

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 66K

(By Mr. Myles and Mr. Seibert)



PASSED February 18, 1967

In Effect from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-2-67

879 #

ENROLLED
House Bill No. 668

(By MR. MYLES AND MR. SEIBERT)

[Passed February 18, 1967; in effect from passage.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article one-f, relating to the Wheeling creek watershed protection and flood prevention district compact, adopting and ratifying such compact, providing for the appointment of the members of the Wheeling creek watershed protection and flood prevention commission, allowing contributions by certain political subdivisions to the district, and authorizing and empowering the board of commissioners of the county of Ohio to transfer certain special levy funds to said commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1F. WHEELING CREEK WATERSHED PROTECTION AND FLOOD PREVENTION DISTRICT COMPACT.

§29-1F-1. Wheeling creek watershed protection and flood prevention district compact approved.

1 The following Wheeling Creek watershed protection and
2 flood prevention district compact, which has been nego-
3 tiated by representatives of the commonwealth of Penn-
4 sylvania and the state of West Virginia, is hereby ap-
5 proved, ratified, adopted, enacted into law, and entered
6 into by the state of West Virginia as a party thereto and
7 signatory state, namely:

8 "WHEELING CREEK WATERSHED PROTECTION
9 AND FLOOD PREVENTION DISTRICT COMPACT"

"ARTICLE I. RECITATION OF REASONS FOR COMPACT.

1 "Whereas, Wheeling Creek, a tributary of the Ohio
2 River, arises in Pennsylvania, flows through Washington

3 and Greene Counties of that commonwealth, enters the
4 State of West Virginia, flows through Marshall and Ohio
5 Counties, West Virginia, and empties into the Ohio River
6 at Wheeling, West Virginia; and

7 “Whereas, The inhabitants of Marshall and Ohio Coun-
8 ties, West Virginia, and, also, but to a much lesser de-
9 gree, the inhabitants of Washington and Greene Coun-
10 ties, Pennsylvania, living along Wheeling Creek have over
11 the years experienced loss of life and property from
12 flooding of that stream; and

13 “Whereas, Surveys made by the Soil Conservation Serv-
14 ice of the United States Department of Agriculture indi-
15 cate that the inhabitants of the four counties named can
16 best be protected from the flooding of Wheeling Creek by
17 flood prevention dams constructed thereon with some of
18 the dams being located on the upper reaches of the stream
19 and its tributaries in the Commonwealth of Pennsylvania;
20 and

21 “Whereas, The federal Watershed Protection and Flood
22 Prevention Act of 1954, as amended, authorizes, under
23 certain circumstances, federal assistance to local organi-

24 zations in preparing and carrying out undertakings for
25 flood prevention and the conservation, development,
26 utilization and disposal of water in watershed or sub-
27 watershed areas; and

28 "Whereas, No local organization within the meaning
29 of the federal act aforesaid established by or organized
30 under the laws of West Virginia is competent under state
31 laws to acquire land for, construct, and operate with or
32 without federal assistance flood prevention facilities in
33 the Commonwealth of Pennsylvania, and it appears that
34 no such local organization established by or organized
35 under the laws of the Commonwealth of Pennsylvania
36 can justify the expenditure of locally raised funds to
37 construct and operate flood prevention facilities which
38 will benefit primarily the inhabitants of the neighboring
39 State of West Virginia;and

40 "Whereas, Facilities erected on the upper reaches of
41 Wheeling Creek and its tributaries for flood control and
42 prevention can nevertheless have a recreational value
43 for the citizens of both West Virginia and Pennsylvania
44 and particularly the citizens of Ohio and Marshall Coun-

45 ties, West Virginia, and Washington and Green Counties,
46 Pennsylvania; accordingly, for purposes of promoting
47 that potential, as well as providing a vehicle or means
48 whereby federal assistance may be enlisted for the pro-
49 tection of citizens of her neighboring State of West Vir-
50 ginia from the flooding of Wheeling Creek, the Common-
51 wealth of Pennsylvania joins with the State of West
52 Virginia in negotiating and ratifying this compact; now
53 therefore,

**“ARTICLE II. WHEELING CREEK WATERSHED PRO-
TECTION AND FLOOD PREVENTION
DISTRICT CREATED.**

1 “The Commonwealth of Pennsylvania and the State of
2 West Virginia hereby create as an agency and instru-
3 mentality of the governments thereof a district to be
4 known as the ‘Wheeling Creek Watershed Protection and
5 Flood Prevention District,’ hereinafter called the dis-
6 trict, which shall embrace all territory in the Common-
7 wealth of Pennsylvania and the State of West Virginia,
8 the water in which flows ultimately into Wheeling Creek
9 or its tributaries.

“ARTICLE III. WHEELING CREEK WATERSHED PROTECTION AND FLOOD PREVENTION COMMISSION CREATED.

1 “The Commonwealth of Pennsylvania and the State of
2 West Virginia hereby create as the governing body of the
3 district the ‘Wheeling Creek Watershed Protection and
4 Flood Prevention Commission,’ hereinafter called the
5 commission, which shall be a body corporate, with the
6 powers and duties set forth herein, and such additional
7 powers as may be conferred upon it by subsequent con-
8 current action of the General Assembly of Pennsylvania
9 and the Legislature of West Virginia or by act or acts
10 of the Congress of the United States.

“ARTICLE IV. COMPOSITION OF COMMISSION.

1 “The commission shall consist of five commissioners
2 from Pennsylvania and five commissioners from West
3 Virginia, each of whom shall be a citizen of the common-
4 wealth or state from which he is appointed. The com-
5 missioners from the commonwealth and from the state
6 shall be chosen in the manner and for the terms pro-
7 vided by the laws of the commonwealth or state from
8 which they shall be appointed, and any commissioner

9 may be removed or suspended from office as provided
10 by the law of the commonwealth or state from which he
11 shall be appointed. Vacancies on the commission shall
12 be filled in the manner provided by the laws of the
13 commonwealth or state among whose representation on
14 the commission the vacancy occurs.

15 “The commissioners shall serve without compensation
16 from the commission, but they shall be paid by the com-
17 mission their actual expenses incurred and incident to
18 the performance of their duties.

“ARTICLE V. ORGANIZATION OF COMMISSION.

1 “The commission shall meet and organize within sixty
2 days after the effective date of this compact, shall elect
3 from its number a chairman and vice chairman, and shall
4 appoint, and at its pleasure remove or discharge, such
5 officers and legal, clerical, expert and other assistants as
6 may be required to carry the provisions of this com-
7 pact into effect, and shall determine their qualifications
8 and fix their duties and compensation. It shall adopt
9 a seal and suitable bylaws, and shall adopt and promul-
10 gate rules and regulations for its management and con-

11 trol. It may establish and maintain one or more offices
12 within the district for the transaction of its business, and
13 may meet at any time or place. The presence of three
14 commissioners from the Commonwealth of Pennsylvania
15 and three commissioners from the State of West Virginia
16 shall constitute a quorum, and a majority vote of the
17 quorum shall be necessary to pass upon matters before
18 the commission.

“ARTICLE VI. POWERS AND DUTIES.

1 “The commission is hereby authorized and empowered:

2 “(a) To be and serve in the capacity of a local organi-
3 zation within the meaning of the Watershed Protection
4 and Flood Prevention Act of the eighty-third Congress of
5 the United States, second session, (Public Law 566), ap-
6 proved August 4, 1954, as from time to time amended,
7 and in that capacity the commission shall have the fol-
8 lowing authority and powers:

9 “(1) To apply for and receive federal financial and
10 other assistance in preparing and carrying out plans for
11 works of improvement as that term is defined in said
12 federal act, as from time to time amended, hereinafter

13 referred to as works of improvement, and to apply for
14 and receive federal financial and other assistance under
15 the aforementioned or other federal acts in preparing
16 and carrying out plans for public fish and wildlife or
17 recreational development in connection with works of
18 improvement, including the construction and operation
19 of all facilities which may be necessary or incident to
20 such works of improvement and public fish and wildlife
21 or recreational development in connection therewith.

22 “(2) To acquire, or with respect to interests in land
23 to be acquired by condemnation, provide assurances
24 satisfactory to the secretary of agriculture of the United
25 States or other agent or agency of the United States that
26 the commission will acquire such land, easements, or
27 rights-of-way as will be needed in connection with works
28 of improvement, and public fish and wildlife or recrea-
29 tional development and facilities in connection with
30 works of improvement, installed with federal assistance.

31 “(3) To agree to operate and maintain any reservoir
32 or other area included in a plan for works of improve-

33 ment or public fish and wildlife or recreational develop-
34 ment and facilities.

35 “(4) To assume all or such proportionate share, as is
36 determined by the secretary of agriculture of the United
37 States or other agent or agency of the United States,
38 of the costs of installing any works of improvement, in-
39 volving federal assistance, which is applicable to the
40 agricultural phases of the conservation, development,
41 utilization, and disposal of water or for fish and wild-
42 life or recreational development and facilities or to pur-
43 poses other than flood prevention and features relating
44 thereto.

45 “(5) To make arrangements satisfactory to the secre-
46 tary of agriculture of the United States or other agent or
47 agency of the United States for defraying costs of operat-
48 ing and maintaining works of improvement and public
49 fish and wildlife or recreational development and facili-
50 ties in connection with works of improvement: *Provided,*
51 That such arrangements shall be based solely upon con-
52 tributions, allotments or commitments of funds to the
53 district or commission.

54 “(6) To acquire, or provide assurance that landowners
55 or water users have acquired, such water rights, pur-
56 suant to the law of the commonwealth or state applicable
57 thereto, as may be needed in the installation and opera-
58 tion of the works of improvement and public fish and
59 wildlife or recreational development and facilities in
60 connection with works of improvement.

61 “(7) To cooperate with soil conservation districts in ob-
62 taining agreements to carry out recommended soil con-
63 servation measures and proper farm plans from owners of
64 land situated in the drainage area above each retention re-
65 servoir to be installed with or without federal assistance.

66 “(8) To apply for and receive federal loans or ad-
67 vancements to finance the local share of costs of carry-
68 ing out works of improvement and public fish and wild-
69 life or recreational development and facilities in con-
70 nection with works of improvement, and to submit a
71 plan of repayment satisfactory to the secretary of agri-
72 culture or other agent or agency of the United States
73 for any loan or advancement: *Provided*, That such plan

74 of repayment shall be based solely upon contributions,
75 allotments or commitments of funds to the district or
76 commission.

77 “(9) To cooperate, and enter into agreements with,
78 the secretary of agriculture of the United States or other
79 agent or agency of the United States, and to do all other
80 things required, not inconsistent with the provisions of
81 this compact and the laws of the Commonwealth of
82 Pennsylvania and the State of West Virginia, to obtain
83 maximum federal financial assistance for works of im-
84 provement and public fish and wildlife or recreational
85 development and facilities in connection with such works
86 of improvement.

87 “(b) To acquire within the district, land, easements,
88 rights-of-way and other property rights as may be
89 needed in connection with works of improvement and
90 public fish and wildlife or recreational development and
91 facilities in connection with such works of improvement
92 and to make studies respecting, and to plan, construct,
93 maintain and operate, works of improvement within the
94 district and public fish and wildlife or recreational de-

95 velopment and facilities in connection with such works
96 of improvement.

97 “(c) To obtain options upon and to acquire, by pur-
98 chase, exchange, lease, gift, grant, bequest, devise, emi-
99 nent domain, or otherwise, any property, real or per-
100 sonal, or rights therein, for any of the purposes speci-
101 fied in this article of the compact: *Provided*, That eminent
102 domain proceedings shall be instituted and prosecuted
103 in the manner and forums provided by the laws of the
104 commonwealth or state in which the property or property
105 rights proceeded against are situate: *Provided, however*,
106 That no property now or hereafter vested in or held
107 by the Commonwealth of Pennsylvania or the State of
108 West Virginia, or by any county, city, town, village,
109 district, township, municipality or other political sub-
110 division thereof shall be taken by the district without
111 the consent of the commonwealth, state or political sub-
112 division which owns the same.

113 “(d) To maintain, administer and improve any proper-
114 ties acquired, to charge fees for use of, and receive in-
115 come from, such properties and to expend such income

116 in carrying out the purposes and provisions of this com-
117 pact, and to lease any of its property or interests therein
118 in accordance with the following provisions and require-
119 ments: The board of commissioners of the County of Ohio,
120 West Virginia, the county court of Marshall County, West
121 Virginia, the board of commissioners of Greene County,
122 Pennsylvania, and the board of commissioners of Wash-
123 ington County, Pennsylvania, shall each have the option
124 of leasing from the commission for such period as the
125 lessee may specify all or any part of the works of im-
126 provement and the public fish and wildlife and recrea-
127 tional development and facilities in connection with
128 works of improvement located within their respective
129 counties upon the following terms and conditions: (a)
130 That in each such lease the lessee in consideration thereof
131 pay to the lessor the sum of one dollar and agree to fully
132 maintain at its (the lessee's) expense all works of im-
133 provement and all such development and facilities in
134 connection therewith located within the county of the
135 lessee in accordance with the requirements of the Water-
136 shed Protection and Flood Prevention Act of the eighty-

137 third Congress of the United States, second session, (Pub-
138 lic Law 566), approved August 4, 1954, as from time to
139 time amended, and all agreements and work plans made
140 or formulated thereunder with respect to such works
141 of improvement and such development and facilities in
142 connection therewith located within the county of the
143 lessee, and that for failure of the lessee to comply with
144 such agreement, the lessor shall be given the right in the
145 lease agreement to cancel the lease upon thirty days
146 written notice to the lessee; (b) that any such lease
147 not be inconsistent with the provisions, or impair the
148 purposes, of this compact; and (c) that any such lease
149 be approved by the secretary of agriculture of the United
150 States or other federal agent or agencies having au-
151 thority to extend approval under the provisions of said
152 act and agreements and works plan made or formulated
153 thereunder. In the event the board of commissioners or
154 county court of any one of the four counties named does
155 not, within six months from the completion of the works
156 of improvement and all such development and facilities
157 in connection therewith located in such county, elect

158 in writing transmitted to the commission to exercise
159 the option given to it by the foregoing provisions, or in
160 the event such option is exercised and the lease to such
161 board of commissioners or county court is subsequently
162 cancelled because of violation of the provision of the
163 lease by the lessee, or in the event such option is exer-
164 cised and the board of commissioners or county court
165 subsequently chooses not to renew its lease, the com-
166 missioners may lease all or any part of the works of
167 improvement and all such development and facilities in
168 connection therewith located within such county to any
169 other lessee which the commission may choose, and upon
170 such terms as may be agreed upon, provided (a) that
171 any such lease be approved by the board of commis-
172 sioners or county court of the county in which any
173 part or all of the works of improvement and all such
174 development and facilities in connection therewith are
175 located; (b) that any such lease not be inconsistent with
176 the provisions, or impair the purposes of this compact;
177 (c) that any such lease be approved by the secre-
178 tary of agriculture of the United States or other federal

179 agent or agencies having authority to extend approval
180 under the provisions of said act and agreements and work
181 plans made or formulated thereunder; and the option of
182 leasing in the board of commissioners of the County of
183 Ohio, West Virginia, the county court of Marshall County,
184 West Virginia, the board of commissioners of Greene
185 County, Pennsylvania, and the board of commissioners of
186 Washington County, Pennsylvania, shall include the right
187 to sublease on the same terms and conditions set out in
188 this paragraph designated (d) to any individual, corpo-
189 ration, municipal subdivision or municipal authority
190 without the approval of the Wheeling Creek Watershed
191 Protection and Flood Prevention Commission.

192 “(e) To enter into contracts and other arrangements
193 with agencies of the United States, with persons, firms
194 or corporations, including both public and private cor-
195 porations, with the government of the state and the
196 government of the commonwealth, or any department or
197 agency of the United States, the state or the common-
198 wealth, with governmental divisions, with soil conser-
199 vation, drainage, flood control, soil erosion or other im-

200 provement districts in the state or the commonwealth,
201 for cooperation or assistance in constructing, improving,
202 operating or maintaining works of improvement within
203 the district, and public fish and wildlife or recreational
204 development and facilities in connection with works of
205 improvement, or in preventing floods, damage from sedi-
206 ment deposited by floodwaters, or in clearance of stream
207 beds, or in conserving, developing, utilizing and dis-
208 posing of water in the district, or for making surveys,
209 investigations or reports thereof.

210 “(f) To apply for, receive and use grants-in-aid, dona-
211 tions and contributions from any source or sources, and
212 to accept and use, consistent with the purposes of this
213 compact, bequests, devises, gifts and donations from any
214 person, firm, corporation, state, commonwealth or agency
215 or political subdivision thereof.

216 “(g) To do any and all things necessary or convenient
217 for the purpose of promoting, developing and advancing
218 the purposes of said district herein set forth, and in pro-
219 moting, developing and advancing the recreational de-
220 velopment and facilities incidental to the works of im-

221 provement that shall be constructed to achieve said pur-
222 poses.

223 “(h) To delegate any authority given to it by law to
224 any of its agents or employees, and to ~~expend~~^{append} its funds
225 in the execution of the powers and authority herein given.

“ARTICLE VII. FISCAL AFFAIRS.

1 The commission shall submit at the appropriate or desig-
2 nated time to the board of commissioners of the County
3 of Ohio, West Virginia, the county court of Marshall
4 County, West Virginia, the board of commissioners of
5 Greene County, Pennsylvania, and the board of commis-
6 sioners of Washington County, Pennsylvania, an annual
7 budget of its estimated expenditures, which budget shall
8 contain specific recommendations of the amount or
9 amounts to be appropriated by each of the named gov-
10 erning bodies.

11 “The commission shall not incur any obligation prior
12 to the commitment or allotment of funds by the named
13 governing bodies or by other sources adequate to meet
14 the same.

15 “The commission shall keep accurate accounts of all
16 receipts and disbursements, which accounts shall be open
17 for inspection at any reasonable time and shall be sub-
18 ject to audit by representatives of contributing political
19 subdivisions and of the Commonwealth of Pennsylvania
20 and State of West Virginia. The receipts and disburse-
21 ments of the commission shall be subject to the audit
22 and accounting procedures established under its by-laws:
23 *Provided*, That all receipts and disbursements of the
24 commission shall be audited yearly by a qualified public
25 accountant, and the report of the audit shall be trans-
26 mitted to each contributor of funds to the district or
27 commission.

“ARTICLE VIII. EXEMPTION FROM TAXES AND FEES.

1 “The district and the property belonging to the district
2 shall be exempt from the payment of all taxes or fees
3 imposed by the Commonwealth of Pennsylvania or the
4 State of West Virginia and by any agency and political
5 subdivision thereof.

“ARTICLE IX. EFFECTIVE DATE OF CCMPACT.

1 “This compact shall become effective upon ratification

2 by the General Assembly of the Commonwealth of Penn-
3 sylvania and the Legislature of the State of West Vir-
4 ginia and upon approval by the Congress of the United
5 States.”

§29-1f-2. Appointment of members of commission; vacancies.

1 In pursuance of article four of the above compact, there
2 shall be five members of the Wheeling Creek watershed
3 protection and flood prevention commission from the
4 state of West Virginia, one of whom shall be a member
5 of the board of commissioners of the county of Ohio, West
6 Virginia, appointed by that body to serve at its will and
7 pleasure, one of whom shall be a citizen of the city of
8 Wheeling, Ohio county West Virginia, appointed by the
9 board of commissioners of the county of Ohio, West Vir-
10 ginia, to serve at its will and pleasure, one of whom shall
11 be a member of the county court of Marshall county, West
12 Virginia, appointed by that body to serve at its will and
13 pleasure, one of whom shall be a citizen of Marshall
14 county, West Virginia, appointed by the county court
15 thereof to serve at its will and pleasure, and one of whom
16 shall be a member of the board of supervisors of the

17 northern panhandle soil conservation district, appointed
18 by said board of supervisors to serve at its will and
19 pleasure: *Provided*, That (1) the citizen appointed by the
20 board of commissioners of the county of Ohio, West Vir-
21 ginia, shall not be a member of that body; (2) the citizen
22 appointed by the county court of Marshall county, West
23 Virginia, shall not be a member of that body; and (3)
24 the member appointed by the board of supervisors of
25 the northern panhandle soil conservation district shall
26 not be a resident of either Ohio or Marshall county, West
27 Virginia.

28 Vacancies shall be filled by the appointing authority
29 responsible for making the appointment to the position
30 vacated.

§29-1f-3. Contributions by political subdivisions.

1 The county court of Marshall county, West Virginia, and
2 the board of commissioners of the county of Ohio, West
3 Virginia, and any municipality therein, which may rea-
4 sonably be expected to receive a benefit from the con-
5 struction, improvement, operation or maintenance of any
6 works of improvement, are hereby authorized and em-

7 powered to contribute moneys to the district by appro-
8 priation from their respective general funds not other-
9 wise appropriated, and may set up in their respective
10 budgets funds to be spent for such purposes, and such
11 counties or municipalities may levy and collect taxes
12 for such purposes, in the manner provided by law: *Pro-*
13 *vided*, That in case sufficient funds cannot be raised by
14 ordinary levies, additional funds may be raised by the
15 counties of Marshall and Ohio, and any such munici-
16 pality, as provided by section sixteen, article eight, chap-
17 ter eleven of the code of West Virginia, one thousand
18 nine hundred thirty-one, as amended.

19 Such county court, board of commissioners, and mu-
20 nicipal corporations are hereby authorized and empow-
21 ered to transfer and convey to the district property of
22 any kind heretofore acquired by said county court, board
23 of commissioners, and municipalities, if acceptable to
24 the district as adaptable to use for the purposes of the
25 district, such transfers or conveyances to be without con-
26 sideration or for such price and upon such terms and

27 conditions as such county court, board of commissioners
28 or municipalities shall determine to be proper.

§29-1f-4. Ohio county board of commissioners authorized to transfer certain special levy receipts to the Wheeling creek watershed protection and flood prevention commission.

1 The board of commissioners of the county of Ohio is
2 hereby authorized and empowered to transfer to the
3 Wheeling creek watershed protection and flood prevention
4 commission established by this article all tax revenue and
5 interest thereon received pursuant to and as the result
6 of the special levy election held in Ohio county on May
7 12, 1964, to raise funds for the Wheeling creek watershed
8 project, which election was authorized and called by the
9 board of commissioners of the county of Ohio by order en-
10 tered on March 31, 1964: *Provided*, That before making any
11 such transfer the board of commissioners of the county of
12 Ohio shall obtain from the Wheeling creek watershed pro-
13 tection and flood prevention commission written assur-
14 ances that all such revenue and interest thereon to be so
15 transferred shall be expended solely for the purposes for

16 which such special levies were authorized: *Provided,*
17 *further,* That upon the receipt of such written assurances
18 the board of commissioners of the county of Ohio shall not
19 be liable for any misapplication by the Wheeling creek
20 watershed protection and flood prevention commission of
21 any such revenues and interest thereon so transferred.

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

William Tompaz
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Keyes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Cannon
President of the Senate

H. Laker White
Speaker House of Delegates

The within approved this the 1st
day of March, 1966.

Hueyt C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 2-24-67

Time 1:45 P.M.