

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

Committee Substitute for
HOUSE BILL No. 1138

(By Mr. Otte)



PASSED March 11, 1978

In Effect from - Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1138

(By MR. OTTE)

[Passed March 11, 1978; in effect from passage.]

AN ACT to amend and reenact section one, article one-f, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one-f by adding thereto a new section, designated section five, all relating to increasing the powers of the Wheeling creek watershed protection and flood prevention commission to permit sale or other disposition of property acquired by the commission; procedures for sale or disposition; how money received to be used; effective date; and when commission authorized to dispose of real and personal property.

Be it enacted by the Legislature of West Virginia:

That section one, article one-f, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one-f be further amended by adding thereto a new section, designated section five, all 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 negotiated
3 by representatives of the commonwealth of Pennsylvania and
4 the state of West Virginia, is hereby approved, ratified,
5 adopted, enacted into law, and entered into by the state of
6 West Virginia as a party thereto and signatory state, namely:

7 WHEELING CREEK WATERSHED PROTECTION AND FLOOD
8 PREVENTION DISTRICT COMPACT

9 **Article I. Recitation of Reasons for Compact.**

10 WHEREAS, Wheeling creek, a tributary of the Ohio river,
11 arises in Pennsylvania, flows through Washington and Greene
12 counties of that commonwealth, enters the state of West
13 Virginia, flows through Marshall and Ohio counties, West
14 Virginia, and empties into the Ohio River at Wheeling, West
15 Virginia; and

16 WHEREAS, The inhabitants of Marshall and Ohio counties,
17 West Virginia, and, also, but to a much lesser degree, the
18 inhabitants of Washington and Greene counties, Pennsylvania,
19 living along Wheeling creek have over the years experienced
20 loss of life and property from flooding of that stream; and

21 WHEREAS, Surveys made by the soil conservation service of
22 the United States department of agriculture indicate that
23 the inhabitants of the four counties named can best be pro-
24 tected from the flooding of Wheeling creek by flood prevention
25 dams constructed thereon with some of the dams being located
26 on the upper reaches of the stream and its tributaries in the
27 commonwealth of Pennsylvania; and

28 WHEREAS, The federal Watershed Protection and Flood
29 Prevention Act of 1954, as amended, authorizes, under certain
30 circumstances, federal assistance to local organizations in pre-
31 paring and carrying out undertakings for flood prevention and
32 the conservation, development, utilization and disposal of water
33 in watershed or subwatershed area; and

34 WHEREAS, No local organization within the meaning of
35 the federal act aforesaid established by or organized under
36 the laws of West Virginia is competent under state laws to
37 acquire land for, construct, and operate with or without
38 federal assistance flood prevention facilities in the common-

39 wealth of Pennsylvania, and it appears that no such local
40 organization established by or organized under the laws of
41 the commonwealth of Pennsylvania can justify the expendi-
42 ture of locally raised funds to construct and operate flood
43 prevention facilities which will benefit primarily the inhabi-
44 tants of the neighboring state of West Virginia; and

45 WHEREAS, Facilities erected on the upper reaches of
46 Wheeling creek and its tributaries for flood control and
47 prevention can nevertheless have a recreational value for
48 the citizens of both West Virginia and Pennsylvania and
49 particularly the citizens of Ohio and Marshall counties,
50 West Virginia, and Washington and Greene counties, Penn-
51 sylvania; accordingly, for purposes of promoting that poten-
52 tial, as well as providing a vehicle or means whereby federal
53 assistance may be enlisted for the protection of citizens of
54 her neighboring state of West Virginia from the flooding of
55 Wheeling creek, the commonwealth of Pennsylvania joins
56 with the state of West Virginia in negotiating and ratifying
57 this compact; now therefore,

58 **Article II. Wheeling Creek Watershed Protection and**
59 **Flood Prevention District Created.**

60 The commonwealth of Pennsylvania and the state of West
61 Virginia hereby create as an agency and instrumentality of
62 the governments thereof a district to be known as the "Wheel-
63 ing creek watershed protection and flood prevention district,"
64 hereinafter called the district, which shall embrace all terri-
65 tory in the commonwealth of Pennsylvania and the state of
66 West Virginia, the water in which flows ultimately into
67 Wheeling creek or its tributaries.

68 **Article III. Wheeling Creek Watershed Protection and**
69 **Flood Prevention Commission Created.**

70 The commonwealth of Pennsylvania and the state of West
71 Virginia hereby create as the governing body of the district
72 the "Wheeling creek watershed protection and flood pre-
73 vention commission," hereinafter called the commission, which
74 shall be a body corporate, with the powers and duties set
75 forth herein, and such additional powers as may be conferred
76 upon it by subsequent concurrent action of the General Assem-

77 bly of Pennsylvania and the Legislature of West Virginia or
78 by act or acts of the Congress of the United States.

79 **Article IV. Composition of Commission.**

80 The commission shall consist of five commissioners from
81 Pennsylvania and five commissioners from West Virginia, each
82 of whom shall be a citizen of the commonwealth or state from
83 which he is appointed. The commissioners from the common-
84 wealth and from the state shall be chosen in the manner and
85 for the terms provided by the laws of the commonwealth or
86 state from which they shall be appointed, and any commis-
87 sioner may be removed or suspended from office as provided
88 by the law of the commonwealth or state from which he shall
89 be appointed. Vacancies on the commission shall be filled in
90 the manner provided by the laws of the commonwealth or
91 state among whose representation on the commission the va-
92 cancy occurs.

93 The commissioners shall serve without compensation from
94 the commission but they shall be paid by the commission
95 their actual expenses incurred and incident to the perform-
96 ance of their duties.

97 **Article V. Organization of Commission.**

98 The commission shall meet and organize within sixty days
99 after the effective date of this compact, shall elect from
100 its number a chairman and vice chairman, and shall appoint,
101 and at its pleasure remove or discharge, such officers and legal,
102 clerical, expert and other assistants as may be required to
103 carry the provisions of this compact into effect, and shall
104 determine their qualifications and fix their duties and comp-
105 ensation. It shall adopt a seal and suitable bylaws, and shall
106 adopt and promulgate rules and regulations for its management
107 and control. It may establish and maintain one or more offices
108 within the district for the transaction of its business, and may
109 meet at any time or place. The presence of three commissioners
110 from the commonwealth of Pennsylvania and three commis-
111 sioners from the state of West Virginia shall constitute a quor-
112 um, and a majority vote of the quorum shall be necessary to
113 pass upon matters before the commission.

114

Article VI. Powers and Duties.

115 The commission is hereby authorized and empowered:

116 (a) To be and serve in the capacity of a local organization
117 within the meaning of the Watershed Protection and Flood
118 Prevention Act of the eighty-third Congress of the United
119 States, second session, (Public Law 566), approved August
120 4, 1954, as from time to time amended, and in that capacity
121 the commission shall have the following authority and powers:

122 (1) To apply for and receive federal financial and other
123 assistance in preparing and carrying out plans for works of
124 improvement as that term is defined in said federal act, as
125 from time to time amended, hereinafter referred to as works
126 of improvement, and to apply for and receive federal finan-
127 cial and other assistance under the aforementioned or other
128 federal acts in preparing and carrying out plans for public fish
129 and wildlife or recreational development in connection with
130 works of improvement, including the construction and opera-
131 tion of all facilities which may be necessary or incident to such
132 works of improvement and public fish and wildlife or recrea-
133 tional development in connection therewith.

134 (2) To acquire, or with respect to interests in land to be
135 acquired by condemnation, provide assurances satisfactory
136 to the secretary of agriculture of the United States or other
137 agent or agency of the United States that the commission will
138 acquire such land, easements, or right-of-ways as will be
139 needed in connection with works of improvement, and public
140 fish and wildlife or recreational development and facilities in
141 connection with works of improvement, installed with federal
142 assistance.

143 (3) To agree to operate and maintain any reservoir or
144 other area included in a plan for works of improvement or
145 public fish and wildlife or recreational development and fa-
146 cilities.

147 (4) To assume all or such proportionate share, as is
148 determined by the secretary of agriculture of the United
149 States or other agent or agency of the United States, of the
150 cost of installing any works of improvement, involving federal
151 assistance, which is applicable to the agricultural phases of

152 the conservation, development, utilization, and disposal of
153 water or for fish and wildlife or recreational development and
154 facilities or to purposes other than flood prevention and fea-
155 tures relating thereto.

156 (5) To make arrangements satisfactory to the secretary of
157 agriculture of the United States or other agent or agency of
158 the United States for defraying costs of operating and main-
159 taining works of improvement and public fish and wildlife or
160 recreational development and facilities in connection with
161 works of improvement: *Provided*, That such arrangements
162 shall be based solely upon contributions, allotments or com-
163 mitments of funds to the district or commission.

164 (6) To acquire, or provide assurance that landowners or
165 water users have acquired, such water rights, pursuant to the
166 law of the commonwealth or state applicable thereto, as may
167 be needed in the installation and operation of the works of
168 improvement and public fish and wildlife or recreational de-
169 velopment and facilities in connection with works of improve-
170 ment.

171 (7) To cooperate with soil conservation districts in ob-
172 taining agreements to carry out recommended soil conser-
173 vation measures and proper farm plans from owners of
174 land situated in the drainage area above each retention
175 reservoir to be installed with or without federal assistance.

176 (8) To apply for and receive federal loans or advancements
177 to finance the local share of costs of carrying out works of
178 improvement and public fish and wildlife or recreational de-
179 velopment and facilities in connection with works of improve-
180 ment, and to submit a plan of repayment satisfactory to the
181 secretary of agriculture or other agent or agency of the United
182 States for any loan or advancement: *Provided*, That such plan
183 of repayment shall be based solely upon contributions, allot-
184 ments or commitments of funds to the district or commission.

185 (9) To cooperate, and enter into agreements with, the sec-
186 retary of agriculture of the United States or other agent or
187 agency of the United States, and to do all other things required,
188 not inconsistent with the provisions of this compact and the
189 laws of the commonwealth of Pennsylvania and the state of

190 West Virginia, to obtain maximum federal financial assistance
191 for works of improvement and public fish and wildlife or
192 recreational development and facilities in connection with such
193 works of improvement.

194 (b) To acquire within the district, land, easements, right-of-
195 ways and other property rights as may be needed in connection
196 with works of improvement and public fish and wildlife or
197 recreational development and facilities in connection with
198 such works of improvement and to make studies respecting,
199 and to plan, construct, maintain and operate, works of im-
200 provement within the district and public fish and wildlife or
201 recreational development and facilities in connection with
202 such works of improvement.

203 (c) To obtain options upon and to acquire, by purchase,
204 exchange, lease, gift, grant, bequest, devise, eminent domain,
205 or otherwise, any property, real or personal or rights therein
206 for any of the purposes specified in this article of the compact:
207 *Provided*, That eminent domain proceedings shall be instituted
208 and prosecuted in the manner and forms provided by the laws
209 of the commonwealth or state in which the property or prop-
210 erty rights proceeded against are situate: *Provided, however*,
211 That no property now or hereafter vested in or held by the
212 commonwealth of Pennsylvania or the state of West Virginia,
213 or by any county, city, town, village, district, township, muni-
214 cipality or other political subdivision thereof shall be taken by
215 the district without the consent of the commonwealth, state or
216 political subdivision which owns the same.

217 (d) To maintain, administer and improve any properties
218 acquired, to charge fees for use of, and receive income from,
219 such properties and to expend such income in carrying out
220 the purposes and provisions of this compact, and to lease any
221 of its property or interests therein in accordance with the
222 following provisions and requirements: The board of commis-
223 sioners of the county of Ohio, West Virginia, the county com-
224 mission of Marshall county, West Virginia, the board of com-
225 missioners of Greene county, Pennsylvania, and the board of
226 commissioners of Washington county, Pennsylvania, shall each
227 have the option of leasing from the commission for such period
228 as the lessee may specify all or any part of the works of im-

229 provement and the public fish and wildlife and recreational
230 development and facilities in connection with works of im-
231 provement located within their respective counties upon the
232 following terms and conditions: (a) That in each such lease
233 the lessee in consideration thereof pay to the lessor the sum
234 of one dollar and agree to fully maintain at its (the lessee's)
235 expense all works of improvement and all such development
236 and facilities in connection therewith located within the county
237 of the lessee in accordance with the requirements of the Water-
238 shed Protection and Flood Prevention Act of the eighty-third
239 Congress of the United States, second session. (Public Law
240 566). approved August 4, 1954, as from time to time amend-
241 ed, and all agreements and work plans made or formulated
242 thereunder with respect to such works of improvement and
243 such development and facilities in connection therewith located
244 within the county of the lessee, and that for failure of the lessee
245 to comply with such agreement, the lessor shall be given the
246 right in the lease agreement to cancel the lease upon thirty
247 days' written notice to the lessee: (b) that any such lease not
248 be inconsistent with the provisions, or impair the purposes,
249 of this compact; and (c) that any such lease be approved by
250 the secretary of agriculture of the United States or other
251 federal agent or agencies having authority to extend approval
252 under the provisions of said act and agreements and work
253 plans made or formulated thereunder. In the event the board
254 of commissioners or county commission of any one of the four
255 counties named does not, within six months from the comple-
256 tion of the works of improvement and all such development
257 and facilities in connection therewith located in such county,
258 elect in writing transmitted to the commission to exercise the
259 option given to it by the foregoing provisions, or in the event
260 such option is exercised and the lease to such board of com-
261 missioners or county commission is subsequently canceled be-
262 cause of violation of the provision of the lease by the lessee, or
263 in the event such option is exercised and the board of commis-
264 sioners or county commission subsequently choose not to renew
265 its lease, the commissioners may lease all or any part of the
266 works of improvement and all such development and facilities
267 in connection therewith located within such county to any
268 other lessee which the commission may choose, and upon such
269 terms as may be agreed upon, provided (a) that any such

270 lease be approved by the board of commissioners or county
271 commission of the county in which any part or all of the works
272 of improvement and all such development and facilities in con-
273 nection therewith are located; (b) that any such lease not be
274 inconsistent with the provisions, or impair the purposes, of this
275 compact; (c) that any such lease be approved by the secretary
276 of agriculture of the United States or other federal agent or
277 agencies having authority to extend approval under the pro-
278 visions of said act and agreements and work plans made or
279 formulated thereunder; and the option of leasing in the board
280 of commissioners of the county of Ohio, West Virginia, the
281 county commission of Marshall county, West Virginia, the
282 board of commissioners of Greene county, Pennsylvania, and
283 the board of commissioners of Washington county, Pennsyl-
284 vania, shall include the right to sublease on the same terms and
285 conditions set out in this paragraph designated (d) to any in-
286 dividual, corporation, municipal subdivision or municipal
287 authority without the approval of the Wheeling Creek Water-
288 shed protection and flood prevention commission.

289 (e) To enter into contracts and other arrangements with
290 agencies of the United States, with persons, firms or corpora-
291 tions, including both public and private corporations, with the
292 government of the state and the government of the common-
293 wealth, or any department or agency of the United States, the
294 state or the commonwealth, with governmental divisions, with
295 soil conservation, drainage, flood control, soil erosion or
296 other improvement districts in the state or the commonwealth,
297 for cooperation or assistance in constructing, improving, oper-
298 ating or maintaining works of improvement within the district,
299 and public fish and wildlife or recreational development and
300 facilities in connection with works of improvement, or in pre-
301 venting floods, damage from sediment deposited by flood-
302 waters, or in clearance of stream beds, or in conserving, devel-
303 oping, utilizing and disposing of water in the district, or for
304 making surveys, investigations or reports thereof.

305 (f) To apply for, receive and use grants-in-aid, donations
306 and contributions from any source or sources, and to accept
307 and use, consistent with the purposes of this compact, be-
308 quests, devises, gifts and donations from any person, firm,

309 corporation, state, commonwealth or agency or political sub-
310 division thereof.

311 (g) To do any and all things necessary or convenient for
312 the purpose of promoting, developing and advancing the pur-
313 poses of said district herein set forth, and in promoting, devel-
314 oping and advancing the recreational development and facilit-
315 ies incidental to the works of improvement that shall be con-
316 structed to achieve said purposes.

317 (h) To delegate any authority given to it by law to any of
318 its agents or employees, and to expend its funds in the execu-
319 tion of the powers and authority herein given.

320 (i) The commission, subject to the conditions herein, may
321 sell, exchange or lease property, real or personal, or any
322 interest therein.

323 When the property, or any interest or right therein, is being
324 held for future use, it may be leased. When the real property,
325 or any part thereof, or any interest or right therein, is deemed
326 by the commission not necessary, or desirable for present or
327 presently foreseeable future use, it may be exchanged for
328 other property, or any interest or right therein, deemed by the
329 commission to be necessary or desirable for present or pre-
330 sently foreseeable future use, or may be sold. In addition the
331 commission may exchange real property, or any part thereof,
332 or any interest or right therein, even though it may be desir-
333 able or necessary for present or presently foreseeable future
334 use, if the exchange is made for other real property, or any
335 interest or right therein, in close proximity thereto which the
336 commission deems of equal or superior value for presently
337 foreseeable future use. In making exchanges the commission
338 may make allowances for differences in values of the proper-
339 ties being exchanged and may move or pay the cost of moving
340 buildings, structures, or appurtenances in connection with the
341 exchange.

342 Every such sale of real property, or any interest or right
343 therein or structure thereon, shall be at public auction in the
344 county in which the real property, or the greater part thereof
345 in value, is located, and the commission shall advertise, by
346 publication or otherwise, the time, place and terms of such

347 sale at least twenty days prior thereto. The property shall be
348 sold in the manner which will bring the highest and best price
349 therefor. The commission may reject any and all bids received
350 at the sale. The commission shall keep a record, open to
351 public inspection, indicating the manner in which such real
352 property or any interest or right therein or structure thereon,
353 was publicly advertised for sale, the highest bid received there-
354 for and from whom the person to whom sold, and payment
355 received therefor. Such record shall be kept for a period of
356 five years and may thereafter be destroyed.

357 The commission may insert in a deed or conveyance,
358 whether it involves an exchange, lease or sale, such conditions
359 as are in the public interest.

360 All moneys received from the exchange, sale or lease of
361 real or personal property, or any right or interest therein, shall
362 be paid into the commission's treasury and used for the
363 purpose for which the commission was created.

364 If the commission has heretofore sold and conveyed away
365 or leased any such property, such transaction and the docu-
366 ments of lease or transfer therefor are hereby approved and
367 confirmed and shall be as effective as if the authority to lease
368 or convey the said property had been given in this statute as
369 originally enacted.

370 **Article VII. Fiscal Affairs.**

371 The commission shall submit at the appropriate or desig-
372 nated time to the board of commissioners of the county of
373 Ohio, West Virginia, the county commission of Marshall
374 county, West Virginia, the board of commissioners of Greene
375 county, Pennsylvania, and the board of commissioners of
376 Washington county, Pennsylvania, an annual budget of its
377 estimated expenditures, which budget shall contain specific
378 recommendations of the amount or amounts to be appropriated
379 by each of the named governing bodies.

380 The commission shall not incur any obligation prior to the
381 commitment or allotment of funds by the named governing
382 bodies or by other sources adequate to meet the same.

383 The commission shall keep accurate accounts of all re-

384 cepts and disbursements, which accounts shall be open for
385 inspection at any reasonable time and shall be subject to audit
386 by representatives of contributing political subdivisions and of
387 the commonwealth of Pennsylvania and state of West Vir-
388 ginia. The receipts and disbursements of the commission shall
389 be subject to the audit and accounting procedures established
390 under its bylaws: *Provided*, That all receipts and disburse-
391 ments of the commission shall be audited yearly by a quali-
392 fied public accountant, and the report of the audit shall be
393 transmitted to each contributor of funds to the district or
394 commission.

395 **Article VIII. Exemption from Taxes and Fees.**

396 The district and the property belonging to the district shall
397 be exempt from the payment of all taxes or fees imposed by
398 the commonwealth of Pennsylvania or the state of West Vir-
399 ginia and by any agency and political subdivision thereof.

400 **Article IX. Effective Date of Compact.**

401 This compact shall become effective upon ratification by
402 the General Assembly of the commonwealth of Pennsylvania
403 and the Legislature of the state of West Virginia and upon
404 approval by the Congress of the United States.

**§29-1F-5. When commission authorized to dispose of real and per-
sonal property.**

1 Subdivision (i), article VI, of the Wheeling creek watershed
2 protection and flood prevention district compact shall be
3 effective from the date of its enactment insofar as it relates
4 to property situated in the state of West Virginia, but shall
5 not apply to property situated in the commonwealth of Penn-
6 sylvania until and unless enacted by said commonwealth.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chustar Jr
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Willan Jr.
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

W. P. Bullock Jr
President of the Senate

Donald L. Zopp
Speaker House of Delegates

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

John D. Ralston
Governor

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 20 9 54 AM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978

Time 4:20 p.m.

RECEIVED

78 MAR 30 P 9:27

OFFICE
SECY. OF STATE