WEST VIRGINIA CODE CHAPTER 22 ARTICLE 28

WV Legislature

§22-28-1. Legislative findings.

The Legislature finds and declares that:

(a) There is a growing need for the extension of public water and sewer services throughout the state and that the extension of such services and facilities maintains the health and economic vitality of the citizens of West Virginia. In addition, access to such infrastructure facilities is equal essential to development in all regions of the state.

(b) The extension of public water and sewer services promotes public health and safety in that it enables businesses, residences, municipalities and other entities to comply with state and federal water quality standards.

(c) The cost of publicly owned sewer and water facilities are normally born by the state, its subdivisions and the citizens of West Virginia and public indebtedness incurred to construct such facilities constitutes a financial burden on the state and its political subdivisions, as well as residential consumers.

(d) The rates for public water and sewer services charged to customers of all service classes have risen in recent years due primarily to the cost of utility construction and the cost of debt service associated with such construction.

(e) There are private business entities that are in need of water and sewer services for various residential, commercial and industrial projects throughout the state and that those entities are willing to pay the cost associated with constructing needed public water and sewer services and to dedicate the facility to the local certificated public utility after construction of such facilities.

(f) Those private business entities need a method by which to enter into agreements with municipal utilities or public service districts that would enable the construction of new infrastructure as well as the expansion of existing facilities.

(g) The dedication of such infrastructure facilities to the local certificated public utility without cost greatly benefits the citizens of the state and promotes industrial, commercial and economic development.

WV Legislature

§22-28-2. Definitions.

For the purposes of this article, the following words or terms defined have the meaning ascribed to them herein:

(a) "Certificate of appropriateness" shall refer to the document evidencing approval of a project and is issued by the Secretary of the Department of Environmental Protection pursuant to the provisions of this article. The issuance of such a certificate shall exempt the project from the provisions of section eleven, article two, chapter twenty-four of this code and, in the case of a public service district, from the provisions of section twenty-five, article thirteen-a, chapter sixteen of this code.

(b) "Community infrastructure investment agreement" shall refer to a written agreement between a municipal utility or public service district and a person that provides for the transfer of legal title to a project facility from the person to the municipal utility or public service district.

(c) "Community infrastructure investment project" shall refer to any newly constructed or enlarged and improved project facility that may be transferred to a municipal utility or public service district without cost to the municipal utility or public service district pursuant to the provisions of this article.

(d) "Person" shall refer to any individual, partnership, firm, society, association, trust, corporation or other business entity.

(e) "Project cost" shall refer to the capital cost of proposed community infrastructure investment project facilities to be constructed pursuant to the provisions of this article. "Project cost" shall also refer to newly constructed or enlarged and improved existing project facilities. Project cost shall not refer to any of the costs or expenses of ordinary operation and maintenance of the project facilities once they become operational.

(f) "Project facilities" shall refer to wastewater treatment plants or water treatment plants constructed pursuant to the provisions of this article and include, but are not limited to, related storage buildings or structures, meters, hydrants, pump stations, force and gravity mains, transmission lines and other such fixtures related to the construction of water or sewer facilities. Project facilities shall not refer to the ordinary extension of collection and distribution lines or facilities from or to the project constructed pursuant to the provisions of this article to the property of any user of project facilities.

(g) "Public service district" shall refer to those public corporations and political subdivisions of the state created pursuant to the provisions of section two, article thirteen-a, chapter sixteen of this code.

(h) "Secretary" shall refer to the Secretary of the Department of Environmental Protection established in section six, article one of this chapter.

WV Legislature

§22-28-3. Creation of community infrastructure investment project; certificate of appropriateness; rule-making authority.

(a) There is hereby created a Community Infrastructure Investment Program within the Department of Environmental Protection. This Program will facilitate the construction or expansion of project facilities for the promotion of economic development and the protection of public health and environment in the state. Any public service district or municipal utility that wishes to accept a project facility constructed pursuant to a community infrastructure investment agreement with a project cost not to exceed $10 million may apply to the secretary for approval of such project. Nothing herein shall be construed to require a public service district or municipal utility to use this program.

(b) Where the Secretary shall have found that the community infrastructure investment project shall have met the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the municipal utility or public service district as evidence of such approval.

(c) Municipal utilities or public service districts may jointly enter into agreements with persons for the purpose of applying to the Secretary of the Department of Environmental Protection for approval of project facilities. The minimum terms and conditions of such agreements are established by the provisions of section four of this article.

(d) The Secretary will, by legislative rule, establish the criteria for the approval of such projects and shall have sole authority to make such determination.

WV Legislature

§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.

(a) Municipal utilities and public service districts have the power and authority to enter into community infrastructure investment agreements with any person for the purpose of constructing new project facilities or substantially improving or expanding project facilities.

(b) Notwithstanding any other provision in this code to the contrary, the Secretary shall have the power and the authority to review and approve all such community infrastructure investment agreements pursuant to this article.

(c) Each such agreement shall contain as a minimum the following terms and conditions to be performed by the parties thereto:

(1) The project facilities shall be engineered and constructed in accordance with the requirements for new construction established by the municipal utility or public service district;

(2) Proof or certification of the financial ability of the municipal utility or public service district to maintain and operate the public facilities;

(3) Certification that upon completion and activation of the project facility or improvements to the project facility, the title to the public facility shall be transferred without cost to the municipal utility or public service district;

(4) A finding that the construction of the new public facility, or the substantial improvement or expansion of an existing public facility, either: (i) Fosters economic growth by promoting commercial, industrial or residential development; and (ii) improves water quality or otherwise enables the affected territory to achieve compliance with any applicable state or federal health or environmental law;

(5) The municipal utility or public service district will receive or otherwise obtain without cost to the public all necessary rights-of-way for the operation of the public facility;

(6) The rates charged by the municipal utility or public service district to new customers to be served by the project facility shall be the rates in effect at the time of transfer of the project facility to the utility plus any additional cost of service borne by the municipal utility or public service district as a result of the project facility until such time as new rates may be finally enacted by the municipal utility or proposed by the public service district and approved by the Public Service Commission and the rates charged by the municipal utility or the public service district to existing customers shall not be impacted as a result of the obligation of the public service district or municipal utility pursuant to the community infrastructure investment agreement;

(7) Confirmation that the agreement does not violate any of the bond covenants imposed on the municipal utility or public service district;

WV Legislature

(8) Proof that necessary permits, where applicable, have been obtained from the Division of Health and the Department of Environmental Protection;

(9) Evidence that the person responsible for the construction of or improvements to the public facility has provided funding to the municipal utility or public service district for the engagement of an engineer qualified to design and certify the structural integrity and capacity of the project facility;

(10) Proof that the person responsible for construction of or improvements to the public facility has obtained a performance bond payable to the municipal utility or public service district equal to the estimated cost of construction: Provided, That the form of the bond required by this section shall be approved by the Secretary and may include, at the option of the Secretary, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation as established by the Secretary, self-bonding or a combination of these methods; and

(11) Any other conditions that the secretary may determine to be relevant as established.

(d) Where the Secretary has found that the community infrastructure investment agreement meets the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the parties as evidence of such approval.

(e) Not later than thirty days prior to the issuance of a certificate of appropriateness for any community infrastructure investment project, the Secretary shall first submit a report of the same to the Joint Committee on Government and Finance.

WV Legislature

§22-28-5. Authority of the Department of Environmental Protection and Division of Health not affected.

Nothing contained in this article shall be construed to affect the authority of the Department of Environmental Protection pursuant to the provisions of this chapter, nor the authority of the Division of Health pursuant to the provisions of chapter sixteen of this code. Facilities discharging into the Potomac River watershed and its tributaries shall be designed to achieve nutrient reductions, for both Nitrogen and Phosphorus, consistent with West Virginia's participation in the Chesapeake Bay Program upon implementation of the Chesapeake Bay standards by the Secretary.

WV Legislature

§22-28-6. Time for approval.

The Secretary shall approve or reject all applications for a community investment infrastructure project or agreement within thirty days, unless, by mutual agreement, such time period is extended. In no case shall the time period extend beyond ninety days.

WV Legislature

§22-28-7. Fees.

The Secretary shall establish by legislative rule a schedule of fees reasonably calculated to pay for the costs of the administration of the provisions of this article.

WV Legislature

§22-28-8. Exemption from Public Service Commission approval.

All project facilities constructed or improved pursuant to the provisions of this article shall be exempt from the provisions of chapter twenty-four of this code until such time as title to the public facility shall be transferred to the municipal utility or public service district. Nothing herein shall be construed to give the Public Service Commission authority to regulate or intervene in the approval and construction of any project or agreement provided in this article. Notwithstanding any other provision of this code to the contrary, the acquisition of a project facility by a municipality or public service district under the provisions of this article shall not require the issuance of a certificate of convenience and necessity from the Public Service Commission.

WV Legislature

§22-28-9. Rule-making authority.

The Secretary shall have the authority to propose legislative rules for promulgation in accordance with the provisions of section one, article three, chapter twenty-nine-a of this code to effectuate the purposes of this article. Notwithstanding any provision of this code to the contrary, the proposed legislative rules for this article filed in the state register by August 1, 2005, may be filed as emergency rules.

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