

# WEST VIRGINIA CODE: §5D-1-5

## **§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.**

The West Virginia Public Energy Authority has and may exercise all powers necessary or appropriate to execute its corporate purpose. The authority may:

- (1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.
- (2) Adopt and use an official seal and alter the same at pleasure.
- (3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.
- (4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.
- (5) Foster, encourage and promote the mineral development industry. The authority is encouraged to maximize the use of the West Virginia mineral development industry, but is not prohibited from utilizing nonstate mineral resources.
- (6) Represent the state with respect to national initiatives concerning the mineral development industry and international marketing activities affecting the mineral development industry.
- (7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.
- (8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, That it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.
- (9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or

amounts and upon such terms and conditions as the Public Energy Authority Board may deem advisable.

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia - Ohio valley market retention and recovery agreement or a comparable agreement.

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

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper: Provided, That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such

land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: Provided, however, That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term "real property" as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section, "fair market value" shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric power projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(18) Purchase property coverage and liability insurance for any electric power project or natural gas transmission project or other energy project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance which may be provided for under a resolution authorizing the issuance of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and other charges for the use or services of any natural gas transmission project as provided in this article.

(20) Charge and collect fees or other charges from any energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the State of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority's or another party's lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the Public Service Commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

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

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.