

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

No: 338

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
- 2 different meaning:
- 3 (1) 'Authority' means the West Virginia water
- 4 development authority created in section four of this article,
- 5 the duties, powers, responsibilities and functions of which
- 6 are specified in this article.

7 (2) 'Beneficial use' means a use of water by a person or by
8 the general public that is consistent with the public interest,
9 health and welfare in utilizing the water resources of this
10 state, including, but not limited to, domestic, agricultural,
11 irrigation, industrial, manufacturing, mining, power, public,
12 sanitary, fish and wildlife, state, county, municipal,
13 navigational, recreational, aesthetic and scenic use.

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

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

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

24 (6) 'Cost' means, as applied to water development
25 projects, the cost of their acquisition and construction; the
26 cost of acquisition of all land, rights-of-way, property rights,
27 easements, franchise rights and interests required by the
28 authority for such acquisition and construction; the cost of
29 demolishing or removing any buildings or structures on land
30 so acquired, including the cost of acquiring any lands to
31 which such buildings or structures may be moved; the cost of
32 acquiring or constructing and equipping a principal office
33 and suboffices of the authority; the cost to diverting
34 highways, interchange of highways; access roads to private
35 property, including the cost of land or easements therefor; the
36 cost of all machinery, furnishings, and equipment; all
37 financing charges, and interest prior to and during
38 construction and for no more than eighteen months after
39 completion of construction; the cost of all engineering
40 services and all expenses of research and development with
41 respect to public water or waste water facilities; the cost of all
42 legal services and expenses; the cost of all plans,
43 specifications, surveys and estimates of cost and revenues; all
44 working capital and other expenses necessary or incident to
45 determining the feasibility or practicability of acquiring or
46 constructing any such project; all administrative expenses
47 and such other expenses as may be necessary or incident to
48 the acquisition or construction of the project; the financing of

49 such acquisition or construction, including the amount
50 authorized in the resolution of the authority providing for the
51 issuance of water development revenue bonds to be paid into
52 any special funds from the proceeds of such bonds; and the
53 financing of the placing of any such project in operation. Any
54 obligation or expenses incurred after the effective date of this
55 section by any governmental agency, with the approval of the
56 authority, for surveys, borings, preparation of plans and
57 specifications and other engineering services in connection
58 with the acquisition or construction of a project shall be
59 regarded as a part of the cost of such project and shall be
60 reimbursed out of the proceeds of loans or water
61 development revenue bonds as authorized by the provisions
62 of this article.

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

69 (8) 'Governmental agency' means the state government or
70 any agency, department, division or unit thereof; counties;
71 municipalities; watershed improvement districts; soil
72 conservation districts; sanitary districts; public service
73 districts; drainage districts; regional governmental
74 authorities and any other governmental agency, entity,
75 political subdivision, public corporation or agency having the
76 authority to acquire, construct or operate public water or
77 waste water facilities; the United States government or any
78 agency, department, division or unit thereof; and any agency,
79 commission or authority established pursuant to an interstate
80 compact or agreement.

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

89 (10) 'Other wastes' means garbage, refuse, decayed wood,
90 sawdust, shavings, bark and other wood debris and residues,

91 sand, lime, cinders, ashes, offal, night soil, silt, oil, tar,
92 dyestuffs, acids, chemicals, and all other materials or
93 substances not sewage or industrial wastes which may cause
94 or might reasonably be expected to cause or to contribute to
95 the pollution of any of the waters of this state.

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

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

110 (13) 'Pollution' means (a) the discharge, release, escape,
111 deposit or disposition, directly or indirectly, of treated or
112 untreated sewage, industrial wastes, or other wastes, of
113 whatever kind or character, in or near any waters of the state,
114 in such condition, manner or quantity, as does, will, or is
115 likely to (1) contaminate or substantially contribute to the
116 contamination of any of such waters, or (2) alter or
117 substantially contribute to the alteration of the physical,
118 chemical or biological properties of any of such waters, if
119 such contamination or alteration, or the resulting
120 contamination or alteration where a person only contributes
121 thereto, is to such an extent as to make any of such waters (i)
122 directly or indirectly harmful, detrimental or injurious to the
123 public health, safety and welfare, or (ii) directly or indirectly
124 detrimental to existing animal, bird, fish, aquatic or plant life,
125 or (iii) unsuitable for present or future domestic, commercial,
126 industrial, agricultural, recreational, scenic or other
127 legitimate uses; and also means (b) the discharge, release,
128 escape, deposit, or disposition, directly or indirectly, of
129 treated or untreated sewage, industrial wastes or other
130 wastes, of whatever kind or character, in or near any waters of
131 the state in such condition, manner or quantity, as does, will,
132 or is likely to reduce the quality of the waters of the state

133 below the standards established therefor by the United States
134 or any department, agency, board or commission of this state
135 authorized to establish such standards.

136 (14) 'Project' or 'water development project' means any
137 public water or waste water facility, the acquisition or
138 construction of which is authorized in whole or in part by the
139 West Virginia water development authority or the acquisition
140 or construction of which is financed in whole or in part from
141 funds made available by grant or loan by, or through, the
142 authority as provided in this article, including facilities, the
143 acquisition or construction of which is authorized in whole or
144 in part by the West Virginia water development authority or
145 the acquisition or construction of which is financed in whole
146 or in part from funds made available by grant or loan by, or
147 through, the authority as provided in this article, including all
148 buildings and facilities which the authority deems necessary
149 for the operation of the project, together with all property,
150 rights, easements and interest which may be required for the
151 operation of the project, but excluding all buildings and
152 facilities used to produce electricity other than electricity for
153 consumption by the authority in the operation and
154 maintenance of the project.

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

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

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

173 (18) 'Sewage' means water-carried human or animal

174 wastes from residences, buildings, industrial establishments
175 or other places, together with such ground water infiltration
176 and surface waters as may be present.

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

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

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

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

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

- 1 The West Virginia water development authority is hereby
- 2 granted, has and may exercise all powers necessary or
- 3 appropriate to carry out and effectuate its corporate purpose.
- 4 The authority shall have the power and capacity to:

5 (1) Adopt, and from time to time, amend and repeal
6 bylaws necessary and proper for the regulation of its affairs
7 and the conduct of its business and rules and regulations to
8 implement and make effective its powers and duties, such
9 rules and regulations to be promulgated in accordance with
10 the provisions of chapter twenty-nine-a of this code.

11 (2) Adopt an official seal.

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

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

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

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

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

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

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

44 (10) Acquire in the name of the state, by purchase or
45 otherwise, on such terms and in such manner as it deems
46 proper, or by the exercise of the right of eminent domain in

47 the manner provided in chapter fifty-four of this code, such
48 public or private lands, or parts thereof or rights therein,
49 rights-of-way, property, rights, easements and interests it
50 deems necessary for carrying out the provisions of this
51 article, but excluding the acquisition by the exercise of the
52 right of eminent domain of any public water or waste water
53 facilities operated under permits issued pursuant to the
54 provisions of article five-a, chapter twenty of this code and
55 owned by any person or governmental agency, and
56 compensation shall be paid for public or private lands so
57 taken.

58 (11) Make and enter into all contracts and agreements and
59 execute all instruments necessary or incidental to the
60 performance of its duties and the execution of its powers.
61 When the cost under any such contract or agreement, other
62 than compensation for personal services, involves an
63 expenditure of more than two thousand dollars, the authority
64 shall make a written contract with the lowest responsible
65 bidder after public notice published as a Class II legal
66 advertisement in compliance with the provisions of article
67 three, chapter fifty-nine of this code, the publication area for
68 such publication to be the county wherein the work is to be
69 performed or which is affected by the contract, which notice
70 shall state the general character of the work and the general
71 character of the materials to be furnished, the place where
72 plans and specifications therefor may be examined and the
73 time and place of receiving bids, but a contract or lease for the
74 operation of a water development project constructed and
75 owned by the authority or an agreement for cooperation in
76 the acquisition or construction of a water development
77 project pursuant to section fourteen of this article is not
78 subject to the foregoing requirements and the authority may
79 enter into such contract or lease or such agreement pursuant
80 to negotiation and upon such terms and conditions and for
81 such period as it finds to be reasonable and proper under the
82 circumstances and in the best interests of proper operation or
83 of efficient acquisition or construction of such project. The
84 authority may reject any and all bids. A bond with good and
85 sufficient surety, approved by the authority, shall be required
86 of all contractors in an amount equal to at least fifty percent of
87 the contract price, conditioned upon the faithful performance
88 of the contract.

89 (12) Employ managers, superintendents and other
90 employees, who shall be covered by the state civil service
91 system, and retain or contract with consulting engineers,
92 financial consultants, accounting experts, architects,
93 attorneys and such other consultants and independent
94 contractors as are necessary in its judgment to carry out the
95 provisions of this article, and fix the compensation or fees
96 thereof. All expenses thereof shall be payable solely from the
97 proceeds of water development revenue bonds or notes
98 issued by the authority, from revenues and from funds
99 appropriated for such purpose by the Legislature.

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

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

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

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

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

129 (18) Do all acts necessary and proper to carry out the
130 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.

1 This section shall apply to any water development project
2 or projects which are owned in whole or in part by the
3 authority. The authority may charge, alter and collect rentals
4 or other charges for the use or services of any water
5 development project, and contract in the manner provided by
6 this section with one or more persons, one or more
7 governmental agencies, or any combination thereof, desiring
8 the use or services thereof, and fix the terms, conditions,
9 rentals or other charges for such use or services. Such rentals
10 or other charges shall not be subject to supervision or
11 regulation by any other authority, department, commission,
12 board, bureau or agency of the state, and such contract may
13 provide for acquisition by such person or governmental
14 agency of all or any part of such water development project
15 for such consideration payable over the period of the contract
16 or otherwise as the authority in its sole discretion determines
17 to be appropriate, but subject to the provisions of any
18 resolution authorizing the issuance of water development
19 revenue bonds or notes or water development revenue
20 refunding bonds of the authority or any trust agreement
21 securing the same. Any governmental agency which has
22 power to construct, operate and maintain public water or
23 waste water facilities may enter into a contract or lease with
24 the authority whereby the use or services of any water
25 development project of the authority will be made available
26 to such governmental agency and pay for such use or services
27 such rentals or other charges as may be agreed to by such
28 governmental agency and authority.

29 Any governmental agency or agencies or combination
30 thereof may cooperate with the authority in the acquisition or
31 construction of a water development project and shall enter
32 into such agreements with the authority as are necessary,
33 with a view to effective cooperative action and safeguarding
34 of the respective interests of the parties thereto, which
35 agreements shall provide for such contributions by the
36 parties thereto in such proportion as may be agreed upon and
37 such other terms as may be mutually satisfactory to the
38 parties, including without limitation the authorization of the

39 construction of the project by one of the parties acting as
40 agent for all of the parties and the ownership and control of
41 the project by the authority to the extent necessary or
42 appropriate for purposes of the issuance of water
43 development revenue bonds by the authority. Any
44 governmental agency may provide such contribution as is
45 required under such agreements by the appropriation of
46 money or, if authorized by a favorable vote of the electors to
47 issue bonds or notes or levy taxes or assessments and issue
48 notes or bonds in anticipation of the collection thereof, by the
49 issuance of bonds or notes or by the levying of taxes or
50 assessments and the issuance of bonds or notes in
51 anticipation of the collection thereof, and by the payment of
52 such appropriated money or the proceeds of such bonds or
53 notes to the authority pursuant to such agreements.

54 Any governmental agency, pursuant to a favorable vote of
55 the electors in an election held for the purpose of issuing
56 bonds to provide funds to acquire, construct or equip, or
57 provide real estate and interests in real estate for a public
58 water or waste water facility, whether or not the
59 governmental agency at the time of such an election had the
60 authority to pay the proceeds from such bonds or notes
61 issued in anticipation thereof to the authority as provided in
62 this section, may issue such bonds or notes in anticipation of
63 the issuance thereof and pay the proceeds thereof to the
64 authority in accordance with an agreement between such
65 governmental agency and the authority: *Provided*, That the
66 legislative authority of the governmental agency finds and
67 determines that the water development project to be acquired
68 or constructed by the authority in cooperation with such
69 governmental agency will serve the same public purpose and
70 meet substantially the same public need as the facility
71 otherwise proposed to be acquired or constructed by the
72 governmental agency with the proceeds of such bonds or
73 notes.

§20-5C-24. Authorized limit on borrowing.

1 The aggregate principal amount of bonds and notes issued
2 by the authority shall not exceed one hundred million dollars
3 outstanding at any one time: *Provided*, That in computing the
4 total amount of bonds and notes which may at any one time
5 be outstanding, the principal amount of any outstanding

6 bonds or notes refunded or to be refunded either by
7 application of the proceeds of the sale of any refunding bonds
8 or notes of the authority or by exchange for any such
9 refunding bonds or notes, shall be excluded.

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

R. P. Baylor
Chairman Senate Committee

Jonny E. Whetlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wilks
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Walter P. Brown
President of the Senate

Walter G. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *29*
day of *April*, 1981.

John N. Dwyer
Governor

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OFFICE OF THE GOVERNOR

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SECY. OF STATE