WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED

HOUSE BILL No. 1087

(By Mr. Bryan & Mr. Bally)

PASSED March 10, 1978

In Effect ninety days from Passage
H. B. 1087

(By MR. BRYAN and MR. BALLOUZ)

[Passed March 10, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal electric power systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; right of eminent domain; cost estimates; provisions for interest and issuance of revenue bonds and rates for services; bonds payable solely from revenues; not to constitute municipal indebtedness; lien of bondholders; covenants with bondholders; operating contract; rates for services to be adequate to any bonds; service charges; sinking fund; discontinuance of power services for nonpayment of charges; bonds for improvement; system of accounts; protection of bondholder's rights; federal grants and loans; alternative method for constructing electric power systems; alternative procedure for constructing additions to electric power system.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definition.

1 Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, within the corporate limits of said municipality and within the area extending twenty miles beyond the corporate limits of such municipality, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

2 When used in this article, the term “waterworks system” shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

3 When used in this article, the term “electric power system” means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and
all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any waterworks system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks or electric power system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the
contemplated undertaking, the estimated cost thereof, the
amount, rate or rates of interest, the time and place of payment,
and other details in connection with the issuance of the bonds.
Such bonds shall be in such form and shall be negotiated in
such manner and upon such terms as the governing body of
such municipality may by ordinance specify. All such bonds
and the interest thereon, and all properties and revenues and in-
come derived from such waterworks or electric power system,
shall be exempt from all taxation by this state, or any county,
municipality, political subdivision or agency thereof. Such
bonds shall bear interest at not more than eight percent per an-
um, payable semiannually, and shall be payable at such times,
not exceeding forty years from their date, and at such place or
places, within or without the state, as shall be prescribed in the
ordinance providing for their issuance. Such ordinance shall
also declare that a statutory mortgage lien shall exist upon the
property so to be acquired, constructed, established, extended
or equipped, fix minimum rates or charges for water to be col-
lected prior to the payment of all of said bonds and shall pledge
the revenues derived from the waterworks or electric power
system for the purpose of paying such bonds and interest there-
on, which pledge shall definitely fix and determine the amount
of revenues which shall be necessary to be set apart and
applied to the payment of the principal of and interest
upon the bonds and the proportion of the balance of such
revenues, which are to be set aside as a proper and adequate
depreciation account, and the remainder shall be set aside
for the reasonable and proper maintenance and operation
thereof. The rates or charges to be charged for the services
from such waterworks or electric power system shall be
sufficient at all times to provide for the payment of interest
upon all bonds and to create a sinking fund to pay the
principal thereof as and when the same become due, and
reasonable reserves therefor, and to provide for the repair,
maintenance and operation of the waterworks or electric
power system, and to provide an adequate depreciation fund,
and to make any other payments which shall be required or
provided for in the ordinance authorizing the issuance of
said bonds.
§8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.

1 Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.


1 There shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon, within the limitations prescribed in section six hereof. Any revenue bonds so issued in payment for such an existing waterworks or electric power system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so
acquired or improved; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.


1 Any ordinance authorizing the issuance of bonds, hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks or electric power system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such waterworks or electric power system, including any part thereof heretofore or hereafter acquired, constructed, established, extended or equipped or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks or electric power system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks or electric power system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks or electric power system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;
(d) The transfer from the general funds of the municipality to the account or accounts of the waterworks or electric power system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such waterworks or electric power system;

(e) Subject to the provisions of subsection (b), section twelve of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks or electric power system, and the rank or priority, as to lien and source and security for payment from the revenues of such waterworks or electric power system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such waterworks or electric power system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such waterworks or electric power system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by
accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance or trust indenture may also contain such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state.

§8-19-10. Operating contract.

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.

Rates or charges for water fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to pro-
vide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and if any surplus shall exist in the bond and interest redemption account the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this
article and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund for the retirement of the bonds and payment of the interest thereon.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.

Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water or electric power service of said waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service.


Whenever any municipality shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided for the
issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system in a municipality which has not heretofore owned and operated a waterworks system: Provided, That nothing in this article shall be construed as authorizing any municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting aside and segregation of such revenues for the construction of such additions, betterments or improvements only where and to the extent consistent with outstanding obligations of such municipality, and in accordance with the provisions of this article.


1 Any municipality operating a waterworks or electric power system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such waterworks or electric power system and the application of the same. At least once each year such municipality shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times.

§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

1 Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section eight of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality, or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the waterworks or electric power system. If there be default in
the payment of the principal of or interest upon any of
such bonds, or of both principal and interest, any court
having jurisdiction shall appoint a receiver to administer
said waterworks or electric power system on behalf of the
municipality, and the bondholders or trustee, or both, with
power to charge and collect rates or charges sufficient to
provide for the retirement of the bonds and pay the interest
thereon, and for the payment of the repair, maintenance and
operation expenses, and such receiver shall apply the revenues
in conformity with the provisions of this article and the
ordinance pursuant to which such bonds have been issued
or any trust indenture, or both.

PART V. GRANTS, LOANS AND ADVANCES;
CUMULATIVE AUTHORITY.

§8-19-17. Acceptance of grants and procurement of loans or
temporary advances from, and contracts and agree-
ments with, federal agencies or private parties.

Any municipality is hereby empowered and authorized to
accept grants, and procure loans or temporary advances, for
the purpose of paying part or all of the cost of acquisition,
construction, establishment, extension or equipment of water-
works systems and the construction of additions, betterments
and improvements to existing waterworks systems or to exist-
ing electric power systems from the United States of America
or any federal or public agency or department of the United
States or any private agency, corporation or individual, which
loans or temporary advances may be repaid out of the proceeds
of bonds authorized to be issued under the provisions of this
article and to enter into the necessary contracts and agreements
to carry out the purposes hereof with the United States of
America or any federal or public agency or department of the
United States, or with any private agency, corporation or in-
dividual.

In no event shall any such loan or temporary advance be a
general obligation of the municipality and such loans or tem-
porary advances, including the interest thereon, shall be paid
solely from the proceeds of the bonds authorized to be issued
under the provisions of this article or the revenues of the
municipal waterworks or electric power system so recited in each such contract and agreement.

§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks system or for the construction of any additions, betterments or improvements to an existing electric power system as herein provided and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART VI. Operation By Board; Construction.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

As an alternative to the procedures hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or
equipped under the provisions of this article or not, and to col-
lect the revenues therefrom for the services rendered thereby,
through the supervision and control of a committee, by what-
ever name called, composed of all or a portion of the governing
body, or of a board or commission appointed by such govern-
ing body, as may be provided by the governing body, and if
such alternative is followed, said committee, board or commis-
sion shall have and be limited to all the powers, authority and
duties granted to and imposed upon a board as provided in
article sixteen of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence Chastain
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. William 
Clerk of the Senate

W. Frank Bostwick
Clerk of the House of Delegates

Robert C. Byrd
President of the Senate

Donald L. Upss
Speaker House of Delegates

The within is approved this the __________ day of __________, 1978.

John D. Bolinger
Governor
APPROVED AND SIGNED BY THE GOVERNOR

Date: Mar. 30, 1978
Time: 5:05 P.M.

OFFICE OF THE GOVERNOR

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SECY. OF STATE