the sewer system or any sewer tributary thereto. The procedures, regulations, charges and licensing, permitting and other programs of the Authority shall also reasonably provide for abatement, reduction and prevention of infiltration and inflow of ground waters, surface waters or storm waters into the sewer system; and the Authority is directed to continue, and is authorized in its discretion reasonably to require the extension and improvement of separation of sewers for the collection, treatment, and disposal of human and industrial sewage from drainage for surface or storm water. The procedures, regulations, charges, licensing, permitting and other programs of the Authority shall also reasonably provide for leak detection and repair, for programs for water conservation, including, without limiting the generality thereof, water use limitations in time of drought or other emergency, and may also reasonably provide for installation and maintenance of meters by any person and the metering of use made by any user or group of users of the sewer system or any system tributary thereto or by any user of water derived from the waterworks system. The Authority may regulate and require the taking of a

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- permit from the Authority with respect to any building, construction, excavation or crossing within an easement or other property interest held by the Authority or in the immediate vicinity of a water or sewer main or other facility which is operated by the Authority. The provisions of this paragraph shall not limit the generality of the regulatory powers conferred on the Authority under section six and the powers to establish charges under section ten.
- (n) The Authority is authorized to take all necessary action, consistent with applicable special or general law, administrative regulation or practice, to secure any federal assistance which is or may become available to the Authority, the commonwealth or any local body for any of the sewer or waterworks purposes of this act. If any federal law, administrative regulation or practice requires any action relating to such federal assistance to be taken by any department or instrumentality of the commonwealth other than the Authority, such other department or instrumentality is authorized to take all such action, including without limitation filing applications for assistance, supervising the expenditure of federal grants or loans and making any determinations and certifications necessary or appropriate to the foregoing, and the Authority is authorized to take all action necessary to permit such department or instrumentality to comply with all federal requirements, such action ; provided, however, that no such action or federal requirement shall be taken which is inconsistent with the provisions of any special or general law or the provisions of this act relating to waterworks, sewer works, wastewater treatment or water supply.
- (o) Any person who without lawful authority injures, destroys or interferes with any property held or used by the Authority for the purpose of constructing, operating or maintaining the waterworks system or the sewer system, shall be subject to a criminal fine of not more than fifty thousand dollars, or imprisonment for not more than one year; provided, however, that in cases of continuing violation, such maximum fine may be ten thousand dollars per day for each day such violation occurs or continues. Notwithstanding any limitation on criminal penalties set forth in the preceding sentence, any person convicted of the wanton or malicious destruction of or injury to any property of the Authority used in the construction, operation or maintenance of the waterworks system or the sewer system shall also be liable in tort to the Authority for triple the amount of damages thereby caused. The provisions of this paragraph are in addition to and not in limitation of the Authority's power to adopt, issue and enforce regulations, permits and licenses and establish penalties for violation thereof and to set charges and provide for the collection and enforcement thereof.

**SECTION 9.**

- (a) Except for the acquisition of any water supply source or right to a water source, which right is vested exclusively in the division of watershed management, the Authority may acquire from any person real property, or any interest or rights therein, deemed by it essential for operation, improvement or enlargement of its sewer and waterworks systems by eminent domain in accordance with the provisions of chapter seventy-nine or chapter eighty A of the General Laws



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- subject to the prior approval of the governor and the general court; provided, however, that for takings related to main, trunk, intercepting and connecting sewers and pumping stations incidental thereto, and combined overflow treatment works and pumping stations incidental thereto, said prior approval shall not be required, and provided, that no property or rights, including water rights, comprising the watershed system shall be taken; and, provided further, that no property or rights already appropriated to public use shall be so taken without the prior approval of the governor and general court. Notwithstanding the provisions of this act, no taking by eminent domain of water or water rights shall be made by the Authority. No taking shall be made for a project of the Authority which requires regulatory approvals with respect to matters to which the Authority is subject under paragraph (i) of section eight until the Authority has certified that the Authority reasonably believes all such approvals will be obtained by the Authority in ordinary course. Before a taking is made by the Authority for which damages may be recovered under chapter seventy-nine, the Authority shall file with the secretary of the commonwealth security to the satisfaction of said secretary for the payment of all damages and costs which may be awarded for the property taken, and if, upon petition of the owner and notice to the Authority, any security taken appears to have become insufficient, the secretary shall require the Authority to give further security to the satisfaction of the secretary.
- (b) The Authority may order the removal or relocation of any conduits, pipes, wires, poles or other property located in public ways or places, or in or upon private lands, which it deems to interfere with the laying out, construction, maintenance or operation of the sewer and waterworks systems, subject to the ability of the proper authorities lawfully to grant or otherwise make provisions for new locations for any such structure so removed or relocated. Such orders, to the extent specified therein, shall be deemed a revocation of the right or license to maintain such conduits, pipes, wires, poles or other property in such public ways or places, and the private owner of any such structures in public ways or places shall comply with such orders. If any such owner shall fail to comply with any such order of the Authority relating to any such structure in public ways and places within a reasonable time, to be fixed in the order, the Authority may discontinue and remove such conduits, pipes, wires, poles or other property, and may relocate the same, and the cost of such discontinuance, removal or relocation shall be repaid to the Authority by the owner. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof. Any such structure in or upon private lands may be removed and relocated by the owner thereof, the reasonable expense thereof shall be repaid to him by the Authority.
- (c) Subject to the prior approval of the governor and general court, and to applicable provisions of the laws and constitution of the commonwealth, including without limiting the generality of the foregoing, article ninety-seven of the Amendments to the Constitution of the Commonwealth, doctrines of laws concerned with diversion of lands devoted to public use to other inconsistent public use the Authority may, at public or private sale, sell, lease or dispose of any interest in real property of the sewer and waterworks systems acquired by the Authority

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pursuant to paragraphs (b) and (c) of section four, upon compliance with the following conditions: (i) such property or interest in property is no longer needed for the construction, maintenance or operation of the sewer and waterworks systems; (ii) such disposition shall not impair the maintenance and operation of said systems; and (iii) the Authority shall so notify the deputy commissioner of capital planning and operations, and said deputy commissioner shall proceed in accordance with section forty F of chapter seven of the General Laws.

- (d) Real and personal property, or interests or rights therein, may be acquired by the Authority after July first, nineteen hundred and eighty-five if deemed essential for operation, improvement or enlargement of its sewer and waterworks systems. The Authority may, at public or private sale, dispose of said real property, or interest or rights therein no longer needed for the construction, maintenance or operation of the sewer and waterworks systems, subject to prior approval of the governor and the general court, provided, however, that such disposition shall not impair the maintenance and operation of said systems.

Any interest in real property so disposed of may be conveyed, subject to such easements, reservations and restrictions as the Authority deems necessary to secure the maintenance and operation of said systems, by deed duly executed by the Authority, with or without warranty. In any case where the Authority may dispose of such property, it may convey it and receive in complete or partial consideration therefor other property or interests therein, for the purpose of the sewer and waterworks systems, the title of the same to be taken in the name of the Authority. The Authority shall give sixty days notice of the proposed lease or disposition of any such property or any such interest in real property to the chief executive officer, as defined in section twenty-three, of any city or town in which the real property is located and to the deputy commissioner of capital planning and operations. The Authority shall be deemed to be a public agency for purposes of and shall comply with sections forty J and forty K of chapter seven of the General Laws. The Authority also from time to time at public or private sale conducted in a commercially reasonable manner may sell or otherwise dispose of personal property of the Authority whether acquired pursuant to the provisions of paragraph (a) of section four or after the effective date of this act, which is no longer needed for the construction, maintenance or operation of said systems.

**SECTION 10.**

- (a) Said Authority shall establish and adjust charges which may be denominated as charges, fees, rates, assessments or otherwise as the Authority may reasonably determine, for services, facilities and commodities furnished or supplied by the Authority. The charges of the Authority shall be separately established in respect to the Authority's waterworks and sewer divisions and shall be fixed and adjusted so as to provide funds, in the aggregate and separately, with respect to costs and operations allocable to each division, sufficient in each fiscal year with other revenues of Authority, if any, available therefor (i) to pay all current expenses, (ii) to pay all debt service on bonds of the Authority as the same becomes due and payable, (iii) to create and maintain all reserves reasonably required by any bond

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resolution, trust, agreement or other agreement securing bonds of the Authority or as otherwise determined by the Authority to be necessary or desirable, (iv) to pay all costs of maintenance and replacement of the sewer and waterworks systems, and costs of improving, extending and enlarging said systems as determined by the Authority to be necessary or desirable, to be funded as current expenses in order to carry out the purposes of the Authority, (v) to provide for payments to the commonwealth for debt service as herein provided, and (vi) to pay or provide for all amounts which the Authority may be obligated to pay or provide for by any law or contract including any bond resolution, trust agreement or other agreement securing bonds of the Authority and including any amount to be repaid to the commonwealth to reimburse the commonwealth for debt service paid by the commonwealth on a bond issued under paragraph (f) of section five. The charges of the Authority for delivery of water and for sewage collection, disposal and treatment services shall be established as charges of general application to be borne by the local body utilizing such services and shall be established at a level sufficient to meet the revenue requirements of the Authority as provided in this paragraph, notwithstanding the provisions of any other general or special law to the contrary. Said Authority's charges of general application shall be adopted, and on not less than an annual basis reviewed and if necessary revised, in accordance with procedures for notice and a hearing as provided by chapter thirty A of the General Laws, and notice of such hearing shall also be delivered at least twenty-one days in advance of the hearing date, to the advisory board and published in newspapers of general circulation in cities and towns receiving services. No later than the date of such publication, the Authority shall transmit to the advisory board and reasonably provide for other public review for the period preceding the hearing including (i) its most recent financial statements, (ii) its current expense budgets and capital expenditure budgets for the current fiscal year and, if then adopted or proposed, for the next fiscal year, and (iii) the proposed charges on which the Authority seeks public comment. Prior to any public hearing as provided herein, the Authority shall comply with requests of the ombudsman acting under paragraph (9) of section twenty-three for the inspection of the books, records, financial statements and documents of the Authority relating to the proposed charges. In establishing its charges the Authority shall continue provisions for subsidization of water charges to which any local body is entitled in accordance with contract or other lawful obligations assumed by the Authority as successor to the metropolitan district commission, to the same extent as the metropolitan district commission would be bound to provide such subsidization if such charges had continued to be established by the metropolitan district commission. The Authority may also provide for charges of special application to any person for compensation for special or temporary services entered into in accordance with paragraphs (c) and (d) of section eight. Charges of special application shall not be regulations for purposes of chapter thirty A of the General Laws and may be computed in the Authority's discretion with respect to the services or commodities provided on the basis of the Authority's costs, or the value of the benefits conferred on the payer, or market value. The charges of the Authority, whether of general or special application, shall not be subject to

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- supervision or regulation by any office, department, division, commission, board, bureau or agency of the commonwealth or any of its political subdivisions. The charges of the Authority, whether of general or special application, shall give account to (i) actual costs to the Authority of providing services, (ii) reasonable provisions in the nature of incentives and disincentives to promote conservation of resources and protection of the environment and to induce the protection, maintenance and improvement of the sewer and waterworks systems and of sewer and water systems of local bodies, (iii) reasonable provisions reflecting the contribution made by local bodies through expenditures including, but not limited to, leak detection, system rehabilitation and other water management programs, sewerage inflow/infiltration reduction projects, separation of combined sewers and other projects which improve the overall efficiency of the Authority's and local bodies' service delivery, (iv) reasonable provisions to reflect respective local bodies disproportionate historic investment in the sewer and waterworks systems and in the former metropolitan district commission sewer system and metropolitan district commission water system used in the services delivered by the Authority, (v) reasonable interest charges and penalties for delinquency in payment.
- (b) Said Authority, in such form as it determines, may certify to each local body to which services, facilities or commodities of the Authority are, delivered or furnished the amounts of the Authority's charges to such local body. The Authority may adopt and enforce procedures and regulations for the purposes of making, collecting and enforcing its charges which, without limiting the generality of the foregoing or the general powers with respect to its' regulations and charges provided or by any other general or special law, may impose requirements on any person including, but not limited to, local bodies and officers and boards thereof or subordinate thereto, respecting (i) the furnishing, to the Authority information reasonably deemed pertinent by the Authority concerning the volume and character of services, facilities and commodities furnished or supplied by the Authority, and the nature and quantity of services, facilities and commodities furnished to or to be furnished to or used by or to be used by users, and (ii) reasonable schedules for remittance to the Authority of its charges. In all actions pursuant to this paragraph, the Authority shall give due regard to local bodies' systems of billing and collection of water and sewer charges in order to avoid unnecessary expense and to achieve management and fiscal efficiency consistent with the attainment, of the Authority's statutory objectives. Local bodies, and officers and boards thereof or subordinate thereto, shall cooperate with the Authority to effect the prompt, accurate and efficient billing and collection of the Authority's charges. In the event any local body, which has received a certification of the Authority's charges, shall fail to pay the same to the Authority when due after demand by the Authority, the Authority may without any requirement of election of remedy provided that there is no duplication of recovery, (i) certify to the state treasurer the amount owing to the Authority by said local body, whereupon the state treasurer shall promptly pay over to the Authority any amount otherwise certified to the state treasurer for payment to the local body as receipts, distributions, reimbursements and assistance under sections

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eighteen A, eighteen B, eighteen C and eighteen D of chapter fifty-eight of the General Laws and any other amount for local reimbursement, grant or assistance programs entitled to be received by such local body until such time as any deficiency in the local body's payment of charges to the Authority shall be set off by such payments from the state treasurer, and (ii) recover from the local body in an action in superior court the amount of such unpaid amount together with such lost interest and other actual damages the Authority shall have sustained from the failure or refusal of the local body to pay over said amount. Any amount paid to the Authority by the state treasurer as a set off under the provisions of the next preceding sentence which is later determined, upon audit, to be in excess of the actual amount of charges, interest and damages due to the Authority, shall, upon demand of the local body, be repaid by the Authority to the local body.

## SECTION 11.

- (a) Debt for borrowed money incurred by the commonwealth in respect to the metropolitan district commission sewer system, or any predecessor thereof, shall not be assumed by said Authority; provided, however, that on and after July first, nineteen hundred and eighty-five, the Authority shall make payments to the state treasurer from the sewer division to reimburse the commonwealth for all payments made on and after July first, nineteen hundred and eighty-five by the commonwealth on account of principal, including sinking fund installments and interest on all bonds of the commonwealth issued for purposes of the former metropolitan district commission sewer system. The amount of such reimbursements, and the date on which the amounts to be reimbursed shall become due, shall be certified to the Authority by the treasurer, for each fiscal year no later than two hundred and eighty days prior to the commencement thereof; provided, however, that such amounts due on July first, nineteen hundred and eighty-five shall be certified ninety days prior thereto. The obligation of the Authority to make the reimbursements herein required shall be subordinate in every respect to the Authority's obligation for debt service on its bonds.
- (b) Debt for borrowed money incurred by the commonwealth in respect to the metropolitan district commission water system, or any predecessor thereof, shall not be assumed by the Authority; provided, however, that on or after July first, nineteen hundred and eighty-five, the Authority shall make payments to the state treasurer from the water division of the Authority to reimburse the commonwealth for one-half of all payments made on or after July first, nineteen hundred and eighty-five by the commonwealth on account of principal, including sinking fund installments and interest on all bonds of the commonwealth issued for purposes of the former metropolitan district commission water system. The amount of such reimbursements, and the date on which such amounts to be reimbursed shall become due, shall be certified to the Authority by the treasurer, for each fiscal year no later than two hundred and eighty days prior to the commencement thereof; provided, however, that such amounts due on July first, nineteen hundred and eighty-five shall be certified ninety days prior thereto. The obligation of the Authority to make the reimbursements herein required shall be subordinate in every respect to the Authority's obligations for debt service on its bond.

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## SECTION 12.

- (a) Said Authority may provide, by resolution of the board of directors, for the issuance from time to time of bonds of the Authority for any of its corporate purposes and for reimbursement, pursuant to section forty-two, to the commonwealth for costs associated with the division, or for the borrowing of money in anticipation of the issuance of such bonds. Bonds issued by the Authority may be issued as general obligations of the Authority or as special obligations payable solely for particular revenues or funds as may be provided for in any bond resolution, trust agreement or other agreement securing bonds. The Authority may also provide by resolution of the board of directors for the issuance from time to time of temporary notes in anticipation of the revenues to be collected or received by the Authority, or in anticipation of the receipt of other grants or aid. The issue of such notes shall be governed by the provisions of this act relating to the issue of bonds of the Authority other than such temporary notes as the same may be applicable; provided, however, that notes issued in anticipation of revenues shall mature no later than one year from their respective dates and notes issued in anticipation of grants, or other aid and renewals thereof, shall mature no later than six months after the expected date of receipt of such grant or aid. The aggregate principal amount of all bonds issued under the authority of this act, shall not exceed the sum of six hundred million dollars outstanding at any one time, provided, however, that bonds for the payment of redemption of which, either at or prior to maturity, refunding bonds shall have been issued, shall be excluded in the computation of outstanding bonds.
- (b) Bonds of each issue shall be dated, may bear interest at such rate or rates, including rates variable from time to time as determined by an index, banker's loan rate or other method determined by the Authority, and shall mature or otherwise be payable at such time or times, as may be determined by the Authority, and may be made redeemable before maturity at the option of the Authority or the holder thereof at such price or prices and under such terms and conditions as may be fixed by the Authority. Prior to the initial issuance of each series of bonds the Authority shall advise the advisory board created by section twenty-three and the executive office for administration and finance of the timing and terms thereof and the Authority shall also communicate such information to the finance advisory board. The Authority shall determine the form of bonds, including interest coupons, if any, to be attached thereto, and the manner of execution of such bonds, and shall fix the denomination or denominations of such bonds and the place or places of payment of principal, redemption premium, if any, and interest, which may be at any bank or trust company within or without the commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery thereof, such signature or facsimile shall nevertheless be valid and

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sufficient for all purposes as if such officer had remained in office until delivery. The Authority may provide for authentication of bonds by a trustee, fiscal agent, registrar or transfer agent. Bonds may be issued in bearer or in registered form, or both, and, if notes, may be made payable to bearer or to order, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of bonds registered as to both principal and interest and for the interchange of bonds registered as to both principal and interest and for the interchange of registered and coupon bonds. The Authority may also establish and maintain a system of registration for any bonds whereby the name of the registered owner, the rights evidenced by the bonds, the transfer of the bonds and such rights and other similar matters are recorded in books or other records maintained by or on behalf of the Authority, and no instrument evidencing such bond or rights need be delivered to the registered owner by the Authority. A copy of the books or other records of the Authority pertaining to any bond registered under such registration system certified by an authorized officer of the Authority or by the agent of the Authority maintaining such system shall be admissible in any proceeding without further authentication. The Authority may adopt regulations with respect to the operation of such system. The board of directors may by resolution delegate to any director or directors or officer or officers of the Authority or any combination thereof the power to determine any of the matters set forth in this section. In the discretion of the Authority, bonds of the Authority may be issued with such terms as will cause the interest thereon to be subject to federal income taxation. The Authority may sell its bonds in the manner, either at public or private sale, for the price, at the rate or rates of interest, or at discount in lieu of interest, as it may determine will best effect the purposes of this act.

- (c) Said Authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds shall have been executed and are available for delivery. The Authority may also provide for replacement of any bonds which shall have become mutilated or shall have been destroyed or lost. The Authority, by itself or through such agent as it may select, may purchase and invite offers to tender for purchase any bonds of the Authority at any time outstanding, provided, however, that no such purchase by the Authority shall be made at a price, exclusive of accrued interest, if any, exceeding the principal amount thereof or, if greater, the redemption price of such bonds when next redeemable at the option of the Authority, and may resell any bonds so purchased in such manner and for such price as it may determine will best effect the purposes of this act.
- (d) In the discretion of the board of directors, any bonds issued hereunder may be secured by a bond resolution or trust agreement or other agreement in such form and executed in such manner as may be determined by the board of directors between the Authority and the purchasers or holders of

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such bonds or between the Authority and a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the commonwealth. Such bond resolution, trust agreement or other agreement may pledge or assign, in whole or in part, the revenues and funds held or to be received by the Authority, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the Authority, and the proceeds thereof. Such bond resolution, trust agreement or other agreement may contain such provisions for protecting and enforcing the rights, security and remedies of the bondholders as may be reasonable and proper, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities, restrictions on the individual right of action by bondholders and covenants setting forth the duties of and limitations on the Authority in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, use, operation, repair, insurance and disposition of the sewer and waterworks systems, the custody, safeguarding, investment and application of moneys, the issue of additional or refunding bonds, the fixing, revision, charging and collection of charges, the use of any surplus bond proceeds, the establishment of reserves and the making and amending of contracts; provided, however, that the Authority shall not mortgage its real property or fixed assets to secure its bonds.

- (e) In the discretion of the board of directors any bonds issued under authority of this act may be issued by the Authority in the form of lines of credit or other banking arrangements under terms and conditions, not inconsistent with this act, and under such agreements with the purchasers or makers thereof or any agent or other representative of such purchasers or makers as the board of directors may determine to be in the best interests of the Authority. In addition to other security provided herein or otherwise by law, bonds issued by the Authority under any provision of this act may be secured, in whole or in part, by financial guarantees, by insurance or by letters of credit issued to the Authority or a trustee or any other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the commonwealth, and the Authority may pledge or assign, in whole or in part, the revenues and funds held or to be received by the Authority, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the Authority, and the proceeds thereof, as security for such guarantees or insurance or for the reimbursement by the Authority to any issuer of such letter of credit of any payments made under such letter of credit.
- (f) It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds, revenues or other moneys under a bond resolution, trust agreement or other agreement of the Authority and to



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furnish indemnification and to provide security as may be required by the Authority. Any pledge of revenues and other funds made by the Authority under the provisions of this act shall be valid and binding and shall be deemed continuously perfected for the purposes of the uniform commercial code and other laws when such pledge is made. The revenues and funds, rights therein and thereto and proceeds so pledged and then held or thereafter acquired or received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act, and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority, whether or not such parties have notice thereof. The bond resolution, trust agreement or any other agreement by which a pledge is created need not be filed or recorded to perfect such pledge except in the records of the Authority and no filing need be made under the uniform commercial code. It is hereby declared that any pledge or assignment made under the Authority of this act is an exercise of the political and governmental powers of the Authority, and revenues or funds, contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this act shall not be applied to any purposes not permitted by such pledge or assignment.

- (g) Any holder of a bond issued by the Authority under the provisions of the act or of any of the coupons appertaining thereto and any trustee or other representative under a bond resolution, trust agreement or other agreement securing the same, except to the extent the rights herein given may be restricted by the resolution, trust agreement or other agreement, may bring suit upon the bonds or coupons and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, including proceedings for the appointment of a receiver to take possession and control of the business and properties of the Authority, to operate and maintain the same, to make any necessary repairs, renewals and replacements in respect thereof and to fix, revise and collect charges, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under such bond resolution, trust agreement or other agreement, and may enforce and compel performance of all duties required by this act or by such bond resolution, trust agreement or other agreement, to be performed by the Authority or by any officer thereof.
- (h) Before the issuance of any bonds of the Authority each member of the board of directors and each officer of the Authority charged with responsibility for the issuance thereof shall execute a surety bond conditioned on the faithful performance of the duties of the office of each such director and officer, in the sum of one hundred thousand dollars payable to the Authority, or, in lieu thereof, the Authority shall obtain a blanket bond in the same amount covering all such persons, and such bonds or bonds shall be filed in the office of the secretary of the commonwealth.

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SECTION 13. Said Authority may issue refunding bonds for the purpose of paying any of its bonds issued pursuant to this act at or prior to maturity or upon acceleration or redemption or purchase and retirement. Refunding bonds may be issued at such times at or prior to the maturity, redemption or purchase and retirement of the refunded bonds as the board of directors deems to be in the interest of said Authority. Refunding bonds may be issued in sufficient amounts to pay or provide for payment of the principal of the bonds being refunded, together with any redemption premium thereon, any interest or discount accrued or to accrue to the date of payment of such bonds, the costs of issuance of the refunding bonds, the expenses of paying, redeeming or purchasing the bonds being refunded, the costs of holding and investing proceeds of refunding bonds pending such payment, redemption or purchase and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by a bond resolution, trust agreement or other agreement securing bonds. The issue and sale of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

SECTION 14. Bonds issued by said Authority are hereby made securities in which all public officers and agencies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly be deposited with and received by any state or municipal officer of any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or obligations of the commonwealth or any political subdivision is now or may hereafter be authorized by law.

SECTION 15. Bonds may be issued under this act without obtaining the consent of any executive office, department, division, commission, board, bureau or agency of the commonwealth or any political subdivision thereof, and without any other proceedings or the happening of any condition or acts other than those proceedings, conditions or acts which are specifically required therefor, and the validity of and security for any bonds issued by the Authority pursuant to this act shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions or acts. Provisions of this act relating to the preparation, adoption or approval of programs and budgets shall not affect the issue of bonds and bonds may be issued either before or after such preparation, adoption or approval.

SECTION 16. Bonds issued under the provisions of this act, excepting any notes or bonds guaranteed or issued by the commonwealth under paragraphs (e) or (f), respectively, of section five, shall not be deemed to be a debt or a pledge of the

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faith and credit of the commonwealth or of any of its political subdivisions, but shall be payable solely from the funds of the Authority from which they are made payable pursuant to this act. Bonds issued under the provisions of this act, excepting any notes or bonds guaranteed or issued by the commonwealth under paragraphs (e) or (f) of section five, shall recite that neither the commonwealth nor any political subdivisions thereof shall be obligated to pay the same and that neither the faith and credit nor the taxing power of the commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or interest on such bonds. Further, every bond shall recite whether it is a general obligation of the Authority or a special obligation thereof payable solely from particular revenues or funds pledged to its payment. The aggregate principal amount of all bonds issued under the authority of this act shall not exceed the sum of six hundred million dollars outstanding, provided however, that bonds for the payment of redemption of which, either at or prior to maturity, refunding bonds shall have been issued shall be excluded in the computation of outstanding bonds.

SECTION 17. Notwithstanding any of the provisions of this act or any recitals in any bonds issued hereunder, all such bonds shall be deemed to be investment securities under the uniform commercial code.

SECTION 18. All moneys received pursuant to the provisions, whether as proceeds from the issue of bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this act.

SECTION 19.

- (a) Bonds issued by the Authority, their transfer and the income therefrom, including any profit made on the sale thereof, shall, at all times, be exempt from taxation by and within the commonwealth.
- (b) The Authority shall not be required to pay any taxes, income, assessments or excises upon its existence, operation or property; provided, however, that so long as there is no revocation of the Authority's title to sewer and waterworks systems as provided for in section four, the Authority is authorized and directed to make payments in accordance with sections five D to five F, inclusive, of chapter fifty-nine of the General Laws.

SECTION 20. It is expressly contemplated by this act that the Authority, to the extent deemed by it to be necessary and convenient to achieve its purposes under this act and under such supervision from agencies of the commonwealth as is expressly authorized in this act, shall provide water and sewage collection, treatment and disposal services within its service area on an exclusive basis. It is intended that this section shall not (i) diminish the powers or responsibilities of local bodies, (ii) override other provisions of this act regulating the procedures for abandonment of local water supplies, (iii) limit the lawful exercise of any local body, subject to applicable approvals by the department of environmental quality engineering and the water resources commission, to continue to use any source of water used by it or to develop or reactivate any source of water to be used by it, or (iv) impose responsibility on the Authority for operation of the sewer and waterworks systems except as the Authority is charged with responsibility or may elect to

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exercise responsibility under other provisions of this act. In addition to and without limiting the generality of the foregoing, said Authority shall be a "local government" insofar as concerns immunity under sections (4), (4A) or (4C) of the Clayton Act; 15 U.S.C.A SS. 15, 15A, and 15C from damages, interest on damages, costs or attorneys fees for a local government, for any official or employee thereof acting in an official capacity or for a person against, whom a claim is based on any official action directed by a local government, or official or employee thereof acting in an official capacity

SECTION 21. The Authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as said Authority shall have bonds outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the Authority, the title to all funds and other properties owned by it which remain after provision for the payment or satisfaction of all bonds of the Authority shall vest in the commonwealth. The obligations, debts and liabilities of the Authority shall be assumed by and imposed upon the commonwealth, and the funds of the authority retirement system shall be transferred to the treasurer and receiver general or to such other successor as the general court may designate, to be held for the exclusive use and benefit of the members of the authority retirement system.

## SECTION 22.

- (a) The Authority, shall, at all times, keep full and accurate accounts of its receipts, expenditures, disbursements, assets and liabilities which shall be open to inspection by any officer or duly appointed agent of the commonwealth or the advisory board. Said Authority shall submit an annual report, in writing, to the governor, the president of the senate, the speaker of the house of representatives, the chairman of the senate committee on ways and means, the chairman of the house committee on ways and means and the advisory board. Said report shall include financial statements relating to the operations, properties, and capital facility expenditures, including costs of land acquisitions, of the Authority maintained in accordance with generally accepted accounting principles so far as applicable, beginning with the fiscal year of the Authority commencing July first, nineteen hundred and eighty-five, and audited by an independent certified public accountant firm.
- (b) Not later than December thirty-first, nineteen hundred and eighty-nine and every five years thereafter, the Authority shall submit to the governor, the president of the senate, the speaker of the house of representatives, the chairman of the senate committee on ways and means, the chairman of the house committee on ways and means and the advisory board a progress report on the Authority's attainment of its statutory purposes. Each such five-year progress report shall be prepared by the Authority with the assistance of an independent citizen panel which shall include persons selected by the Authority and approved by the advisory board who are experienced in environmental protection, civil engineering and public management and finance. Said reports shall include recommendations concerning the future activities of the Authority including, but not limited to, changes in the provisions of this act or the Authority's administrative procedures necessary or

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desirable for improving the delivery of services. The costs of preparing the reports of said Authority shall be provided for in the current expense budgets of said Authority.

## SECTION 23.

- (a) There shall be an advisory board to the Authority consisting of (i) a voting representative of each of the following cities and towns: Arlington, Ashland, Bedford, Belmont, Boston, Braintree, Brookline, Burlington, Cambridge, Canton, Chelsea, Chicopee, Clinton, Dedham, Everett, Framingham, Hingham, Holbrook, Leominster, Lexington, Lynn, Lynnfield, Maiden, Marblehead, Marlborough, Medford, Melrose, Milton, Nahant, Natick, Needham, Newton, Northborough, Norwood, Peabody, Quincy, Randolph, Reading, Revere, Saugus, Somerville, South Hadley, Southborough, Stoneham, Stoughton, Swampscott, Wakefield, Walpole, Waltham, Watertown, Wellesley, Weston, Westwood, Weymouth, Wilbraham, Wilmington, Winchester, Winthrop, Woburn and Worcester and (ii) a voting representative of the metropolitan area planning council to be designated by the board of the council and six persons to be appointed by the governor who shall be voting representatives from the following categories: (1) one person who represents the interests of persons and communities in the Connecticut river basin area, (2) one person who represents the interests of persons and communities in the Quabbin and Ware watershed area, (3) one person who represents the interests of persons and communities in the Wachusett watershed area, provided, however, that no such person appointed for categories (1), (2) or (3) shall live in a community which has a representation on the advisory board by virtue of clause (i) of this sentence, (4) one person with skill and expertise in matters relating to environmental protection, and (5) two persons qualified by membership or affiliation in organizations directly concerned with the recreational or commercial uses of Boston harbor and who are further qualified by professional experience in an environmental or scientific discipline. The member of the advisory board representing a city or town shall consist of the chief executive officer thereof; provided, however, that any chief executive officer, by writing filed with the Authority may appoint a permanent designee to serve in his stead as a member of said advisory board until the expiration of each term of office of the designating chief executive officer or the earlier vacancy of the office of the designating chief executive officer. For purposes of this section, the term "chief executive officer" shall mean the person designated as the chief executive officer under the provisions of a local charter of laws having the force of a charter, and otherwise the mayor in every city and the chairman of the board of selectmen or president of the town council, as the case may be, in every town. The members of said advisory board appointed by the governor shall serve coterminous with the governor.
- (b) The total voting strength of the advisory board shall be one hundred votes, of which ninety-five votes shall be divided on a fractional basis in the manner hereafter provided among the cities and towns listed in clause (i) of the first sentence of paragraph (a) of this section and five votes shall be divided on an equal fractional basis among the representatives provided for in clause (ii) of said

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- sentence. The fractional vote of the representative of each city or town shall be determined on an annual basis by the Authority on a weighted basis by dividing a reasonable estimate of the charges for the Authority's services to users in that city or town by a reasonable estimate of the charges for the Authority's services to all users in all such cities and towns. For each year the determination of votes shall be certified to the advisory board by the Authority, provided, however, that within five days of the effective date of this act the executive office of environmental affairs shall prepare an interim voting value based on the most recent available annual records of the costs of water and sewer services of the metropolitan district commission, which interim voting value shall be conclusive upon the advisory board until July first, nineteen hundred and eighty-six. Said advisory board may act at a regular periodic meeting called in accordance with its by-laws or at a special meeting called by the Authority or by representatives of fifteen or more members of the advisory board. Except as specially provided in paragraph (e), a quorum of the advisory board shall consist of representatives who hold a total voting strength of fifty or more of the votes of the advisory board, and the advisory board may act, except as otherwise provided in paragraph (e), by the affirmative casting of a majority of the votes represented in the quorum. The advisory board shall be deemed to be a governmental body for purposes of, and shall be subject to, section eleven A and one-half of chapter thirty A of the General Laws and shall also be subject to section ten of chapter sixty-six of the General Laws.
- (c) For the conduct of its business said advisory board shall adopt and may revise and amend by-laws. Said advisory board shall annually elect a chairperson, a vice chairperson and a secretary and such other officers as said advisory board may determine. Each officer shall serve until a successor is chosen and qualified. Each officer may be removed by vote of the advisory board with or without cause. In the event of a vacancy, said board shall fill the vacancy for the unexpired term. Each member of said advisory board shall serve without compensation but may be reimbursed, as an expense of said advisory board, for all reasonable expenses incurred in the performance of its duties as approved by the advisory board.
- (d) The purposes of the advisory board shall be as follows:
- (i) to appoint three members of the board of directors of the Authority, in the manner hereafter provided and in section three;
  - (ii) to consider matters committed to the approval of the advisory board under paragraphs (c) and (d) of section eight;
  - (iii) to make recommendations to the Authority on annual current expense expenditure budgets submitted to the advisory board in accordance with paragraph (b) of section eight;
  - (iv) to make recommendations to the Authority on its charges;
  - (v) to hold hearings, which may be held jointly with the Authority at the discretion of the advisory board and said Authority, on matters relating to said Authority;
  - (vi) to review the annual report of the Authority and to prepare comments thereon to the Authority and the governor, and to make such examinations of the reports on the Authority's records and affairs as the advisory board deems appropriate;

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and

- (vii) to make recommendations to the governor and the general court respecting the Authority and its programs. The advisory board shall have all powers necessary or convenient to carry out and effectuate the foregoing purposes.
- (e) Three members of the board of directors of the Authority shall be appointed by the advisory board. Members of the board of directors so appointed may also be members of said advisory board. Said advisory board shall appoint successor members, which successor members shall replace those members of the board of directors appointed by the advisory board whose terms have expired or otherwise terminated. With respect to appointment of any member of the board of directors the advisory board shall act only if there is a special quorum consisting of a majority of those persons who are voting members of the advisory board and only by an affirmative vote of the majority of the members present, each voting member voting one unweighted vote, and in this instance the total voting strength of the advisory board shall equal the total number of persons entitled to vote.
- (f) Within thirty days of receiving any proposed current expense budget of the Authority or within fifteen days of receiving any proposed amended expense budget of the Authority, the advisory board shall hold a public hearing on matters relating to such budget for the purpose of ascertaining, for subsequent report to the Authority if necessary, the views of the public thereon.
- (g) The advisory board shall provide for the appointment of an ombudsman who, with assistance from such staff and consultants as the advisory board may authorize and appoint, shall act for and in the name of the advisory board in the following respects:
- (i) preparation of analysis for the advisory board of the Authority's current expense budgets, capital expenditure budgets and capital programs and their effect on the charges of said Authority;
  - (ii) representation of the advisory board to said Authority in all matters relating to said Authority's programs, operations, finances and charges;
  - (iii) reporting regularly to the advisory board on the activities of the ombudsman and other staff of the advisory board, on the affairs of the Authority, and on the effect of the Authority's program and operations on the costs to consumers of water and sewer services; and
  - (iv) exercising such other duties and responsibilities consistent with the powers of the advisory board as the advisory board may assign from time to time. Reports of the ombudsman, after acceptance by the advisory board, shall be made available to the public.
- (h) The advisory board may incur expenses, not to exceed thirty-five thousand dollars in the fiscal year commencing July first, nineteen hundred and eighty-four and not to exceed one hundred thousand dollars annually thereafter for expenses authorized under paragraph (c) and for personnel and office expenses. Such expenses shall be paid by the Authority in the fiscal year commencing July first, nineteen hundred and eighty-four from amounts appropriated to the Authority by the commonwealth, and thereafter shall be provided for in current expense budgets of the Authority. After the fifth anniversary of the transfer date, the maximum level of advisory board expenses may be increased from time to time

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upon the review and approval by the Authority of the justification for such increases submitted by the advisory board.

SECTION 24. The superior court department of the trial court shall have jurisdiction to enforce rights and duties created by the provisions of this act, and on complaint of the Authority may restrain violations of the Authority's regulations and otherwise enforce by any appropriate remedy, including without limiting the generality of the foregoing, injunctive relief, the regulations, licenses, permits, orders, penalties and charges of the Authority. Penalties and charges established by or under authorization of this act shall be collected for the account of the Authority and paid over to the Authority. Except for rights of action expressly conferred upon the Authority, no provision of this act shall create private rights of action in enforcement proceedings.

Notwithstanding any provision of the Massachusetts Water Resources Authority Act or of any special or general law to the contrary, the supreme judicial court shall have original and exclusive jurisdiction of all state actions in which the Authority is a defendant and water pollution is an issue. The attorney general shall appear on behalf of the Authority in any action involving water pollution in which the Authority is a plaintiff or defendant, and he shall do so to the same extent as is required by section three of chapter twelve when appearing on behalf of a state agency.

SECTION 25. The provisions of this act shall be deemed to provide an additional, alternative and complete method for accomplishing the purposes of this act, and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the Authority and others by laws; provided, however, that insofar as the provisions of this act are inconsistent with the provisions of any general or special law, administrative order or regulation, the provisions of this act shall be controlling.

SECTION 26.

- (a) All local bodies and all public agencies, instrumentalities, commissions and authorities of the commonwealth are hereby authorized and empowered to undertake activities, programs and projects in conjunction with the Authority in furtherance of the purposes of this act, including without limiting the generality of the foregoing, to join in investigations and studies, and to grant applications and applications for project approvals.
- (b) Except with respect to real property acquired or held for purposes described in Article XCVII of the Amendments to the Constitution, all local bodies and all public agencies, instrumentalities, commissions and authorities of the commonwealth, are hereby authorized and empowered to lease, lend, grant or convey to the Authority upon such terms and conditions as the proper authorities of such public bodies, public agencies, instrumentalities, commissions and authorities of the commonwealth may deem appropriate and without the necessity of any action or formality other than the regular and formal action of said public bodies, agencies, instrumentalities, commissions and authorities of the commonwealth any interest in any real or personal property which may be necessary or convenient to effect the purposes of the sewer and waterworks of the Authority.



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- (c) All general and special laws relating to water and sewer services of local bodies shall be interpreted and construed liberally so as to effectuate the purposes and provisions of this act and the objectives of the Authority.
- (d) For any local body in the service areas of the Authority, local officials lawfully so charged shall for their local body have the charge and control of the respective water, waterworks and sewer works owned and used by said local body and not in the ownership, possession and control of the Authority. Said local officials so charged shall have for their local body the charge and control of the water sources owned and used by said local body. Subject to the exercise of powers of the Authority provided for in this act or otherwise, and to other applicable law, said local officials shall manage and improve municipal water works and sewer works, extend the pipes and other works as they may deem expedient, keep the pipes, fixtures and other works under their charge in good condition and repair, and prescribe for local water and sewer systems, rules and regulations under other law, provided, however, that without limiting the generality of the foregoing, written notice of rules and regulations relating to local sewer and delivery of water services proposed for adoption by any local body shall, except in an emergency, be given to the Authority not less than sixty days prior to adoption.
- (e) Notwithstanding any provision of general or special law to the contrary, a local body may (i) for furnishing water supply, establish rates, fees or other charges on a flat rate per volume of water consumed or on an ascending unit rate based on quantity of water consumed; and may (ii) provide for furnishing water supply and sewer services in its charges or through abatement proceedings conducted in accordance with its regulations for assurance of service to persons who by reason of age, infirmity or poverty are unable to pay the charges of the local body otherwise applicable, provided that the aggregate liability of the local body for the total amounts owed to the Authority under section ten shall be in no way diminished thereby. Without limiting the generality of regulatory powers and powers with respect to charges established elsewhere in this act, the Authority may require that each local body adopt and administer user charges for local water services and sewage services which shall be in compliance with (i) all applicable requirements of state and federal law, and (ii) policies of the Authority directed to conservation of water, elimination of infiltration and inflow of surface water and ground water into the sewage collection, treatment and disposal system, and removal or pre-treatment of industrial wastes. No action shall be taken by the Authority, however, in violation of clause 1 of section 10 of Article I of the United States Constitution which shall substantially impair a contractual expectation entered into prior to the effective date of this act by a local body pursuant to a power granted it by law to issue revenue bonds.
- (f) If, except in circumstances of temporary emergency, any volume of water from the watershed system of the division shall be directed under any provision of law for delivery of water purposes which are not subject to the charges of the Authority provided for in section ten, the Authority shall receive compensation from the user or users thereof in lieu of revenues which otherwise would have been received by the Authority in respect of the use of such water.

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SECTION 27. Notwithstanding the provisions of any general or special law or provision of this act to the contrary, no officer of the Authority shall enter into any consent decree in any court of any jurisdiction without prior approval of the governor and the general court.

SECTION 28. The provisions of chapter twelve A of the General Laws shall apply to the Authority.

SECTION 29. The provisions of this act are severable, and if any provision hereof shall be held invalid in any circumstances, such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet any constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements.

SECTION 30. On July first, nineteen hundred and eighty-five, the metropolitan sewerage district and the metropolitan water district shall be dissolved and the following sections of chapter ninety-two of the General Laws are hereby repealed: Sections one, one A, two, three, four, five, five A, five B, six, six A, six B, seven, eight, eight A, nine, ten to thirty-two, inclusive, seventy-seven, seventy-eight, eighty-one eighty-two, and one hundred and two.

SECTION 31. Chapter 10 of the General Laws is hereby amended by striking out section 11 and inserting in place thereof the following section:

Section 11. He shall annually as soon after the prorogation of the general court as is practicable, publish a statement showing the assessments for interest, principal, and maintenance requirements due from towns in the metropolitan parks districts; a statement showing the several classes of debts incurred for metropolitan district purposes, and the share of the towns in the district as measured by the basis used in computing the assessments mentioned in the first statement; and such other statements, if any, as he may deem advisable. The expense of printing shall be apportioned and paid from the maintenance fund of the parks districts.

SECTION 32. The second paragraph of section 33B of chapter 21 of the General Laws is hereby amended by striking out, in line 2, the words, "the metropolitan district commission" and inserting in place thereof the words:-, the Massachusetts Water Resources Authority.

SECTION 33. Said chapter 21 of the General Laws is hereby amended by striking out section 40 and inserting in place thereof the following section:-

Section 40. The director, his authorized representative, or personnel of the division of watershed management in the metropolitan district commission or of the Massachusetts Water Resources Authority

Said feasibility study shall require that the entire cost of building and maintaining such processing facility shall be born by the towns using it.

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SECTION 69. The Authority shall not take any structural action in any donor basin, including any capital improvements or expenditure of capital funds, which could reasonably be expected to (i) create a new interbasin transfer of water or (ii) increase the rate of any existing interbasin transfer of water without the express approval of the general court; provided, however, that this provision shall not be construed to require general court approval for actions undertaken to reduce leakage in an existing interbasin transfer. Any determinations made under the provisions of this section shall be made by the division.

SECTION 70. The Authority shall take all reasonable steps expeditiously to continue planning on design and to commence construction of wastewater treatment and delivery projects for which planning or design contracts have been approved by the metropolitan district commission prior to the effective date of this act and which are listed on the Construction Grants Project Priority List established by the department of environmental quality engineering and the division of water pollution control in effect on the effective date of this act.

SECTION 71. Notwithstanding any provision of this act to the contrary, the supply of water by the Authority to any political subdivision to which the metropolitan district commission was not providing water at the time of the effective date of this act shall be made only upon the determination by the Authority and the department of environmental quality engineering that the water supply source used by said political subdivision at the time of the passage of this act is unfit for drinking and cannot be economically restored for drinking purposes.

SECTION 72. Section 2 of chapter 234 of the acts of 1984 is hereby amended by inserting after item 2420-0200 the following item: -

2420-1400 For the operation and maintenance of the watershed management division, provided, that the secretary of environmental affairs shall file quarterly reports, by subsidiary, of expenditures for the purpose of this item with the house and senate committees on ways and means, including not more than one hundred and sixty-six permanent positions and not more than four temporary positions ..... \$2,681,186

SECTION 73. Sections six, ten, thirty, thirty-one, thirtyfour, forty, forty-one, forty-two, forty-three, forty-four, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, and one hundred shall take effect upon July first, nineteen hundred and eighty-five. All other provisions of this act shall take effect upon January first, nineteen hundred and eighty-five.

Approved December 19, 1984.

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