

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 146

(By Mr. BEAN, MR. PRESIDENT, AND) MR. MOATS

PASSED March 5, 1959

In Effect 90 days from Passage



Filed in Office of the Secretary of State
of West Virginia **MAR 12 1959**

JOE F. BURDETT
SECRETARY OF STATE

146

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Senate Bill No. 146

(By MR. BEAN, MR. PRESIDENT, AND MR. MOATS)

[Passed March 5, 1959; in effect ninety days from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article twelve, relating to the construction of slack-water dams with the approval and assistance of the director of the conservation commission and the state road commissioner.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article twelve, to read as follows:

Article 12. Slack-water Dams.

Section 1. *Slack-water Dams; Purposes.*—The state road
2 commissioner, in constructing public highways, bridges
3 and culverts, as provided by law, and any municipal
4 corporation constructing or improving public streets, via-
5 ducts, bridges and culverts, either severally or jointly,
6 upon request of the director of the conservation com-
7 mission and with the approval of the state road commis-
8 sioner, may construct and maintain slack-water dams in
9 connection with such public highways, streets, bridges,
10 culverts or viaducts so as to create reservoirs, ponds,
11 water parks, basins, lakes or other incidental works to
12 conserve the water supply of the state.

Sec. 2. *Request by Director of Conservation Commis-*
2 *sion; Approval by Public Authority.*—The director of the
3 conservation commission may request the public author-
4 ity having charge of the construction of state highways,
5 highway bridges, and culverts or municipal streets, via-
6 ducts, bridges and culverts for the construction of slack-
7 water dams in connection with the construction of any
8 such public highway, street, bridge, viaduct or culvert

9 whenever, in his opinion, the construction of such dam is
10 desirable and feasible for the economical creation and
11 construction of reservoirs, ponds, water parks, basins,
12 lakes or other incidental works for the conservation of
13 the water supply of the state.

14 The public authority having charge of such construc-
15 tion may approve such request when, in its opinion, the
16 construction of such dams will not unnecessarily delay or
17 hinder the construction of the public highway, street,
18 bridge, viaduct or culvert, or will not interfere with its
19 value or use for highway purposes.

20 If such request is approved, the director of the conserva-
21 tion commission, in cooperation with the state road com-
22 missioner and the public authority participating in the
23 project, shall make a survey and prepare plans, specifi-
24 cations and estimates for the construction of such dams
25 and the reservoir, pond, water park, basin, lake or other
26 incidental works in connection therewith.

27 Upon approval of the plans and specifications and de-
28 termination to proceed with the project, the director shall
29 enter into an agreement with the public authority on the

30 distribution of the cost and expense of the construction
31 of such dams and incidental works in connection there-
32 with. The portion of the cost to be paid by the conserva-
33 tion commission shall be paid from any funds appropri-
34 ated for or paid into the commission and available for
35 such purpose. No public authority shall proceed with the
36 construction of such a project unless the plans have com-
37 plied with the other requirements of law relative to the
38 construction of dams and the director shall have satisfied
39 the public authority that sufficient funds are available for
40 the completion of the dam.

41 Such dams shall be constructed under and subject to
42 any laws governing the construction of state, county or
43 municipal highways, streets, viaducts, bridges or culverts.
44 Any public authority undertaking construction pursuant
45 to this article shall proceed in the same manner as pro-
46 vided for the construction of public highway or street im-
47 provements.

48 Nothing herein contained shall require the public au-
49 thority so concerned to delay or postpone the construction

50 of the principal public improvement, though approval of
51 the combined project may have been given.

Sec. 3. Petition to Director of Conservation Commission

2 *for Construction of Reservoirs and Dams.*—Any depart-
3 ment or division of the state government or any county,
4 municipal corporation, park board or district, or any or-
5 ganization, club, corporation, or private person may peti-
6 tion the director of the conservation commission for the
7 construction of dams and reservoir projects in connec-
8 tion with the construction of any public highway, bridge,
9 culvert, street or viaduct.

10 Upon receipt of such a petition and its approval by the
11 director of the conservation commission, the director shall
12 proceed as authorized by section two of this article. If the
13 public authority having charge of the construction of such
14 public highway, street, bridge, viaduct or culvert approves
15 the request, then the director of the conservation com-
16 mission shall enter into an agreement with the public
17 authority, organization or persons petitioning for the
18 construction of such dam or reservoir on the apportion-
19 ment of the cost and expense of construction. The cost

20 and expense of such dam project shall include the cost of
21 clearing and grubbing and the cost of property and
22 damages incidental thereto. Such agreement shall also
23 contain provisions for the proper maintenance and re-
24 pair of such projects after completion and also apportion
25 the revenue derived therefrom between the conservation
26 commission and the petitioner.

Sec. 4. Part Payment of Costs by Petitioner Condition

2 *Precedent to Construction.*—In all cases in which a public
3 authority, private organization or person shall petition
4 for the construction of a dam and reservoir project as
5 authorized by this article, the director of the conservation
6 commission, as a condition precedent to the construction
7 of such project, shall require the petitioning authority,
8 organization or person to pay his share of the cost and
9 expense of such project into the hands of the treasurer
10 of the state to be kept in a separate account for each
11 such project and to be disbursed upon the order of the
12 director of the conservation commission.

13 If the estimated cost paid into the state treasury is
14 found to be insufficient, the deficiency shall be made up

15 by the parties bearing the cost before any further work
16 is done. If the deficiency is not made up within sixty days
17 after notice to such parties, the cost paid in, less the
18 amount of expense incurred by the director of the con-
19 servation commission and the cooperating public authori-
20 ties shall be refunded to the donor. After completion of
21 the work, any amount remaining in the state treasury
22 to the credit of the project shall likewise be refunded.

Sec. 5. *Letting of Contracts for Dam Projects.*—In the
2 construction of dams, reservoirs and other incidental
3 works pursuant to this article, the state road commissioner
4 or the public authority of a municipality shall proceed
5 as provided by law and shall enter into contracts as pro-
6 vided by law.

Sec. 6. *Supervision and Maintenance of Projects.*—The
2 director of the conservation commission shall have the
3 supervision, care and control of all dams, reservoirs,
4 ponds, water parks, basins, lakes or other incidental works
5 constructed pursuant to this article and shall maintain
6 and keep them in repair. The cost of such maintenance
7 and repair shall be paid from any funds appropriated to

8 the conservation commission for that purpose or paid
9 into the state treasury as agreed upon with the public or
10 contracting authorities cooperating in the construction
11 of such projects.

12 Such projects may also be maintained by any depart-
13 ment or division of state government or other public
14 authorities leasing or operating the projects, through
15 agreements made with said director of the conservation
16 commission. All rentals derived from the leases of such
17 projects shall be used by said director in the maintenance
18 or repair of all such projects. The cost and expenses of
19 the reconstruction of any such projects shall be dis-
20 tributed, unless otherwise agreed, on the same basis and
21 pro rata share of the costs and expenses as was paid by the
22 contracting authorities to the cost of the original project:
23 *Provided, however,* That the state road commission shall
24 not be required to contribute any portion of the cost of
25 maintaining or repairing any dam, reservoir, pond, water
26 park, basin, lake, or other incidental work when the
27 maintenance of the road, bridge, or culvert would not
28 have required such expenditure if it were not for the in-

29 stallation of the project or projects by this article con-
30 templated.

Sec. 7. *Acquisition of Property by Director of Conser-*
2 *vation Commission.*—The title or lease to any such lands,
3 waters or riparian rights shall be taken by the conserva-
4 tion commission, subject to the approval of the governor
5 and the attorney general, in the name of the state. The
6 lease rentals or purchase price of any such lands, waters
7 or riparian rights, as well as all costs and expenses of con-
8 structing any such reservoirs, ponds, water parks, basins,
9 lakes • other incidental works on such lands, may be paid
10 for from any funds appropriated for the use of or paid into
11 the conservation commission and available for such pur-
12 pose. The director may accept contributions to such
13 funds from individuals, associations, clubs, organizations
14 and corporations to effectuate the purposes of this article.

Sec. 8. *Notice by Road Commissioner and Other Public*
2 *Authorities.*—Upon request, by the director of the con-
3 servation commission, the state road commissioner or
4 other public authority shall furnish such director plans
5 under way or contemplated for the construction of new

6 public highways, bridges, culverts, viaducts, or streets;
7 and thereupon, it shall become the duty of the director of
8 conservation to coordinate the plans of the conservation
9 commission, if any, with the state road commission or
10 other public authority to the end that such additional
11 project shall not cause a delay in or interfere with the
12 construction of the principal project, and to the end that
13 such additional project shall, in all respects, be in con-
14 formity with recognized road construction standards and
15 practices.

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

W. Jasper

Chairman Senate Committee

J. F. Teem

Chairman House Committee

Originated in the Senate.

Takes effect *90 days from* passage.

Abner M. Peay

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Ralph Bean

President of the Senate

F. R. Pauley

Speaker House of Delegates

The within *approved* this the *12th*
day of *March*, 1959.

W. H. Underwood

Governor

