

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978

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ENROLLED

HOUSE BILL No. 1087

(By Mr. Bryan + Mr. Ballou)

— ● —

PASSED March 10, 1978

In Effect ninety days from Passage

ENROLLED

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
2 article, any municipality may acquire, construct, establish,
3 extend, equip, repair, maintain and operate, or lease to others
4 for operation, a waterworks system, or construct, main-
5 tain and operate additions, betterments and improvements
6 to an existing waterworks system or an existing electric
7 power system, within the corporate limits of said munici-
8 pality and within the area extending twenty miles beyond
9 the corporate limits of such municipality, notwithstanding
10 any provision or limitation to the contrary in any other
11 law or charter: *Provided*, That such municipality shall not
12 serve or supply water facilities or electric power facilities
13 or services within the corporate limits of any other munici-
14 pality without the consent of the governing body of such
15 other municipality.

16 When used in this article, the term "waterworks system"
17 shall be construed to mean and include a waterworks system
18 in its entirety or any integral part thereof, including mains,
19 hydrants, meters, valves, standpipes, storage tanks, pump
20 tanks, pumping stations, intakes, wells, impounding reservoirs,
21 pumps, machinery, purification plants, softening apparatus,
22 and all other facilities necessary, appropriate, useful, con-
23 venient or incidental in connection with or to a water supply
24 system.

25 When used in this article, the term "electric power system"
26 means a system or facility which produces electric power in
27 its entirety or any integral part thereof, including, but not
28 limited to, power lines and wires, power poles, guy wires,
29 insulators, transformers, generators, cables, power line towers,
30 voltage regulators, meters, power substations, machinery and

31 all other facilities necessary, appropriate, useful or con-
32 venient or incidental in connection with or to an electric
33 power supply system.

PART III. RIGHT OF EMINENT DOMAIN.

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

1 For the purpose of acquiring, constructing, establishing or
2 extending any waterworks system, or for the purpose of
3 constructing any additions, betterments or improvements
4 to any waterworks or electric power system, or for the
5 purpose of acquiring any property necessary, appropriate,
6 useful, convenient or incidental for or to any waterworks or
7 electric power system, under the provisions of this article,
8 the municipality shall have the right of eminent domain as
9 provided in chapter fifty-four of this code: *Provided*, That
10 such right of eminent domain for the acquisition of a com-
11 plete privately owned waterworks system shall not be exer-
12 cised without prior approval of the public service com-
13 mission, and in no event shall any municipality construct,
14 establish or extend beyond the corporate limits of said
15 municipality a municipal waterworks or electric power system
16 under the provisions of this article to supply service in
17 competition with an existing privately or municipally owned
18 waterworks or electric power system in such municipality or
19 within the proposed extension of such system, unless a certifi-
20 cate of public convenience and necessity therefor shall have
21 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.

1 Whenever a municipality shall, under the provisions of this
2 article, determine to acquire, by purchase or otherwise, con-
3 struct, establish, extend or equip a waterworks system, or to
4 construct any additions, betterments or improvements to any
5 waterworks or electric power system, it shall cause an estimate
6 to be made of the cost thereof, and shall, by ordinance, provide
7 for the issuance of revenue bonds under the provisions of this
8 article, which ordinance shall set forth a brief description of the

9 contemplated undertaking, the estimated cost thereof, the
10 amount, rate or rates of interest, the time and place of payment,
11 and other details in connection with the issuance of the bonds.
12 Such bonds shall be in such form and shall be negotiated in
13 such manner and upon such terms as the governing body of
14 such municipality may by ordinance specify. All such bonds
15 and the interest thereon, and all properties and revenues and in-
16 come derived from such waterworks or electric power system,
17 shall be exempt from all taxation by this state, or any county,
18 municipality, political subdivision or agency thereof. Such
19 bonds shall bear interest at not more than eight percent per an-
20 num, payable semiannually, and shall be payable at such times,
21 not exceeding forty years from their date, and at such place or
22 places, within or without the state, as shall be prescribed in the
23 ordinance providing for their issuance. Such ordinance shall
24 also declare that a statutory mortgage lien shall exist upon the
25 property so to be acquired, constructed, established, extended
26 or equipped, fix minimum rates or charges for water to be col-
27 lected prior to the payment of all of said bonds and shall pledge
28 the revenues derived from the waterworks or electric power
29 system for the purpose of paying such bonds and interest there-
30 on, which pledge shall definitely fix and determine the amount
31 of revenues which shall be necessary to be set apart and
32 applied to the payment of the principal of and interest
33 upon the bonds and the proportion of the balance of such
34 revenues, which are to be set aside as a proper and adequate
35 depreciation account, and the remainder shall be set aside
36 for the reasonable and proper maintenance and operation
37 thereof. The rates or charges to be charged for the services
38 from such waterworks or electric power system shall be
39 sufficient at all times to provide for the payment of interest
40 upon all bonds and to create a sinking fund to pay the
41 principal thereof as and when the same become due, and
42 reasonable reserves therefor, and to provide for the repair,
43 maintenance and operation of the waterworks or electric
44 power system, and to provide an adequate depreciation fund,
45 and to make any other payments which shall be required or
46 provided for in the ordinance authorizing the issuance of
47 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
2 payable solely from the revenues derived from such water-
3 works or electric power system, and such bonds shall not
4 in any event constitute an indebtedness of such municipality
5 within the meaning of any constitutional or statutory pro-
6 vision or limitation, and it shall be plainly stated on the
7 face of each bond that the same has been issued under the
8 provisions of this article, and that it does not constitute an
9 indebtedness of such municipality within any constitutional
10 or statutory provision or limitation. Subject to the provisions
11 of subsection (b), section twelve of this article, the ordinance
12 authorizing the issuance of the bonds may contain such cove-
13 nants and restrictions upon the issuance of additional revenue
14 bonds thereafter as may be deemed necessary or advisable for
15 the assurance of payment of the bonds thereby authorized and
16 as may thereafter be issued.

§8-19-8. Lien of bondholders.

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

11 Any municipality in acquiring an existing waterworks system
12 or in improving ^{an} existing waterworks or electric power system
13 may provide that payment therefor shall be made by issuing
14 revenue bonds and delivering the same at such prices as may be
15 agreed upon, within the limitations prescribed in section six
16 hereof. Any revenue bonds so issued in payment for such an
17 existing waterworks or electric power system shall for all pur-
18 poses be regarded as partaking of the nature of and as being
19 secured by a purchase money mortgage upon the property so

20 acquired or improved; and the holders thereof shall have, in
21 addition to any other remedies and rights prescribed by this
22 article, such remedies and rights as may now or hereafter exist
23 in law in the case of purchase money mortgages.

§8-19-9. Covenants with bondholders.

1 Any ordinance authorizing the issuance of bonds, here-
2 under, or any trust indenture with any banking institution
3 or trust company within or without the state for the security
4 of said bonds, which any such municipality is hereby em-
5 powered and authorized to enter into and execute, may contain
6 covenants with the holders of such bonds as to:

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

13 (b) The pledging of all or any part of the revenues
14 derived from the ownership, control or operation of such
15 waterworks or electric power system, including any part
16 thereof heretofore or hereafter acquired, constructed, estab-
17 lished, extended or equipped or derived from any other
18 sources, to the payment of the principal of or interest there-
19 on of bonds issued hereunder and for such reserve or
20 other funds as may be deemed necessary or desirable;

21 (c) The fixing, establishing and collecting of such rates
22 or charges for the use of the services and facilities of the
23 waterworks or electric power system, including the parts
24 thereof heretofore or hereafter acquired, constructed, estab-
25 lished, extended or equipped and the revision of same from
26 time to time, as will always provide revenues at least suf-
27 ficient to provide for all expenses of repair, maintenance
28 and operation of such waterworks or electric power system,
29 the payment of the principal of and interest upon all bonds
30 or other obligations payable from the revenues of such
31 waterworks or electric power system, and all reserve and
32 other funds required by the terms of the ordinance authorizing
33 the issuance of such bonds;

34 (d) The transfer from the general funds of the munici-
35 pality to the account or accounts of the waterworks or
36 electric power system of an amount equal to the cost of
37 furnishing the municipality or any of its departments, boards
38 or agencies with the services and facilities of such water-
39 works or electric power system;

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

48 (f) The manner and terms upon which all bonds and other
49 obligations issued hereunder may be declared immediately
50 due and payable upon the happening of a default in the pay-
51 ment of the principal of or interest thereon, or in the
52 performance of any covenant or agreement with bondholders,
53 and the manner and terms upon which such defaults may be
54 declared cured and the acceleration of the maturity of such
55 bonds rescinded and repealed;

56 (g) Budgets for the annual repair, maintenance and opera-
57 tion of such waterworks or electric power system and restric-
58 tions and limitations upon expenditures for such purposes,
59 and the manner of adoption, modification, repeal or amend-
60 ment thereof, including the approval of such budgets by
61 consulting engineers designated by holders of bonds issued
62 hereunder;

63 (h) The amounts of insurance to be maintained upon such
64 waterworks or electric power system, or any part thereof,
65 and the use and disposition of the proceeds of any insur-
66 ance; and

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

71 accountants designated or approved by the holders of bonds
72 issued hereunder.

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

§8-19-10. Operating contract.

1 Any such municipality may enter into contracts or agree-
2 ments with any persons for (1) the repair, maintenance and
3 operation and management of the facilities and properties of
4 said waterworks or electric power system, or any part thereof,
5 or (2) the collection and disbursement of the income and
6 revenues therefor, or for both (1) and (2), for such period of
7 time and under such terms and conditions as shall be agreed
8 upon between such municipality and such persons. Any such
9 municipality shall have plenary power and authority to pro-
10 vide in the ordinance authorizing the issuance of bonds here-
11 under, or in any trust indenture securing such bonds, that
12 such contracts or agreements shall be valid and binding upon
13 the municipality as long as any of said bonds, or interest
14 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.**

1 Rates or charges for water fixed precedent to the issuance
2 of bonds shall not be reduced until all of said bonds shall
3 have been fully paid, and may, whenever necessary, be in-
4 creased in amounts sufficient to provide for the payment of
5 the principal of and interest upon such bonds, and to pro-

6 vide proper funds for the depreciation account and repair,
7 maintenance and operation charges. If any surplus shall be
8 accumulated in the repair, maintenance and operation fund
9 which shall be in excess of the cost of repairing, maintaining
10 and operating the waterworks or electric power system dur-
11 ing the remainder of the fiscal year then current, and the
12 cost of repairing, maintaining and operating the said water-
13 works or electric power system during the fiscal year then
14 next ensuing, then any such excess may be transferred to
15 either the depreciation account or to the bond and interest
16 redemption account, and if any surplus shall be accumulated
17 in the depreciation account over and above that which the
18 municipality shall find may be necessary for the probable
19 replacements which may be needed during the then present
20 fiscal year, and the next ensuing fiscal year, such excess may
21 be transferred to the bond and interest redemption account,
22 and if any surplus shall exist in the bond and interest
23 redemption account the same shall be applied insofar as
24 possible in the purchase or retirement of outstanding revenue
25 bonds payable from such account.

**§8-19-12. Service charges; sinking fund; amount of bonds; addi-
tional bonds; surplus.**

1 (a) Every municipality issuing bonds under the provisions
2 of this article shall thereafter, so long as any of such bonds
3 remain outstanding, repair, maintain and operate its water-
4 works or electric power system as hereinafter provided and
5 shall charge, collect and account for revenues therefrom as
6 will be sufficient to pay all repair, maintenance and operation
7 costs, provide a depreciation fund, retire the bonds and pay
8 the interest requirements of the bonds as the same become
9 due. The ordinance pursuant to which any such bonds are
10 issued shall pledge the revenues derived from the waterworks
11 or electric power system to the purposes aforesaid and shall
12 definitely fix and determine the amount of revenues which
13 shall be necessary and set apart in a special fund for the bond
14 requirements. The amounts as and when so set apart into
15 said special fund for the bond requirements shall be remitted
16 to the state sinking fund commission to be retained and paid
17 out by said commission consistent with the provisions of this

18 article and the ordinance pursuant to which such bonds have
19 been issued. The bonds hereby authorized shall be issued in
20 such amounts as may be determined necessary to provide
21 funds for the purpose for which they are authorized, and in
22 determining the amount of bonds to be issued it shall be
23 proper to include interest on the bonds for a period not beyond
24 six months from the estimated date of completion.

25 (b) If the proceeds of the bonds, because of error or other-
26 wise, shall be less than the cost of the property or undertaking
27 for which authorized, additional bonds may be issued to pro-
28 vide the amount of such deficit and such additional bonds shall
29 be deemed to be of the same issue and shall be entitled to
30 payment from the same fund without preference or priority
31 over the bonds first authorized and issued.

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

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

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

§8-19-14. Bonds for additions, betterments and improvements.

1 Whenever any municipality shall now or hereafter own
2 and operate a waterworks or electric power system, whether
3 acquired, constructed, established, extended or equipped under
4 the provisions of this article or not, and shall desire to con-
5 struct additions, betterments or improvements thereto, it may
6 issue revenue bonds under the provisions of this article to
7 pay for the same, and the procedure therefor, including the
8 fixing of rates or charges and the computation of the amount
9 thereof, and the power and authority in connection there-
10 with, shall be the same as in this article provided for the

11 issuance of bonds for the acquisition, construction, establish-
12 ment, extension or equipment of a waterworks system in
13 a municipality which has not heretofore owned and operated
14 a waterworks system: *Provided*, That nothing in this article
15 shall be construed as authorizing any municipality to im-
16 pair or commit a breach of the obligation of any valid
17 lien or contract created or entered into by it, the inten-
18 tion being to authorize the pledging, setting aside and segre-
19 gation of such revenues for the construction of such addi-
20 tions, betterments or improvements only where and to the
21 extent consistent with outstanding obligations of such munic-
22 ipality, and in accordance with the provisions of this article.

§8-19-15. System of accounts; audit.

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

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

1 Any holder of any bonds issued under the provisions of
2 this article or of any coupons representing interest accrued
3 thereon may by civil action, mandamus or other proper
4 proceeding enforce the statutory mortgage lien created and
5 granted in section eight of this article, protect and enforce
6 any and all rights granted hereunder or under any such
7 ordinance or trust indenture, and may enforce and compel
8 performance of all duties required by the provisions of this
9 article or by any such ordinance or trust indenture to be per-
10 formed by the municipality, or by the governing body or
11 any officer, including the making and collecting of reasonable
12 and sufficient rates or charges for services rendered by the
13 waterworks or electric power system. If there be default in

14 the payment of the principal of or interest upon any of
15 such bonds, or of both principal and interest, any court
16 having jurisdiction shall appoint a receiver to administer
17 said waterworks or electric power system on behalf of the
18 municipality, and the bondholders or trustee, or both, with
19 power to charge and collect rates or charges sufficient to
20 provide for the retirement of the bonds and pay the interest
21 thereon, and for the payment of the repair, maintenance and
22 operation expenses, and such receiver shall apply the revenues
23 in conformity with the provisions of this article and the
24 ordinance pursuant to which such bonds have been issued
25 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.**

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

17 In no event shall any such loan or temporary advance be a
18 general obligation of the municipality and such loans or tem-
19 porary advances, including the interest thereon, shall be paid
20 solely from the proceeds of the bonds authorized to be issued
21 under the provisions of this article or the revenues of the

22 municipal waterworks or electric power system so recited
23 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.

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

20 This article shall be construed as cumulative authority for
21 any undertaking herein authorized, and shall not be construed
22 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.

1 As an alternative to the procedures hereinabove provided,
2 any municipality is hereby empowered and authorized to acquire,
3 construct, establish, extend, equip, repair, maintain and operate
4 a waterworks system or to construct, maintain and operate additions,
5 betterments and improvements to an existing waterworks system
6 or an existing electric power system, whether acquired, constructed,
7 established, extended or

8 equipped under the provisions of this article or not, and to col-
9 lect the revenues therefrom for the services rendered thereby,
10 through the supervision and control of a committee, by what-
11 ever name called, composed of all or a portion of the governing
12 body, or of a board or commission appointed by such govern-
13 ing body, as may be provided by the governing body, and if
14 such alternative is followed, said committee, board or commis-
15 sion shall have and be limited to all the powers, authority and
16 duties granted to and imposed upon a board as provided in
17 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 C. Chuston Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Willson, Jr.
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

W. T. Bullock Jr.
President of the Senate

Donald L. Topp
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Ralston
Governor



RECEIVED

MAR 20 9 53 AM '78

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date

Mar. 30, 1978

Time

5:05 p.m.

RECEIVED

78 MAR 30 P 9:31

OFFICE
SECY. OF STATE