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WEST VIRGINIA
SECRETARY OF STATE

SB 466

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 466

(BY SENATORS UNGER, PLYMALE, PREZIOSO, FOSTER,
JENKINS, STOLLINGS AND HUNTER)

[Passed March 6, 2008; in effect ninety days from passage.]

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CLERK OF SENATE
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(BY SENATORS UNGER, PLYMALE, PREZIOSO, FOSTER,
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[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, all relating to the Water Development Authority; defining terms; providing that stormwater systems may qualify as water development projects; and authorizing the Water Development Authority to administer the Dam Safety Rehabilitation Revolving Fund Loan Program.

Be it enacted by the Legislature of West Virginia:

That §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to

read as follows:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Authority" means the Water Development
4 Authority provided for in section four of this article, the
5 duties, powers, responsibilities and functions of which
6 are specified in this article.

7 (2) "Beneficial use" means a use of water by a person
8 or by the general public that is consistent with the
9 public interest, health and welfare in utilizing the water
10 resources of this state, including, but not limited to,
11 domestic, agricultural, irrigation, industrial,
12 manufacturing, mining, power, public, sanitary, fish
13 and wildlife, state, county, municipal, navigational,
14 recreational, aesthetic and scenic use.

15 (3) "Board" means the Water Development Authority
16 Board provided for in section four of this article, which
17 shall manage and control the Water Development
18 Authority.

19 (4) "Bond" or "water development revenue bond"
20 means a revenue bond, note or other evidence of
21 indebtedness issued by the Water Development
22 Authority to effect the intents and purposes of this
23 article.

24 (5) "Construction" includes reconstruction,
25 enlargement, improvement and providing furnishings or

26 equipment.

27 (6) "Cost" means, as applied to water development
28 projects, the cost of their acquisition and construction;
29 the cost of acquisition of all land, rights-of-way,
30 property rights, easements, franchise rights and
31 interests required by the authority for such acquisition
32 and construction; the cost of demolishing or removing
33 any buildings or structures on land so acquired,
34 including the cost of acquiring any lands to which such
35 buildings or structures may be moved; the cost of
36 acquiring or constructing and equipping a principal
37 office and suboffices of the authority; the cost of
38 diverting highways, interchange of highways; access
39 roads to private property, including the cost of land or
40 easements therefor; the cost of all machinery,
41 furnishings and equipment; all financing charges and
42 interest prior to and during construction and for no
43 more than eighteen months after completion of
44 construction; the cost of all engineering services and all
45 expenses of research and development with respect to
46 public water facilities, stormwater systems or
47 wastewater facilities; the cost of all legal services and
48 expenses; the cost of all plans, specifications, surveys
49 and estimates of cost and revenues; all working capital
50 and other expenses necessary or incident to determining
51 the feasibility or practicability of acquiring or
52 constructing any such project; all administrative
53 expenses and such other expenses as may be necessary
54 or incident to the acquisition or construction of the
55 project; the financing of such acquisition or
56 construction, including the amount authorized in the
57 resolution of the authority providing for the issuance of
58 water development revenue bonds to be paid into any
59 special funds from the proceeds of such bonds; and the

60 financing of the placing of any such project in
61 operation. Any obligation or expenses incurred by any
62 governmental agency, with the approval of the
63 authority, for surveys, borings, preparation of plans and
64 specifications and other engineering services in
65 connection with the acquisition or construction of a
66 project are a part of the cost of such project and shall be
67 reimbursed out of the proceeds of loans or water
68 development revenue bonds as authorized by the
69 provisions of this article.

70 (7) "Establishment" means an industrial
71 establishment, mill, factory, tannery, paper or pulp mill,
72 mine, colliery, breaker or mineral processing operation,
73 quarry, refinery, well and each and every industry or
74 plant or works or activity in the operation or process of
75 which industrial wastes or other wastes are produced.

76 (8) "Governmental agency" means the state
77 government or any agency, department, division or unit
78 thereof; counties; municipalities; watershed
79 improvement districts; soil conservation districts;
80 sanitary districts; public service districts; drainage
81 districts; regional governmental authorities and any
82 other governmental agency, entity, political subdivision,
83 public corporation or agency having the authority to
84 acquire, construct or operate public water facilities,
85 stormwater systems or wastewater facilities; the United
86 States government or any agency, department, division
87 or unit thereof; and any agency, commission or
88 authority established pursuant to an interstate compact
89 or agreement.

90 (9) "Industrial wastes" means any liquid, gaseous,
91 solid or other waste substance or any combination

92 thereof, resulting from or incidental to any process of
93 industry, manufacturing, trade or business, or from or
94 incidental to the development, processing or recovery of
95 any natural resources; and the admixture with such
96 industrial wastes of sewage or other wastes, as defined
97 in this section, are also industrial wastes.

98 (10) "Other wastes" means garbage, refuse, decayed
99 wood, sawdust, shavings, bark and other wood debris
100 and residues, sand, lime, cinders, ashes, offal, night soil,
101 silt, oil, tar, dyestuffs, acids, chemicals and all other
102 materials or substances not sewage or industrial wastes
103 which may cause or might reasonably be expected to
104 cause or to contribute to the pollution of any of the
105 waters of this state.

106 (11) "Owner" includes all persons, copartnerships or
107 governmental agencies having any title or interest in
108 any property rights, easements and interests authorized
109 to be acquired by this article.

110 (12) "Person" means any public or private
111 corporation, institution, association, firm or company
112 organized or existing under the laws of this or any other
113 state or country; the United States or the State of West
114 Virginia; any federal or state governmental agency;
115 political subdivision; county commission; municipality;
116 industry; sanitary district; public service district;
117 drainage district; soil conservation district; watershed
118 improvement district; partnership; trust; estate; person
119 or individual; group of persons or individuals acting
120 individually or as a group or any other legal entity
121 whatever.

122 (13) "Pollution" means: (a) The discharge, release,

123 escape, deposit or disposition, directly or indirectly, of
124 treated or untreated sewage, industrial wastes or other
125 wastes, of whatever kind or character, in or near any
126 waters of the state, in such condition, manner or
127 quantity, as does, will or is likely to: (1) contaminate or
128 substantially contribute to the contamination of any of
129 such waters; or (2) alter or substantially contribute to
130 the alteration of the physical, chemical or biological
131 properties of any of such waters, if such contamination
132 or alteration, or the resulting contamination or
133 alteration where a person only contributes thereto, is to
134 such an extent as to make any of such waters: (i)
135 Directly or indirectly harmful, detrimental or injurious
136 to the public health, safety and welfare; or (ii) directly
137 or indirectly detrimental to existing animal, bird, fish,
138 aquatic or plant life; or (iii) unsuitable for present or
139 future domestic, commercial, industrial, agricultural,
140 recreational, scenic or other legitimate uses; and also
141 means (b) the discharge, release, escape, deposit or
142 disposition, directly or indirectly, of treated or
143 untreated sewage, industrial wastes or other wastes, of
144 whatever kind or character, in or near any waters of the
145 state in such condition, manner or quantity, as does,
146 will or is likely to reduce the quality of the waters of the
147 state below the standards established therefor by the
148 United States or any department, agency, board or
149 commission of this state authorized to establish such
150 standards.

151 (14) "Project" or "water development project" means
152 any public water facility, stormwater system or
153 wastewater facility, the acquisition or construction of
154 which is authorized, in whole or in part, by the Water
155 Development Authority or the acquisition or
156 construction of which is financed, in whole or in part,

157 from funds made available by grant or loan by, or
158 through, the authority as provided in this article,
159 including facilities, the acquisition or construction of
160 which is authorized, in whole or in part, by the Water
161 Development Authority or the acquisition or
162 construction of which is financed, in whole or in part,
163 from funds made available by grant or loan by, or
164 through, the authority as provided in this article,
165 including all buildings and facilities which the
166 authority deems necessary for the operation of the
167 project, together with all property, rights, easements
168 and interest which may be required for the operation of
169 the project, but excluding all buildings and facilities
170 used to produce electricity other than electricity for
171 consumption by the authority in the operation and
172 maintenance of the project.

173 (15) "Public roads" mean all public highways, roads
174 and streets in this state, whether maintained by the
175 state, county, municipality or other political
176 subdivision.

177 (16) "Public utility facilities" means public utility
178 plants or installations and includes tracks, pipes, mains,
179 conduits, cables, wires, towers, poles and other
180 equipment and appliances of any public utility.

181 (17) "Revenue" means any money or thing of value
182 collected by, or paid to, the Water Development
183 Authority as rent, use or service fee or charge for use of,
184 or in connection with, any water development project,
185 or as principal of or interest, charges or other fees on
186 loans, or any other collections on loans made by the
187 Water Development Authority to governmental agencies
188 to finance, in whole or in part, the acquisition or

189 construction of any water development project or
190 projects or other money or property which is received
191 and may be expended for or pledged as revenues
192 pursuant to this article.

193 (18) "Sewage" means water-carried human or animal
194 wastes from residences, buildings, industrial
195 establishments or other places, together with such
196 groundwater infiltration and surface waters as may be
197 present.

198 (19) "Stormwater system" means a stormwater system
199 in its entirety or any integral part thereof used to
200 collect, control or dispose of stormwater and an
201 associated stormwater management program. It
202 includes all facilities, structures and natural water
203 courses used for collecting and conducting stormwater
204 to, through and from drainage areas to the points of
205 final outlet, including, but not limited to, any and all of
206 the following: Inlets, conduits, corals, outlets, channels,
207 ponds, drainage ways, easements, water quality
208 facilities, catch basins, ditches, streams, gulches, flumes,
209 culverts, siphons, retention or detention basins, dams,
210 floodwalls, pipes, flood control systems, levies and
211 pumping stations. The term "stormwater system" does
212 not include highways, road and drainage easements or
213 stormwater facilities constructed, owned or operated by
214 the West Virginia Division of Highways.

215 (20) "Stormwater management program" means those
216 activities associated with the management, operation
217 and maintenance and control of stormwater and
218 stormwater systems and includes, but is not limited to,
219 public education, stormwater and surface runoff water
220 quality improvement, mapping, planning, flood control,

221 inspection, enforcement and any other activities
222 required by state and federal law. The term
223 "stormwater management program" does not include
224 those activities associated with the management,
225 operation, maintenance and control of highways, road
226 and drainage easements or stormwater facilities
227 constructed, owned or operated by the West Virginia
228 Division of Highways without the express agreement of
229 the Commissioner of the Division of Highways.

230 (21) "Water resources", "water" or "waters" means
231 any and all water on or beneath the surface of the
232 ground, whether percolating, standing, diffused or
233 flowing, wholly or partially within this state, or
234 bordering this state and within its jurisdiction, and
235 includes, without limiting the generality of the
236 foregoing, natural or artificial lakes, rivers, streams,
237 creeks, branches, brooks, ponds (except farm ponds,
238 industrial settling basins and ponds and water
239 treatment facilities), impounding reservoirs, springs,
240 wells and watercourses.

241 (22) "Wastewater" means any water containing
242 sewage, industrial wastes or other wastes or
243 contaminants derived from the prior use of such water
244 and includes, without limiting the generality of the
245 foregoing, surface water of the type storm sewers are
246 designed to collect and dispose of.

247 (23) "Wastewater facilities" means facilities for the
248 purpose of treating, neutralizing, disposing of,
249 stabilizing, cooling, segregating or holding wastewater,
250 including, without limiting the generality of the
251 foregoing, facilities for the treatment and disposal of
252 sewage, industrial wastes or other wastes, waste water

253 and the residue thereof; facilities for the temporary or
254 permanent impoundment of wastewater, both surface
255 and underground; and sanitary sewers or other
256 collection systems, whether on the surface or
257 underground, designed to transport wastewater
258 together with the equipment and furnishings thereof
259 and their appurtenances and systems, whether on the
260 surface or underground, including force mains and
261 pumping facilities therefor.

262 (24) "Water facility" means all facilities, land and
263 equipment used for the collection of water, both surface
264 and underground, transportation of water, treatment of
265 water and distribution of water all for the purpose of
266 providing potable, sanitary water suitable for human
267 consumption and use.

**§22C-1-6. Powers, duties and responsibilities of authority
generally.**

1 The Water Development Authority has and may
2 exercise all powers necessary or appropriate to carry
3 out and effectuate its corporate purpose. The authority
4 has the power and capacity to:

5 (1) Adopt and, from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its
7 affairs and the conduct of its business and rules to
8 implement and make effective its powers and duties,
9 such rules to be promulgated in accordance with the
10 provisions of chapter twenty-nine-a of this code.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office and, if necessary,

13 regional suboffices at locations properly designated or
14 provided.

15 (4) Sue and be sued in its own name and plead and be
16 impleaded in its own name and particularly to enforce
17 the obligations and covenants made under sections nine,
18 ten and sixteen of this article. Any actions against the
19 authority shall be brought in the circuit court of
20 Kanawha County in which the principal office of the
21 authority shall be located.

22 (5) Make loans and grants to governmental agencies
23 for the acquisition or construction of water development
24 projects by any such governmental agency and, in
25 accordance with the provisions of chapter twenty-nine-
26 a of this code, adopt rules and procedures for making
27 such loans and grants.

28 (6) Acquire, construct, reconstruct, enlarge, improve,
29 furnish, equip, maintain, repair, operate, lease or rent
30 to, or contract for operation by a governmental agency
31 or person, water development projects and, in
32 accordance with the provisions of chapter twenty-nine-
33 a of this code, adopt rules for the use of such projects.

34 (7) Make available the use or services of any water
35 development project to one or more persons, one or
36 more governmental agencies or any combination
37 thereof.

38 (8) Issue water development revenue bonds and notes
39 and water development revenue refunding bonds of the
40 state, payable solely from revenues as provided in
41 section nine of this article unless the bonds are refunded
42 by refunding bonds, for the purpose of paying all or any

43 part of the cost of, or financing by loans to
44 governmental agencies, one or more water development
45 projects or parts thereof.

46 (9) Acquire by gift or purchase, hold and dispose of
47 real and personal property in the exercise of its powers
48 and the performance of its duties as set forth in this
49 article.

50 (10) Acquire in the name of the state, by purchase or
51 otherwise, on such terms and in such manner as it
52 deems proper, or by the exercise of the right of eminent
53 domain in the manner provided in chapter fifty-four of
54 this code, such public or private lands, or parts thereof
55 or rights therein, rights-of-way, property, rights,
56 easements and interests it deems necessary for carrying
57 out the provisions of this article, but excluding the
58 acquisition by the exercise of the right of eminent
59 domain of any public water facilities, stormwater
60 systems or wastewater facilities, operated under permits
61 issued pursuant to the provisions of article eleven,
62 chapter twenty-two of this code and owned by any
63 person or governmental agency, and compensation shall
64 be paid for public or private lands so taken.

65 (11) Make and enter into all contracts and agreements
66 and execute all instruments necessary or incidental to
67 the performance of its duties and the execution of its
68 powers. When the cost under any such contract or
69 agreement, other than compensation for personal
70 services, involves an expenditure of more than two
71 thousand dollars, the authority shall make a written
72 contract with the lowest responsible bidder after public
73 notice published as a Class II legal advertisement in
74 compliance with the provisions of article three, chapter

75 fifty-nine of this code, the publication area for such
76 publication to be the county wherein the work is to be
77 performed or which is affected by the contract, which
78 notice shall state the general character of the work and
79 the general character of the materials to be furnished,
80 the place where plans and specifications therefor may
81 be examined and the time and place of receiving bids,
82 but a contract or lease for the operation of a water
83 development project constructed and owned by the
84 authority or an agreement for cooperation in the
85 acquisition or construction of a water development
86 project pursuant to section sixteen of this article is not
87 subject to the foregoing requirements and the authority
88 may enter into such contract or lease or such agreement
89 pursuant to negotiation and upon such terms and
90 conditions and for such period as it finds to be
91 reasonable and proper under the circumstances and in
92 the best interests of proper operation or of efficient
93 acquisition or construction of such project. The
94 authority may reject any and all bids. A bond with good
95 and sufficient surety, approved by the authority, is
96 required of all contractors in an amount equal to at
97 least fifty percent of the contract price, conditioned
98 upon the faithful performance of the contract.

99 (12) Employ managers, superintendents and other
100 employees, who are covered by the state civil service
101 system, and retain or contract with consulting
102 engineers, financial consultants, accounting experts,
103 architects, attorneys and such other consultants and
104 independent contractors as are necessary in its
105 judgment to carry out the provisions of this article and
106 fix the compensation or fees thereof. All expenses
107 thereof are payable solely from the proceeds of water
108 development revenue bonds or notes issued by the

109 authority, from revenues and from funds appropriated
110 for such purpose by the Legislature.

111 (13) Receive and accept from any federal agency,
112 subject to the approval of the Governor, grants for or in
113 aid of the construction of any water development
114 project or for research and development with respect to
115 public water facilities, stormwater systems or
116 wastewater facilities and receive and accept aid or
117 contributions from any source of money, property, labor
118 or other things of value to be held, used and applied
119 only for the purposes for which such grants and
120 contributions are made.

121 (14) Engage in research and development with respect
122 to public water facilities, stormwater systems or
123 wastewater facilities.

124 (15) Purchase property coverage and liability
125 insurance for any water development project and for the
126 principal office and suboffices of the authority,
127 insurance protecting the authority and its officers and
128 employees against liability, if any, for damage to
129 property or injury to or death of persons arising from its
130 operations and any other insurance the authority may
131 agree to provide under any resolution authorizing the
132 issuance of water development revenue bonds or in any
133 trust agreement securing the same.

134 (16) Charge, alter and collect rentals and other
135 charges for the use or services of any water development
136 project as provided in this article and charge and collect
137 reasonable interest, fees and charges in connection with
138 the making and servicing of loans to governmental
139 agencies in the furtherance of the purposes of this

140 article.

141 (17) Establish or increase reserves from moneys
142 received or to be received by the authority to secure or
143 to pay the principal of and interest on the bonds and
144 notes issued by the authority pursuant to this article.

145 (18) Administer on behalf of the Department of
146 Environmental Protection the Dam Safety
147 Rehabilitation Revolving Fund Loan Program pursuant
148 to the provisions of article fourteen of chapter twenty-
149 two of this code. Revenues or moneys designated by this
150 code or otherwise appropriated for use by the authority
151 pursuant to the provisions of this article may not be
152 used for the Dam Safety Rehabilitation Revolving Fund
153 Loan Program and moneys in the Dam Safety
154 Rehabilitation Revolving Fund shall be kept separate
155 from all revenues and moneys of the authority.

156 (19) Do all acts necessary and proper to carry out the
157 powers expressly granted to the authority in this article.

**§22C-1-16. Rentals and other revenues from water
development projects owned by the
authority; contracts and leases of the
authority; cooperation of other
governmental agencies; bonds of such
agencies.**

1 This section applies to any water development project
2 or projects which are owned, in whole or in part, by the
3 authority. The authority may charge, alter and collect
4 rentals or other charges for the use or services of any
5 water development project, and contract in the manner
6 provided by this section with one or more persons, one

7 or more governmental agencies, or any combination
8 thereof, desiring the use or services thereof, and fix the
9 terms, conditions, rentals or other charges for such use
10 or services. Such rentals or other charges are not
11 subject to supervision or regulation by any other
12 authority, department, commission, board, bureau or
13 agency of the state and such contract may provide for
14 acquisition by such person or governmental agency of
15 all or any part of such water development project for
16 such consideration payable over the period of the
17 contract or otherwise as the authority in its sole
18 discretion determines to be appropriate, but subject to
19 the provisions of any resolution authorizing the issuance
20 of water development revenue bonds or notes or water
21 development revenue refunding bonds of the authority
22 or any trust agreement securing the same. Any
23 governmental agency which has power to construct,
24 operate and maintain public water facilities,
25 stormwater systems or wastewater facilities may enter
26 into a contract or lease with the authority whereby the
27 use or services of any water development project of the
28 authority will be made available to such governmental
29 agency and pay for such use or services such rentals or
30 other charges as may be agreed to by such governmental
31 agency and the authority.

32 Any governmental agency or agencies or combination
33 thereof may cooperate with the authority in the
34 acquisition or construction of a water development
35 project and shall enter into such agreements with the
36 authority as are necessary, with a view to effective
37 cooperative action and safeguarding of the respective
38 interests of the parties thereto, which agreements shall
39 provide for such contributions by the parties thereto in
40 such proportion as may be agreed upon and such other

41 terms as may be mutually satisfactory to the parties,
42 including, without limitation, the authorization of the
43 construction of the project by one of the parties acting
44 as agent for all of the parties and the ownership and
45 control of the project by the authority to the extent
46 necessary or appropriate for purposes of the issuance of
47 water development revenue bonds by the authority.
48 Any governmental agency may provide such
49 contribution as is required under such agreements by
50 the appropriation of money or, if authorized by a
51 favorable vote of the electors to issue bonds or notes or
52 levy taxes or assessments and issue notes or bonds in
53 anticipation of the collection thereof, by the issuance of
54 bonds or notes or by the levying of taxes or assessments
55 and the issuance of bonds or notes in anticipation of the
56 collection thereof and by the payment of such
57 appropriated money or the proceeds of such bonds or
58 notes to the authority pursuant to such agreements.

59 Any governmental agency, pursuant to a favorable
60 vote of the electors in an election held for the purpose of
61 issuing bonds to provide funds to acquire, construct or
62 equip, or provide real estate and interests in real estate
63 for a public water facility, stormwater system or
64 wastewater facility, whether or not the governmental
65 agency at the time of such an election had the authority
66 to pay the proceeds from such bonds or notes issued in
67 anticipation thereof to the authority as provided in this
68 section, may issue such bonds or notes in anticipation of
69 the issuance thereof and pay the proceeds thereof to the
70 authority in accordance with an agreement between
71 such governmental agency and the authority: *Provided,*
72 That the legislative authority of the governmental
73 agency finds and determines that the water
74 development project to be acquired or constructed by

75 the authority in cooperation with such governmental
76 agency will serve the same public purpose and meet
77 substantially the same public need as the facility
78 otherwise proposed to be acquired or constructed by the
79 governmental agency with the proceeds of such bonds
80 or notes.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David E. Holmes
.....
Clerk of the Senate

Bryan S. Eubank
.....
Clerk of the House of Delegates

Carl Roy Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *27th* Day of *July*, 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 21 2008

Time 9:45 am