WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 338

(By Mr. McGraw, Mr. President)

PASSED April 9, 1981
In Effect ninety days from...Passage
ENROLLED

Senate Bill No. 338
(By MR. McGRAW, MR. PRESIDENT)

[Passed April 9, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, six and fourteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to defining certain terms; establishing the powers, duties and responsibilities of the West Virginia water development authority; authorizing the authority to fund and issue bonds to fund projects to establish facilities for the treatment and distribution of potable, sanitary water for human consumption and use; providing for rentals and revenues from water development projects owned by the authority; providing for the contracts and leases of the authority; providing for cooperation with other governmental agencies; and placing a limit on borrowing by the authority.

Be it enacted by the Legislature of West Virginia:

That sections three, six and fourteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-four, all to read as follows:

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-3. Definitions.

1. As used in this article, unless the context clearly requires a different meaning:

(1) ‘Authority’ means the West Virginia water development authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.
(2) 'Beneficial use' means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) 'Board' means the West Virginia water development authority board created in section four of this article, which shall manage and control the West Virginia water development authority.

(4) 'Bond' or "water development revenue bond" means a revenue bond or note issued by the West Virginia water development authority to effect the intents and purposes of this article.

(5) 'Construction' includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) 'Cost' means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost to diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water or waste water facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of
such acquisition or construction, including the amount
authorized in the resolution of the authority providing for the
issuance of water development revenue bonds to be paid into
any special funds from the proceeds of such bonds; and the
financing of the placing of any such project in operation. Any
obligation or expenses incurred after the effective date of this
section by any governmental agency, with the approval of the
authority, for surveys, borings, preparation of plans and
specifications and other engineering services in connection
with the acquisition or construction of a project shall be
regarded as a part of the cost of such project and shall be
reimbursed out of the proceeds of loans or water
development revenue bonds as authorized by the provisions
of this article.

(7) 'Establishment' means an industrial establishment,
mill, factory, tannery, paper or pulp mill, mine, colliery,
breaker or mineral processing operation, quarry, refinery,
well, and each and every industry or plant or works or activity
in the operation or process of which industrial wastes, or
other wastes are produced.

(8) ‘Governmental agency’ means the state government or
any agency, department, division or unit thereof; counties;
municipalities; watershed improvement districts; soil
conservation districts; sanitary districts; public service
districts; drainage districts; regional governmental
authorities and any other governmental agency, entity,
political subdivision, public corporation or agency having the
authority to acquire, construct or operate public water or
waste water facilities; the United States government or any
agency, department, division or unit thereof; and any agency,
commission or authority established pursuant to an interstate
compact or agreement.

(9) ‘Industrial wastes’ means any liquid, gaseous, solid or
other waste substance, or any combination thereof, resulting
from or incidental to any process of industry, manufacturing,
trade or business, or from or incidental to the development,
processing or recovery of any natural resources; and the
admixture with such industrial wastes of sewage or other
wastes, as defined in this section,"shall also be considered
industrial wastes.

(10) ‘Other wastes’ means garbage, refuse, decayed wood,
sawdust, shavings, bark and other wood debris and residues,
sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) 'Owner' includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) 'Person' means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) 'Pollution' means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state...
below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) 'Project' or 'water development project' means any public water or waste water facility, the acquisition or construction of which is authorized in whole or in part by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized in whole or in part by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) 'Public roads' means all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) 'Public utility facilities' means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) 'Revenue' means any money or thing of value collected by, or paid to, the West Virginia water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia development authority to governmental agencies to finance in whole or in part the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) 'Sewage' means water-carried human or animal
wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present.

(19) 'Water resources,' 'water' or 'waters' means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) 'Waste water' means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and shall include without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) 'Waste water facilities' means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including without limitation the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

(22) 'Water facility' means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§20-5C-6. Powers, duties and responsibilities of authority generally.

The West Virginia water development authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

The authority shall have the power and capacity to:
(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections eight, nine and fourteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects, and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in section eight of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in
the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water or waste water facilities operated under permits issued pursuant to the provisions of article five-a, chapter twenty of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section fourteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.
(12) Employ managers, superintendents and other employees, who shall be covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water or waste water facilities and receive and accept aid or contributions from any source or money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water or waste water facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.
§20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

This section shall apply to any water development project or projects which are owned in whole or in part by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water or waste water facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the
construction of the project by one of the parties acting as
agent for all of the parties and the ownership and control of
the project by the authority to the extent necessary or
appropriate for purposes of the issuance of water
development revenue bonds by the authority. Any
governmental agency may provide such contribution as is
required under such agreements by the appropriation of
money or, if authorized by a favorable vote of the electors to
issue bonds or notes or levy taxes or assessments and issue
notes or bonds in anticipation of the collection thereof, by the
issuance of bonds or notes or by the levying of taxes or
assessments and the issuance of bonds or notes in
anticipation of the collection thereof, and by the payment of
such appropriated money or the proceeds of such bonds or
notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of
the electors in an election held for the purpose of issuing
bonds to provide funds to acquire, construct or equip, or
provide real estate and interests in real estate for a public
water or waste water facility, whether or not the
governmental agency at the time of such an election had the
authority to pay the proceeds from such bonds or notes
issued in anticipation thereof to the authority as provided in
this section, may issue such bonds or notes in anticipation of
the issuance thereof and pay the proceeds thereof to the
authority in accordance with an agreement between such
governmental agency and the authority: Provided, That the
legislative authority of the governmental agency finds and
determines that the water development project to be acquired
or constructed by the authority in cooperation with such
governmental agency will serve the same public purpose and
meet substantially the same public need as the facility
otherwise proposed to be acquired or constructed by the
governmental agency with the proceeds of such bonds or
notes.


The aggregate principal amount of bonds and notes issued
by the authority shall not exceed one hundred million dollars
outstanding at any one time: Provided, That in computing the
total amount of bonds and notes which may at any one time
be outstanding, the principal amount of any outstanding
bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any such refunding bonds or notes, shall be excluded.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylar
Chairman Senate Committee

Tony E. Whatlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Joseph C. Wells
Clerk of the Senate

Blanche H. Brown
Clerk of the House of Delegates

Nancy Dowless
President of the Senate

Revell Y. Lee, Jr.
Speaker House of Delegates

The within approved this the 20th day of April, 1981.

John N. Dalton
Governor