

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
ACT OF 1996

JUNE 25, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 3663]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3663) to amend the District of Columbia Self-Government and Governmental Reorganization Act to permit the Council of the District of Columbia to authorize the issuance of revenue bonds with respect to water and sewer facilities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND AND NEED FOR THE LEGISLATION

A. BACKGROUND

History of Blue Plains Wastewater Treatment Facility

Though not one of Washington, D.C.'s tourist attractions, the Blue Plains Wastewater Treatment Plant is the largest of its kind in the United States and is the Washington Region's most significant environmental facility. The facility is responsible for treating raw sewage from Washington, DC and neighboring jurisdictions in Maryland and Virginia. Blue Plains provides sewer service for almost all major federal facilities in the Washington region.

Owned, operated by, and located in the District of Columbia, about 52% of the influent sewage flow is from the District; about 39% from the Washington Suburban Sanitary Commission (Montgomery County and Prince Georges County in suburban Maryland) and approximately 9% from Virginia (the Counties of Fairfax and Loudon, plus Dulles Airport, as well as the Pentagon). Thus, most

all federal facilities in the Washington Region, in all 3 branches of government, plus around 2 million residential users, depend upon Blue Plains. A collapse of Blue Plains would be an ecological catastrophe.

The Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act") 33 U.S.C. 1319, governs protection of the water quality, fish, wildlife, scenic and recreational aspects of the Potomac River and its tributary navigable waters. While the District owns and operates Blue Plains, it is subject to the conditions and limitations contained in the National Pollutant Discharges Elimination System ("NPDES") Permit Number DC0021199 (the "Permit") issued by the Environmental Protection Agency (EPA) effective February 4, 1991, pursuant to the Clean Water Act. In September, 1995, the EPA listed the flow of raw sewage into the Potomac because of shortcomings at Blue Plains as a "very real possibility." The Permit expired on February 3, 1996. Negotiations are currently underway to extend or renew the permit.

How the Blue Plains Wastewater Treatment Facility and the water and sewer collection and distribution systems of the District of Columbia deteriorated is a story that reflects the enormous growth of the Washington region beginning with World War II and then the growing out migration to the suburbs. It is also an all too familiar story in the Nation's Capital of municipal shortcomings in terms of available resources, best management skills, and allegations of serious improprieties.

Blue Plains now treats an average 325 million gallons a day (mgd) of sewage. Consisting of 154 acres of waterfront land in Southwest, the District calculates that Blue Plains is an asset valued at \$1.4 billion. It's annual operating and capital budget is around \$250 million.

In 1934 the original facilities provided primary treatment only, treating 130 mgd's with a service population of around 650,000. Capital funding for construction was provided by the Federal government, the District, Fairfax County, Virginia, and the Washington Suburban Sanitary Commission (WSSC). The WSSC is an entity of the state of Maryland which represents Montgomery and Prince Georges County.

Expansion occurred in 1949, when chlorination was added, along with secondary (biological) treatment. The plant was expanded again in 1959. The most recent expansion and upgrade started in 1972 and was completed in stages by 1983. The plant now has a peak design capacity of 650 mgd, plus primary treatment capacity for an additional 289 mgd of storm flow.

EPA funding began in 1973. Since then, EPA has given the District over \$360 million in construction grants. Maryland and Virginia have received an additional \$187 million to support Blue Plains construction.

In 1984, a Blue Plains Feasibility Study evaluated various assessed needs through 2010. An upgrade to 370 mgd with a peak flow of 740 mgd was recommended, and expansion is currently underway.

The Blue Plains collection system consists of approximately 1,275 miles of sewers, 9 wastewater pump stations, and 15 storm water

pump stations. Because Blue Plains is in the District, EPA Region III has primary oversight for its operation. The District's Department of Public Works' Water and Sewer Utility Administration (WASUA) is responsible for the day-to-day operation of the water and sewer systems and operation of the Blue Plains facility. The District's potable water supply is provided by the Washington Aqueduct which is owned and operated by the US Army Corps of Engineers. The District of Columbia owns and maintains its water distribution system.

The existing institutional arrangements for treatment and transmission capacity allocation and for capital and operating cost allocation are governed by a series of agreements between the users. Prior agreements are: the 1954 Agreement between WSSC and the District, the 1959 Agreement between Fairfax County and the District; the Agreements executed in the 1960's between the District and the Users of the Potomac Interceptor; the 1970 Memorandum of Understanding; the 1971 Interim Treatment Agreement; the 1974 Blue Plains Sewage Treatment Plant Agreement as amended; the 1976 Agreement between the District and WSSC; the 1984 Memorandum of Understanding on Blue Plains; and the 1984 Sludge Memorandum of Understanding. The current operative agreement, the Blue Plains Intermunicipal Agreement of 1985 (IMA), was signed on September 5, 1985 by those acting in an official capacity for the District of Columbia, Fairfax County, Montgomery County, Prince Georges County, and the WSSC. This latter agreement was developed with assistance from the Metropolitan Washington Council of Governments.

The basic rate structure consists of two tiers. Blue Plains retail customers, that is residents of the District, have their rates set by the City Council. The suburban users are wholesale customers and their payments are calculated on a cost formula basis.

Problems and status of Blue Plains

Problems, with the Blue Plains Facility have been growing more serious since the 1970's. These underlying problems have involved permit issues and the proper handling of sludge. The EPA filed suit in 1984 against the District for numerous alleged operational problems. As a result of the suit, a formal 5 year Consent Decree was entered into in 1985. Throughout the life of the Consent Decree violations continued, and a considerable amount of stipulated penalties was owed.

In 1990 EPA filed a second lawsuit for effluent violations, construction delays and inadequate maintenance of treatment equipment. In 1991 agreement was reached on a \$1.5 million penalty to settle both this and the previous case. The decree was to be negotiated, and it was not until late 1994 that an agreement was reached settling the litigation. The City paid a \$500,000 penalty and made other operational changes.

On August 31, 1995, EPA issued an Administrative Order to the District to correct maintenance and operational problems. Both short-term and long-term strategies were required to be implemented. In November, 1995, EPA conducted another joint inspection. The report, completed in March, 1996, reiterated previous concerns, including financing. The report found that the capital im-

provement budget for Blue Plains would be \$20 million short for FY '96. As accurately summarized and reported by R.H. Melton in The Washington Post on December 14, 1995, the EPA report warned that "Blue Plains is on the verge of failing its central mission * * * (and) is now so dilapidated it poses a serious pollution threat and will soon run out of money it needs for long-delayed repairs."

EPA and the Department of Justice also worked with the City to resolve more short-term immediate problems at Blue Plains. As stated, while the District owns and operates the Blue Plains Wastewater Treatment Works, including the Blue Plains Wastewater Treatment Facility, it does so subject to the conditions and limitations contained in the Permit issued by EPA pursuant to the Clean Water Act. EPA's National Enforcement Investigation Center (NEIC), in reports dated July, 1995, and January, 1996, presented findings alleging serious permit violations from two inspections at Blue Plains. Included were serious allegations of periodic shortages of chemicals critical for the proper operation of the facility and effective wastewater treatment, and failure to make timely payments to Blue Plains contractors and chemical suppliers. At that time the total amount awarded to the District under all EPA grants for Blue Plains exceeded \$360 Million.

Citing the IMA, and the findings of a District audit dated August 11, 1995, EPA and the Department of Justice alleged that the revenues in the Water and Sewer Enterprise Fund were pooled with other revenues in the District's General Fund, and WASUA's ending cash balance for FY '94 of some \$83 million was made unavailable by the District for the operation and maintenance of Blue Plains in FY 95. Overall, the District is alleged to have diverted at least \$96 million in revenue from user fees. The District government took money from the Water and Sewer Enterprise Fund intended for Blue Plains and used it for other purposes. Thus, while Blue Plains was in danger of falling apart and creating an environmental catastrophe, the District government was diverting money collected for repairs and maintenance, leaving no funds for that vital work.

On February 7, 1996, the Commonwealth of Virginia served the required 60 day notice on EPA and the District of its intent to file a citizen suit under the Clean Water Act against the District for allegedly violating its EPA operating permit at Blue Plains. Virginia's main contention was that the lack of proper operation and maintenance, adequate funding, and discharge levels were caused by the District diverting rate payer funds to other uses than funding Blue Plains, and that the District should restore the funds. Virginia Attorney General James S. Gilmore, in his notice letter to District Mayor Marion Barry, said that the Blue Plains facility is in "critical condition" that could lead to "major failures" in pollution control that would endanger the Potomac River and the Chesapeake Bay.

On April 5, 1996, the last day of the sixty-day notice period, the United States Government (EPA and Justice) filed a civil action under Section 309(b) of the Clean Water Act, seeking injunctive relief against the District for alleged violations of the Blue Plains Permit. Under law, the EPA suit effectively prevented Virginia

from filing its litigation. Also filed with the Complaint was an executed "Settlement Agreement and Order" ("Consent Decree") between the parties resolving outstanding disputes. The lawsuit, referring to EPA inspections made in 1995, asserted deterioration, inadequate maintenance programs and other major problems at Blue Plains that could lead to the discharge of high concentrations of chemical pollutants and harmful micro-organisms into the Potomac. A "significant risk to public health and the environment" was warned if corrective steps weren't taken promptly. The District agreed to make significant upgrades and repairs estimated to cost \$20 million over the next two years. The settlement looked to Congressional action to separate water and sewer revenues from the District's General Fund (Section 154 of the District of Columbia Appropriations for FY 1996, signed on April 26, 1996). The Stipulated Agreement and Order requires the District to submit monthly reports to EPA on the status of the construction projects outlined in the agreement, as well as the status of payments owing and made to chemical suppliers and for maintenance.

On May 9, 1996 Virginia filed a Motion to Intervene in the federal case along with a proposed Complaint. Virginia claims that the suit otherwise would not sufficiently protect its interests. As this report is filed no resolution of Virginia's request to intervene has occurred and the Stipulated Agreement and Order has not become final.

The "Congressional ratification" mentioned in the Consent Decree refers to legislation enacted by the District of Columbia government (DC Act 11-201), approved by the Financial Responsibility and Management Assistance Authority (the "control board" created by Public Law 104-8) with certain recommended amendments, and transmitted to Congress under the Home Rule Act and Article 1, Section 8, Clause 17 of the U.S. Constitution. Essentially, the District's legislation was in response to the demands made by the EPA for fundamental change in the structure and operation of Blue Plains.

The District Government's response to continuing problems at Blue Plains

On February 7, 1995 Bill 11-102 was introduced in the District of Columbia Council, known as the "District of Columbia Water and Sewer Authority Act of 1995." The bill went to hearing before the Committee on Public Works and Environment on May 3, 1995. The Committee Mark-up occurred on October 25, 1995. Following approval by the full Council and the Mayor's signature on February 1, 1996, the legislation, now known as Act 11-201 (Law 11-111), "the District of Columbia Water and Sewer Authority Act of 1996," was referred to the control board under Section 207 of Public Law 104-8. It was approved, with some recommendations for modifications, by the control board on February 15, 1996. The enactment was then officially transmitted to Congress by the District government on February 22, 1996.

Throughout the legislative process District officials met with and negotiated with officials of the suburban jurisdictions over an acceptable structure and operating scheme. The District was, and still is, facing a grave fiscal and financial crisis. This led to many

of the under funding problems at Blue Plains and for the District's water and sewer pipes. Under pressure from EPA and the suburban users of Blue Plains the District government decided to create a new, independent Water and Sewer Authority as a District of Columbia agency. The Water and Sewer Authority would include all of the "joint use" sewer facilities (the Blue Plains plant and a number of pipes within the system) along with the water distribution and sewer collection systems within the District itself.

The suburban jurisdictions strongly favored a true regional authority such as an Interstate Compact modeled after the Airports Authority or the Washington Metropolitan Area Transit Authority (WMATA). A regional authority would take considerable negotiation to set up and could only be created with the approval of the Virginia, Maryland, and District legislatures. Because of the fiscal distress of the District, the need to find a means of guaranteeing repair and maintenance of the water and sewer pipes, and the necessity to do something quickly, the District insisted on proceeding on its own. An offer was made to include voting representatives of the suburban jurisdictions on the Board of the new Water and Sewer Authority in order to give them more direct influence and to gain their acceptance for the creation of the Authority.

The thrust of the Water and Sewer Authority proposal was to separate water and sewer revenues from the General Fund so that further diversion of those funds would not be possible. The Water and Sewer Authority would set the rates it charged at whatever level was required to make it completely self-supporting and it would finance capital projects through revenue bonds secured by its own revenue. Under the terms of the home rule act (PL 93-198), the District government does not have the power to sell revenue bonds for water and sewer purposes, so the proposed new Authority could not be implemented without Congressional action to grant the necessary borrowing power.

The proposed legislation was modified considerably as it worked its way through the District's legislative process and negotiations intensified after the Council passed Act 11-201. The control board held an extensive hearing on the legislation and then forwarded it for the required 30 day Congressional review. The Committee engaged in discussions with the District government, the user jurisdictions, and EPA. Considerable background and support was provided by Council of Governments (COG) staff. The Committee reached an understanding with the District and user jurisdictions that it would not proceed with the vital revenue bond power for the Water and Sewer Authority until it was satisfied with the District's legislation and that the user jurisdictions supported the proposal.

The original District legislation finished its 30 day review and became District law on April 18, 1996. The Committee did not consider the legislation as complete, but was satisfied that negotiations were proceeding on a compromise and that it ultimately could legislate for the District on this issue if a satisfactory resolution was not found. On June 5, 1996 the District Council passed significant, substantive amendments to the original proposal which were the result of the negotiation process. These amendments were supported by the Committee, EPA, the control board, and the user jurisdictions. At a Committee hearing on June 12, 1996, the user ju-

risdictions testified that they were willing to accept and participate on the Water and Sewer Authority as amended by the Council on June 5, 1996. EPA testified that the amendments significantly improved the proposal.

The original enactment established a 10 member authority, with 4 members designated by the suburban user jurisdictions. It sought to facilitate the adequate delivery of water to the District and sewer system services to the District and portions of the Metropolitan Washington area, delegated Council authority (if Congress granted such authority) to issue revenue bonds to the Authority, dedicated District water and sewer revenues to the Authority, transferred the functions of the Water and Sewer Utility Administration (WASUA), Department of Public Works, to the Authority, and abolished WASUA.

Amendments recommended by the Control Board included formalizing a plan within 60 days for the repayment of the unavailable funds, approximately \$81 million, and a requirement to maintain complete separation of the water and sewer revenues and cash balances from those of the General Fund.

In order to lay the foundation for timely and rapid Congressional action, the District of Columbia Subcommittee of the Government Reform and Oversight Committee, chaired by Rep. Tom Davis, held an Oversight Hearing on February 23, 1996 on "Water and Sewer Systems in the District of Columbia." Chairman Davis, in his Opening Statement, referred to Blue Plains as an "enormous and growing" crisis, and mentioned the EPA "boil water" alert in the District in November, 1995 as indicative of concurrent problems with the water distribution system.

Following further negotiations between the user jurisdictions, the District of Columbia Council, by emergency legislation, amended Act 11-201 to incorporate agreed upon amendments. Key provisions increased the new Board's size from ten to eleven members (6 members from the District and 5 from the suburban jurisdictions), raised the number of Board members to be recommended by Montgomery and Prince Georges Counties from one to two members each, and eliminated the Board of Director's position reserved for a person recommended by the WSSC. Eight votes are necessary to hire or fire the General Manager. The Water and Sewer Authority is specifically named as the permit holder for Blue Plains as requested by EPA. The financial independence from the General Fund is strengthened and the study of privatization or forming a regional authority is clarified and improved. The emergency legislation was passed by the Council on June 5, 1996.

There then remained, as contemplated by the Act, the necessity for Congress to adopt affirmative legislation conferring revenue bond power for water and sewer purposes on the Council, allowing the Council to transfer such power to the Water and Sewer Authority, and to take the Authority "off-budget" (meaning that the Mayor and Council cannot affect the self-funded budget adopted by the Board of the Authority). Accordingly, H.R. 3663, District of Columbia Water and Sewer Authority Act of 1996, was introduced on June 18, 1996. The bill was referred to the Government Reform and Oversight Committee, and a hearing was held by the District of Columbia Subcommittee on June 12, 1996.

B. NEED FOR LEGISLATION

H.R. 3663 amends the Home Rule Act to authorize the issuance of revenue bonds with respect to water and sewer facilities, and for other necessarily related purposes. Bonding and budget matters for the District are covered in the Home Rule Act (PL 93–198) and can only be changed by Act of Congress. Without H.R. 3663 the District of Columbia's Water and Sewer Authority (Act 11–201, amended by Emergency Act on June 5, 1996) is a de facto nullity.

Thus, H.R. 3663 is essential in order to allow revenue bonds for water and sewer purposes and to permit the District Government to delegate that power to the new Water and Sewer Authority. Other provisions are needed to prevent the District Government from changing the Authority's budget, and to exempt bond proceeds and repayments from being part of the District's appropriations process. Also, when Water and Sewer Authority revenues are removed from the General Fund they must also be removed from the calculation determining the District's debt service cap and, at the same time, existing water and sewer General Obligation bonds sold for water and sewer purposes must be removed from that calculation.

The District Government has the power to issue General Obligation bonds for any legitimate purpose and has used this authority since 1984 to sell bonds for water and sewer purposes. Section 490 of the Home Rule Act gives the District of Columbia Council the power to sell revenue bonds only for certain specified purposes. The Council does not currently have the power to sell revenue bonds for water and sewer purposes, and may not provide that revenues of the new Water and Sewer Authority may be used to pay off revenue bonds for those purposes. Only Congress can confer this power. When the Council is given such power HR 3663 provides that it may (as it has already done legislatively) delegate that power to another District entity—in this case the new Water and Sewer Authority.

Revenues in the District's Water and Sewer Enterprise Fund were "pooled" with revenues in the District's General Fund in recent years. The District's Department of Public Works, Water and Sewer Utility Administration (WASUA), which is being abolished by the District legislation, had an ending cash balance for FY '94 of some \$83 million that was made unavailable by the District for the operation and maintenance of the Blue Plains Wastewater Treatment Facility in FY '95 because the District had used the funds for other purposes. At the recommendation of the control board and with the agreement of the other interested parties, the District is required to repay the new Water and Sewer Authority \$83 million. A 4 year plan to do that is incorporated in the District's Financial Plan, which is a legally binding document under PL 104–8. The Control Board has assured the Subcommittee, the participating jurisdictions, and the State of Virginia, that it fully intends to enforce the District's commitment to repay the funds. Congress, of course, retains the ultimate power to enforce repayment, and is the ultimate guarantor since it must approve the annual District budget.

The testimony of Henri N. Gourd, Vice President of MBIA Insurance Corporation, which was made part of the permanent record of the hearing held on June 12, 1996, was very helpful to the Committee. Mr. Gourd stressed the importance of making certain that the new Water and Sewer Authority “* * * be independent from any government body” and that “Control of the revenue stream by the issuing entity is critical to future bondholders.” Mr. Gourd mentioned 9 issues related to a future sale of revenue bonds aimed at “maximizing the attractiveness of the securities to the capital markets.” It is important that these matters be provided for in the Authority legislation or that the Authority have the power to implement them on its own. These points and how they are addressed are as follows:

1. Fees and charges to the new Authority should be in force and effect at least as long as any of the Authority's bonds are outstanding.

In response to a question Mr. Gourd stated that the June 5 Council amendment to Section 207 of the District bill takes care of this point.

2. The bond market can not be expected to embrace a new bond issue until the Authority becomes a free-standing independent entity.

Mr. Gourd was assured that the Authority will not attempt to sell revenue bonds until long after it is fully operational, and that the Committee will work with the District to make sure that this happens as soon as possible.

3. The Study called for in the bill must be as comprehensive as those done for other new authorities, and for systems operating under EPA consent decrees.

In response to a question, Mr. Gourd acknowledged that it is not necessary for Congress to spell out the type and frequency of such studies, and that the Authority is capable of doing this on its own.

4. The rates must reflect the needs of the system as a whole, “covering expected capital needs, operation and maintenance expenses and debt service expenses by a factor in excess of one.”

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are acceptable to satisfy this concern.

5. An “additional bonds test” must be met. This is a coverage test prior to the issuance of additional parity bonds “to protect against dilution of the revenue stream once the initial series of bonds are issued.”

In response to a question, Mr. Gourd agreed that the Authority has sufficient motivation to do this and is not precluded from doing so by any provision of the District legislation or of HR 3663.

6. An independent, outside accounting firm “and/or engineering firm” is commonly asked to certify that “projected operating and debt service expenses will be covered by the rates in compliance with bond documents.”

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are specific enough, and that the Authority Board can be relied upon to take this step.

7. A “closed loop” is preferable for holders of the revenue bonds.

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are sufficiently strong and clear on this point.

8. Revenue bond holders “prefer a senior claim to the revenues.”

Mr. Gourd agreed to work with the Committee if the current language isn’t sufficient to do this.

9. A “debt service reserve fund” is recommended “to provide liquidity * * * for water and sewer revenue bonds * * * in any future financing by the Authority.”

In response to a question, Mr. Gourd agreed that this would be covered under generally accepted accounting procedures and is specifically allowed under the District legislation.

In response to other questions asked at the hearing, Mr. Gourd agreed that the new Water and Sewer Authority is “substantially independent” and, all else being equal, should get a good rating. Mr. Gourd also agreed that taking the Authority out of the General Fund entirely and letting it collect its own revenues and put them into its own account is adequate to deal with the “control of revenue” issue.

LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

On June 18, 1996, Mr. Davis introduced H.R. 3663. It was co-sponsored by all the members of the Subcommittee on the District of Columbia along with Mr. Hoyer, Mrs. Morella, Mr. Moran, and Mr. Wynn representing the suburban user jurisdictions.

H.R. 3663 was referred to the Committee on Government Reform and Oversight. The Subcommittee on the District of Columbia held hearings on February 23, 1996 and June 12, 1996. The bill was marked-up in the Subcommittee on the District of Columbia on June 18, 1996. There were no amendments offered. The legislation passed the Subcommittee by a voice vote.

The Government Reform and Oversight Committee met on June 20, 1996, to consider H.R. 3663. There were no amendments offered. The bill was reported to the House unanimously by voice vote.

COMMITTEE HEARINGS AND WRITTEN TESTIMONY

February 23, 1996 oversight hearing

On February 23, 1996, the Subcommittee on the District of Columbia, of the Committee on Government Reform and Oversight, met pursuant to notice. The hearing was devoted to oversight issues associated with the District’s water and waste water systems. The purpose of the hearing in regard to Blue Plains was to evaluate its over all performance, especially its day-to day operation, maintenance, personnel policies, procurement practices, and compliance with the Environmental Protection Agency (EPA) permits and orders.

Subcommittee Chairman Davis began by stating that the problem of clean and inexpensive water and wastewater treatment affect all of the residents and businesses located in the metropolitan

region. The Chairman went on to say that a failure in the wastewater system might threaten the health of the Chesapeake Bay, the Potomac River, and other vital wetlands, as well as District and suburban residents. He stated that the newly proposed Water and Sewer Authority needed borrowing power in order to implement any reforms. The Chairman then said that the Subcommittee must amend the home rule act if the Water and Sewer Authority is to have borrowing power. Ranking Member Norton agreed that both the Aqueduct and Blue Plains are regional problems which call for bipartisan solutions. She expressed her support for the District's effort to establish a new, independent Water and Sewer Authority.

The first panel of witnesses consisted of Mr. Michael McCabe, the Director of Region III, EPA. Mr. McCabe reviewed the development of the Washington Aqueduct and the Blue Plains Wastewater Treatment Facility. He stated that the Aqueduct is a complex drinking water infrastructure that is old and run by the U.S. Army Corps of Engineers, with its customer base concentrated in the City. The Blue Plains facility is located in and operated by the District. The facility serves the needs of the District and suburban jurisdictions. However, both systems have committed recent and serious permit or federal standards violations; both have been issued Administrative Orders (one is a Proposed Administrative Order) by Region III because of problems with their operations; both present potential threats to the health and safety of their customers; and both are hampered by financial problems.

Mr. McCabe then addressed possible solutions. For the Aqueduct, he stated that the Corps lacks the borrowing/bonding authority necessary to procure additional funding for reforms. For the Blue Plains facility, Mr. McCabe emphasized the importance of the Biological Nutrient Removal Pilot Project, which is vital to the health of the Potomac River and the Chesapeake Bay. He concluded by saying that the EPA has attempted to help the Aqueduct and the Blue Plains facility through technical assistance, administrative orders, court-filed consent orders, unannounced inspections and audits, substantial fines, and jaw boning, but the results have been virtually negligible. Mr. McCabe suggested that Congress give consideration to new financing systems for both institutions, including the establishment of separate accounts for the collection and disbursement of grant payments and revenues for operation and maintenance.

The second panel of witnesses consisted of Mr. Larry King, the Director of the District of Columbia Department of Public Works. Mr. King reported on the quality of the drinking water and wastewater treatment in the District of Columbia. He stated that the City's water is safe, but that many of the water distribution and wastewater system components predated the Civil War, and need to be modernized and properly maintained. Mr. King stated that the District has responded to these problems by developing three proposals to improve the infrastructure of the Blue Plains Wastewater Treatment Plant, the wastewater and combined collection systems, and the water distribution systems. Mr. King spoke in support of the D.C. Water and Sewer Authority Establishment and DPW Reorganization Act of 1996 (Council Act 11-201).

The third panel consisted of Mr. Tom Jacobus, the Chief of Washington Aqueduct, United States Army Corps of Engineers. Mr. Jacobus described the operation and history of the Washington Aqueduct, as well as recent reforms and improvements. Mr. Jacobus then discussed recent problems. The current pay-as-you-go system for capital improvements will not be enough to fund the projects under design and study for the Aqueduct. He also described the Aqueduct's cooperation with the District to implement the reforms in the EPA's Administrative order.

The fourth panel of witnesses consisted of Mr. Erik Olson, the Senior Attorney of the Natural Resources Defense Council and Dr. Peter Hawley, the Medical Director of the Whitman-Walker Clinic. Mr. Olson's testimony focused on the need to make substantial improvements in the District's water system. Dr. Hawley stated that D.C. drinking water was dangerously close to EPA limits for turbidity, and could easily cause illness for many people, especially those who are HIV infected, the debilitated elderly, newborns, individuals undergoing chemotherapy treatment, and those with rheumatoid arthritis or other immunocompromising illnesses.

June 12, 1996 Legislative Hearing

On June 12, 1996, the Subcommittee on the District of Columbia, of the Committee on Government Reform and Oversight, met pursuant to notice. The hearing was intended to evaluate the progress of the Blue Plains wastewater treatment facility since the last hearing on February 23, 1996, to examine the District's proposal for a Water and Sewer Authority, and to obtain testimony on draft Congressional legislation necessary for the full implementation of the proposed Water and Sewer Authority.

Subcommittee Chairman Davis began by commending the District government for passing legislation establishing the Water and Sewer Authority (District of Columbia Act 11-201), a self-funding, independent agency and for the improvements resulting from the June 5, 1996 amendments. The Authority is being created to improve wastewater treatment for the District and surrounding Virginia and Maryland jurisdictions as well as the maintenance of the District's water distribution system. Furthermore, the Authority is being established with voting Board representatives from suburban jurisdictions who use the facility. Chairman Davis emphasized that the Authority will be prohibited from transferring money to the District's General Fund, except for the acceptable arrangement for the Authority to pay the debt service on outstanding General Obligation bonds issued for water and sewer purposes. Mr. Davis acknowledged congressional action was necessary before the newly created Authority could issue revenue bonds. Ranking Member Norton expressed her gratitude to Chairman Davis for allowing the local stakeholders to work out a solution to the Water and Sewer Authority. She also spoke in favor of amending the home rule act to permit the Council to authorize the Water and Sewer Authority to issue revenue bonds.

The first panel of witnesses consisted of Rep. Steny H. Hoyer, who expressed his approval of the creation of the Authority, which will aid the Blue Plains facility in the protection of human and environmental health, as well as daily operations, proper equipment,

financial stability, and sufficient staffing levels. Mr. Hoyer expressed his concern about past transfers from the District's Water and Sewer Enterprise Fund to the city's General Fund. He stated that the District should return the funds removed from the Water and Sewer Enterprise Fund, and that the new Water and Sewer Authority should be prevented from this type of transfer. Mr. Hoyer then expressed support for the revenue bond legislation being considered.

The second panel of witnesses consisted of Mr. Michael Rogers, the City Administrator of the District and Mr. Larry King, Director, DC Department of Public Works. Mr. Rogers began by stating that, when amending the home rule act, Congress should deal only with provisions relating to the Authority's bonding needs or other necessary Congressional actions, and should leave all other issues to the discretion and control of home rule government.

Specifically, Mr. Rogers objected to a Congressional amendment requiring an eight vote majority on budget matters of joint-use facilities (intended to increase suburban participation). He felt this was unnecessary since the District's legislation was all ready created with suburban consultation. The District legislation was approved by the Mayor, the Council, the control board, the suburban jurisdictions, and allowed to become law by the Congress. Mr. Rogers also pointed out several errors in the draft Congressional legislation and asked the Subcommittee to work with the District to straighten them out. Mr. King spoke in favor of the District legislation as amended.

The third panel consisted of the Honorable Katherine Hanley, Chairman of the Fairfax County Board of Supervisors, Mr. Bruce Romer, Chief Administrative Officer of Montgomery County, and Mr. Howard Stone, Chief Administrative Officer of Prince Georges County, Maryland. Ms. Hanley expressed her support of the revised eleven member Authority with five members from the suburban jurisdictions. In the long term, the Fairfax Board of Supervisors would like a separate Regional Authority to operate Blue Plains and joint-use facilities, without concern for the city's water and sewer system. Although there were other improvements the Board asked for in the District's legislation, she supports the creation of a Water and Sewer Authority as an important first step.

Mr. Romer testified on behalf of himself and Mr. Stone. He stated that Blue Plains handles about 94% of the wastewater flows from Montgomery County and about 54% of the flows from Prince George's County, as part of the Inter Municipal Agreement of 1985 (IMA). Mr. Romer said that the two counties have a considerable stake in the pending legislation; suburban residents use 50% of the allocated capacity for Blue Plains, and have paid \$346 million in capital investment in the Blue Plains facility. He also stated that suburban residents supported a separate Regional Authority in the long term, but supported suburban participation on the Authority's Board of Directors in the short term. He supported Congressional legislation to give the Water and Sewer Authority revenue bond power.

The fourth panel consisted of Mr. Michael McCabe, the Region III Administrator of EPA, and Mr. Henri Gourd, Vice President/Manager of MBIA Insurance Corporation. Mr. McCabe expressed

EPA's support for this legislation and said that the independent Water and Sewer Authority, as amended by the Council on June 5, 1996 should significantly improve the operation and maintenance of Blue Plains. Mr. McCabe also stressed the importance of the particular amendment making clear that the Water and Sewer Authority is the successor of WASUA and is the permit holder for Blue Plains. He also endorsed revenue bond power for the Authority. Mr. Gourd discussed the opportunities for the Authority in the bond market, from his perspective as a municipal bond insurer. There are two key issues for the bond market. First, the Authority must be an independent agency of the District's government so that its credit rating will not be linked to the District's. Second, the Authority must control its own revenue, so its bondholders will be assured of its financial security. He also listed nine important issues for the Authority to secure the most favorable bond rating.

Written testimony was received from the District of Columbia Financial Responsibility and Management Assistance Authority's (control board) Executive Director, Mr. John W. Hill, Jr. Mr. Hill's testimony supported the Council's creation of an independent Water and Sewer Authority as it was amended on June 5, 1996. The amended version of the District legislation effectively addressed the previously stated concerns of the control board in regard to the financing and membership of the proposed Water and Sewer Authority. Mr. Hill also expressed the control board's approval for the goal of the congressional legislation. He did, however, express his reservations about several details of the proposed legislation and noted that these may have been inadvertent. Mr. Hill asked the Subcommittee to work with the control board staff to perfect the Congressional legislation.

EXPLANATION OF THE BILL

H.R. 3663 amends the District of Columbia Governmental Organization and Reorganization Act (PL 93-198) to permit the District of Columbia government to issue revenue bonds for water and sewer facilities, and for other related purposes. This is necessary in order to implement legislation already passed by the District of Columbia Council, as signed by the Mayor, and approved by the Control Board under PL 104-8, creating the District of Columbia Water and Sewer Authority (Act 11-201, amended by Emergency Act on June 5, 1996). After submission to Congress, the legislation was permitted to become District law on April 18, 1996.

H.R. 3663 accomplishes the intent of Congress to allow the issuance of revenue bonds for water and sewer purposes by the District of Columbia and to permit the District Government to delegate the power being vested to the new Water and Sewer Authority. Other related provisions prevent the District Government from altering the Authority's budget and exempts bond proceeds and repayments from being part of the District's appropriations process. The legislation also removes both the revenues of the Water and Sewer Authority and outstanding General Obligation bonds issued for water and sewer purposes from the calculation of the District debt ceiling.

Under existing law the District government already has the power to issue General Obligation bonds for any legitimate purpose. Section 490 of the Home Rule Act gives the District power to

issue revenue bonds only for certain specified purposes. But the District lacks the power to sell revenue bonds for water and sewer purposes, and may not provide that any revenues of the new Water and Sewer Authority be used to pay off any revenue bonds issued for those purposes. The power to do that can only be conferred by a statutory enactment of Congress, as signed by the President. Should that power be conveyed by statute, which is the purpose of H.R. 3663, then the Council may, and by its aforesaid enactments already has, delegate that power to another District entity—in this instance the new Water and Sewer Authority. Under this bill the District government need not then further approve any bonds lawfully sold by the Water and Sewer Authority.

Under existing law the District of Columbia has a debt ceiling specified in the home rule act. The District is not permitted to have outstanding debt service higher than 14% of expected revenues. H.R. 3663 removes revenues of the new Water and Sewer Authority from the General Fund, effectively making them “off budget”. What this does is to reduce the amount of General Obligation debt the District can assume. Up to \$350 million of the current General Obligation debt was for water and sewer purposes. Under the District legislation (Council Act 11–201, as amended) the new Water and Sewer Authority must pay the debt service on the outstanding debt for water and sewer purposes, about \$38 million each year. This means that the existing General Obligation bonds for water and sewer purposes will no longer be the responsibility of the General Fund, but will be the responsibility of the new Water and Sewer Authority. Therefore, this debt should also be removed from the debt ceiling calculation.

The General Obligation bonds issued for water and sewer purposes and its annual debt service will be identified in the audit required in the District legislation. The Committee expects this audit to be conducted by an independent consultant well qualified to conduct such work. The Committee also expects for the Board of the Water and Sewer Authority to be consulted with and to accept the audit report for this matter and also for the identification of WASUA spending over the years, personnel, and equipment for which the Authority will be asked to repay the District under the provisions of the District legislation. This audit must also include the value of services rendered to the District which were not paid for such as free water service to the District government and any other such items. Any disputes or disagreements between the Board and the District government on these matters should be settled to the satisfaction of both bodies. The Committee notes that it retains both oversight and legislative power over the District and the Water and Sewer Authority and that Congress must approve the District and Water and Sewer Authority budget. Therefore, any unresolved issues between the parties may be subject to Congressional action.

The new Water and Sewer Authority being created is independent, self-funded, and not in the General Fund of the District of Columbia budget. H.R. 3663 therefore takes the Authority out of the District’s budget process. Other than nominating and confirming Board members for the Authority, the Mayor and Council will have no other role to play by way of exercising influence over the Au-

thority. While the Mayor and Council may comment on the budget, they can not change it. It is Congress alone that may change the Authority's budget under H.R. 3663, and Congress alone will be authorizing and appropriating the Authority's budget. As a necessary corollary, the Authority will be exempt from the mid-year budget reductions which may be ordered by the Mayor.

The Committee notes with favor that the Water and Sewer Authority is not only allowed, but is mandated to develop its own personnel and procurement systems. These provisions along with taking the Authority off budget will overcome past personnel problems caused by FTE caps and hiring freezes. Getting the Authority out from under the District's cumbersome and ineffective procurement system is expected to greatly improve the efficiency and cost savings available through good management and competitive bidding without an onerous overlay of Council enacted set asides and special considerations. The Committee expects the Authority to use its power in the area of personnel and procurement to aggressively pursue the best service at the lowest cost. The Committee included an amendment to the District legislation (Section 5 of H.R. 3663) to clarify that WASUA personnel transferred to the Water and Sewer Authority will only have their compensation guaranteed until the new personnel policy is put in place or until new labor agreements are entered into. The Committee agrees to allow transferred employees to maintain their compensation until the new personnel system is implemented, but will not agree to maintain employees compensation if their responsibilities or classification are reduced under the new system.

In addition, the Committee supports the provisions of Act 11-201, as amended, which call for quick action on possible contracting out of various parts of the operation and maintenance of Blue Plains and the water and sewer pipes of the District. The June 5 Council amendments together with consensus language in HR 3663 allow the Authority, on its own, to contract everything including general management of Blue Plains. The only action which the Authority cannot take is to sell or lease the entire Blue Plains Wastewater Facility, which is appropriate because the District retains title to Blue Plains and the Mayor and Council would have to approve a sale or lease.

The question of the equity status of Blue Plains is left unresolved. Since the Maryland and Virginia counties have received EPA constuction grants and contributed them to Blue Plains and have partly paid for capital projects through their wholesale rate payments to the District there is disagreement with the District's position that it has sole claim to an equity interest in Blue Plains. This issue was not resolved by the 1985 Intermunicipal Agreement (IMA) and has remained unresolved and untested in the courts since then. The Committee declined to resolve this complex issue legislatively at this time. The asset equity question along with numerous other important questions such as going to a true regional authority and the potential inclusion of the Washington Aqueduct is to be dealt with in a major Study. The study is to be contracted for by the Water and Sewer Authority shortly after it is formally set up. The suburban jurisdictions, through their representatives on the Board, are to have substantive input in writing the Request

For Proposal, setting the parameters of the Study, and reviewing and commenting on any draft Report before it becomes final. The Committee expects the District government to fulfill its commitment to the other jurisdictions and to the Congress on the Study.

Also, unspecified in the District or Congressional legislation is an exact structure or list of issues on which various components of the Board may vote. The Authority is really a bi-fucated body since it is responsible for purely District items (water and sewer pipes) and for considerable joint use facilities; and because the Board will consist of both District members and suburban members. The suburban Board members may not vote on matters affecting purely District issues, but may vote on all matters affecting the "general management" of any joint use facilities. The Committee understands that "general management" is a term of art in this context and that this language has been agreed to by all the parties. A similar question arises about bond issues since bonds may be sold for purely District purposes and for joint use facility purposes. Again, the Committee understands that all the parties are aware of the issues to be dealt with by the Water and Sewer Authority and are willing to work together to resolve them. The Committee is aware that goodwill and comity can easily overcome any lack of specifics in an organizational charter while lack of those qualities can render inoperable the best and most carefully designed structure. It is expected and anticipated that the Board will work together, in its own self interest, to resolve these questions in a friendly spirit of regional cooperation. If the Authority is able to work together to improve the operation of the area's largest environmental facility then further efforts at this type of close regional partnerships may become more prevalent.

The Committee is very pleased that the Council amendments of June 5, 1996 guaranteed the complete fiscal independence of the Water and Sewer Authority. By allowing the Authority to collect its own revenues and deposit them directly with its own trustee, the District government has removed itself from even a pass through role in handling these funds and guarantees that no District official, including the Council, may divert those funds for other purposes. This is the most important feature in signalling a true transformation in the District government structure and delivery of services.

In the past the District government has acted cavalierly towards its water and sewer system and too often has granted unfortunate favors or special treatment to some at the expense of the ratepayers. For instance, the Council has routinely exempted churches and other tax-exempt organizations from paying for water. Similarly, the District government does not pay for water it uses in its facilities. Large apartment complexes cannot have their water shut off no matter how much money they owe for water because the government does not allow water service to be cut off for people who are not responsible for paying the bills. Because of these and other actions of the District government, there is currently an uncollected backlog of more than \$30 million in unpaid water bills. The Committee takes special note of these issues and the fact that the District legislation grants the Water and Sewer Authority power to

deal with each of them. The Committee strongly encourages the Authority to require all users of water and sewer service to pay their fair share, to be fair but tough about letting individuals or businesses fall far behind in paying their bills, and to charge the District government for its water and sewer service or make an arrangement to offset and revenues foregone. Only in this way will all ratepayers be able to feel that they are asked only to pay for what they use and that they are not subsidizing someone else who could afford to pay.

The Committee thanks Mayor Barry for his vision for proposing such a radical transformation of the water and sewer services of the District and for his willingness to include voting members on the Board from other jurisdictions. This is a major step forward in regional cooperation. City Administrator Rogers has been both persistent and flexible in his dealings with the other jurisdictions and with the Committee. He deserves praise for reaching an agreement that all parties are willing to participate in at least as an interim measure. The Maryland and Virginia county governments on both the elected official and staff levels have shown toughness and attention to detail both large and small while maintaining a willingness to keep the important objective of improving Blue Plains in mind. The Committee hopes that this process and this legislation—both Council Act 11–201, as amended, and H.R. 3663—are the end of the beginning in protecting the environment, improving water and sewer service for the Washington area, and a new spirit of regional cooperation.

Concerns have been raised that since the Water and Sewer Authority is only a creation of the District government, the Council could amend the statute in the future in unfavorable ways. The Committee observes that Congress retains ultimate oversight and legislative power over the District and its legislative acts by the Constitution and PL 93–198. All Council acts must undergo Congressional review. Congress remains the watchdog of the District. The Committee commits itself to careful monitoring of the Water and Sewer Authority as it moves forward. It will do anything it can to help or improve the prospects of the Authority, and will be vigilant in looking for problems or attempts to subvert the performance of the Authority.

The Committee anticipates that when H.R. 3663 is considered by the House there will be an amendment in the nature of a substitute. This amendment consists solely of technical and conforming changes and no policy changes are anticipated. Therefore, pending unexpected amendments by the House or in the Senate, this Report fully reflects the legislation which will be passed and will not become irrelevant because it addresses substantially different than that which becomes law.

SECTION BY SECTION ANALYSIS

Section 1: Short Title. The Act may be cited as the “District of Columbia Water and Sewer Authority Act of 1996.”

Section 2: Permits the issuance of revenue bonds for wastewater treatment activities. Currently, the District Government does not have the power to sell revenue bonds for water and sewer purposes, nor to provide that the revenues of the Water and Sewer Authority

may be used to pay off revenue bonds for those purposes. Only Federal statutory law can do this. After the District is granted this power it may (and in this instance already has, in the form of its enacted law) delegate that power to another District entity—in this case the new Water and Sewer Authority. Thus, this Section amends Section 490 of the Home Rule Act to allow revenue bonds to be used for water and sewer purposes (Subsection (a)), allow Water and Sewer Authority revenues to be used to pay for revenue bonds (Subsection (b)), and permits the District to delegate full power to sell bonds without further District Council approval to the Water and Sewer Authority and to remove the proceeds of bonds and funds obligated to secure or pay debt service on bonds from the appropriation process (Subsection (c)).

Section 3: Treatment of revenues and obligations. Removes the revenues of the Water and Sewer Authority and the outstanding General Obligation debt attributable to water and sewer purposes from the calculation of the District's debt service ceiling.

Section 4: Treatment of the budget of the new Water and Sewer Authority. As the new Water and Sewer Authority is independent, self-funding, and not in the General Fund, it is thus appropriate to remove it from the regular budget process. The Mayor and Council may comment on the Authority budget, but can not change it. This is the same way the budget for the courts is treated. Congress may change and must appropriate the new Water and Sewer Authority budget. As an independent, self-funded operation, the new Authority will be exempt from any mid-year budget reductions ordered by the Mayor.

Section 5: Clarification of compensation of current employees of the Department of Public Works. This is to conform transferred employees to the new personnel system or to new collective bargaining agreements.

COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A), of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

BUDGET ANALYSIS AND PROJECTIONS

This Act provides for no new authorization or budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act are not applicable.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

The Committee was provided the following estimate of the cost of H.R. 3663, as prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1996.

Hon. WILLIAM F. CLINGER, JR.,
*Chairman, Committee on Government Reform and Oversight,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3663, the District of Columbia Water and Sewer Authority Act of 1996, as ordered reported by the House Committee on Government Reform and Oversight on June 20, 1996. Based on information provided by the Joint Committee on Taxation, CBO estimates that H.R. 3663 would have no direct impact on the federal budget. Therefore, pay-as-you-go procedures would not apply.

H.R. 3663 would:

- authorize the issuance of revenue bonds, notes, or other obligations by either the Council of the District of Columbia, or if the Council delegates this authority, by the District of Columbia Water and Sewer Authority to finance water and wastewater treatment facilities;

- exclude certain estimated revenues and certain estimated principal and interest payments from the calculation of the amount of debt issuance available to the District of Columbia;

- require the Water and Sewer Authority to submit to the Mayor each year its estimate of the necessary expenditures and appropriations for the following fiscal year; and

- clarify the compensation of the current employees of the District of Columbia's Department of Public Works.

H.R. 3663 would have no direct budgetary impact on the federal government. The bill would remove from the District's calculation of its available debt capacity both the estimated revenues and the Water and Sewer Authority and the estimated principal and interest payments on general obligation bonds issued by the Water and Sewer Utility Administration within the Department of Public Works prior to fiscal year 1997. Under current law, the District cannot issue an amount of long-term general obligation debt, other than refunding debt, at would cause the estimated payment of principal and interest on the District's total outstanding debt in any fiscal year to exceed 14 percent of the revenues estimated for the fiscal year in which the debt would be issued. Thus, by excluding from this calculation certain principal and interest payments, H.R. 3663 would likely result in the District issuing more general obligation debt than it would under current law. The Joint Committee on Taxation has determined that this change would have no direct effect on federal receipts.

H.R. 3663 contains no intergovernmental or private-sector mandates as defined in Public Law 104-4, and would impose no direct costs on state, local or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

CHANGES IN EXISTING LAW

Clause 3 of rule XIII of the Rules of the House of Representatives requires that any change in existing law made by the bill, as reported, be shown with the existing law proposed to be omitted enclosed in black brackets, new matter printed in italic, and existing law in which no change is proposed shown in roman type.

COMMITTEE RECOMMENDATION

On June 20, 1996, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

Committee on Government Reform and Oversight—104th Congress Rollcall

Date: June 20, 1996.

Final Passage of H. R. 3663.

Offered By: Mr. Davis.

Voice Vote: Ayes.

CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1; SECTION 102(B)(3)

This provision is inapplicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND
GOVERNMENTAL REORGANIZATION ACT**

TABLE OF CONTENTS

* * * * *

TITLE IV—THE DISTRICT CHARTER

* * * * *

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

- Sec. 441. Fiscal year.
- Sec. 442. Submission of annual budget.
- Sec. 443. Multiyear plan.
- Sec. 444. Multiyear capital improvements plan.
- Sec. 445. District of Columbia courts' budget.

Sec. 445A. Water and Sewer Authority budget.

* * * * *

TITLE IV—THE DISTRICT CHARTER

* * * * *

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

* * * * *

SUBMISSION OF ANNUAL BUDGET

SEC. 442. (a) * * *

* * * * *

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, **[and]** the Commission on Judicial Disabilities and Tenure**[.]**, and the District of Columbia Water and Sewer Authority.

* * * * *

WATER AND SEWER AUTHORITY BUDGET

SEC. 445A. The District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to sections 446 and 603(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates, but shall have no authority under this Act to revise such estimates.

ENACTMENT OF APPROPRIATIONS BY CONGRESS

SEC. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. Except as provided in section 467(d), section 471(c), section 472(d)(2), section 483(d), and subsections **[(f) and (g)(3)]** (f), (g)(3), and (h)(4) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any

other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

* * * * *

REDUCTIONS IN BUDGETS OF INDEPENDENT AGENCIES

SEC. 453. (a) * * *

* * * * *

(c) Subsection (a) shall not apply to amounts appropriated or otherwise made available to the District of Columbia [courts or the Council, or to] *courts, the Council*, the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995[.], *or the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996.*

* * * * *

Subpart 5—Tax Exemption; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

* * * * *

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490. (a)(1) The Council may by act authorize the issuance of revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, to refinance, or to assist in the financing or refinancing of, undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, college and university programs which provide loans for the payment of educational expenses for or on behalf of students, pollution control facilities, [and] industrial and commercial development[.], *and water and sewer facilities (as defined in paragraph (5)).* Any such financing or refinancing may be effected by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

* * * * *

(3) Any revenue bond, note, or other obligation, issued under paragraph (1) shall be paid and secured (as to principal, interest, and any premium) as provided by the act of the Council authorizing the issuance of such bond, note, or other obligation. Subject to subsection (c), any act of the Council authorizing the issuance of

such bond, note, or other obligation may provide for (A) the payment of such bond, note, or other obligation from any available revenues, assets, or property (*including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities*), and (B) the Securing of such bond, note, or other obligation by the mortgage of real property (*including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities*) or the creation of any security interest in available revenues, assets, or other property (*including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities*).

* * * * *

(5) *In paragraph (1), the term “water and sewer facilities” means facilities for the obtaining, treatment, storage, and distribution of water, the collection, storage, treatment, and transportation of wastewater, storm drainage, and the disposal of liquids and solids resulting from treatment.*

* * * * *

(h)(1) *The Council may delegate to the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 the authority of the Council under subsection (a) to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing or refinancing of undertakings in the area of utilities facilities, pollution control facilities, and water and sewer facilities (as defined in subsection (a)(5)). The Authority may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after the date of the enactment of this subsection) only in accordance with this subsection.*

(2) *Revenue bonds, notes, and other obligations issued by the District of Columbia Water and Sewer Authority under a delegation of authority described in paragraph (1) shall be issued by resolution of the Authority, and any such resolution shall not be considered to be an act of the Council.*

(3) *The provisions of subsections (a) through (e) shall apply with respect to the District of Columbia Water and Sewer Authority, the General Manager of the Authority, and to revenue bonds, notes, and other obligations issued by the Authority under a delegation of authority described in paragraph (1) in the same manner as such provisions apply with respect to the Council, to the Mayor, and to revenue bonds, notes, and other obligations issued by the Council under subsection (a)(1) (without regard to whether or not the Council has authorized the application of such provisions to the Authority or the General Manager).*

(4) *The fourth sentence of section 446 shall not apply to—*

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

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

(C) any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this subsection; or

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

* * * * *

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

* * * * *

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) * * *

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

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), [and] obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, *and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects*, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

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

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, *any revenues, charges, or*

fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement, contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds (*less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects*) and such Treasury loans.

* * * * *

SECTION 205 OF THE WATER AND SEWER AUTHORITY ESTABLISHMENT AND DEPARTMENT OF PUBLIC WORKS REORGANIZATION ACT OF 1996

SEC. 205. DUTIES OF THE BOARD.

(a) * * *

* * * * *

(b)(1) * * *

(2) Department of Public Works employees whose salaries are funded by the Water and Sewer Utility Administration shall become employees of the Authority without impairment of civil service status and seniority, reduction in compensation (notwithstanding any change in job titles or [duties]) *duties, and except as may otherwise be provided under the personnel system developed pursuant to subsection (a)(4) or a collective bargaining agreement entered into after the date of the enactment of this Act*) or loss of accrued rights to holidays, leave, and benefits. All employees of the Authority shall perform their duties under the direction, control, and supervision of the Authority; provided, however, that any employee subject to transfer whose existing duties and responsibilities are determined by the Authority and the Department of Public Works to relate directly and primarily to functions of the Department of Public Works, and for whom a position at the Department of Public Works is funded in whole or in part, shall remain an employee of the Department of Public Works and shall continue to perform duties under the direction, control, and supervision of the Department of Public Works and not under funding arrangements thereafter derived from the accounts of the Authority.