WEST VIRGINIA CODE CHAPTER 22C ARTICLE 2

WV Legislature

§22C-2-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service and the funding of accounts and reserves which the authority may require; and

(6) Other items that the Department of Environmental Protection determines to be reasonable and necessary.

(c) "Fund" means the state Water Pollution Control Revolving Fund provided for in this article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33 U.S.C. §1251, et seq., as amended, the Federal Safe Drinking Water Act 42 U.S.C. §300f 0through §300j-26, inclusive, as amended, or by the executive order of the Governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U.S.C. §1251, et seq., as amended, and the Federal Safe Drinking Water Act 42 U.S.C. §300f through §300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district,

WV Legislature

public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law.

WV Legislature

§22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The Division of Environmental Protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

WV Legislature

§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the Division of Environmental Protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the Division of Environmental Protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the Division of Environmental Protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful

WV Legislature

investments for public funds under this code.

WV Legislature

§22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

WV Legislature

§22C-2-5. Collection of money due to the fund.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(b) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision. The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

(c) For loans made for projects defined in subdivision (6), subsection (f), section one of this article, at the direction of the Department of Environmental Protection, the authority shall take a security or other interest in real or personal property with the right to foreclose upon a default to secure loans made from the fund.

WV Legislature

§22C-2-6. State construction grants program established; special fund.

(a) The director of the Division of Environmental Protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the State Treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the Division of Environmental Protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the Division of Environmental Protection in administering the provisions of this section.

WV Legislature

§22C-2-7. Environmental review of funded projects.

(a) The Division of Environmental Protection shall conduct an environmental review on each project funded under this article. The director of the Division of Environmental Protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal Clean Water Act, as amended.

(b) The director of the Division of Environmental Protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal Clean Water Act, as amended.

WV Legislature

§22C-2-8. Conflicting provisions.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.

WV Legislature