

710-5

WEST VIRGINIA LEGISLATURE



FIRST EXTRAORDINARY SESSION, 1986



ENROLLED

SENATE BILL NO. 5

(By Senator *Tomborich, Mr. President, et al.*)



PASSED *May 11* 1986  
In Effect *from* Passage



**ENROLLED**  
**Senate Bill No. 5**

(BY SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN)

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[Passed May 18, 1986. in effect from passage.]

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AN ACT to amend and reenact sections one, four, eight, seventeen and eighteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal waterworks systems and electric power systems; authorizing municipalities to acquire, construct, establish, extend, equip, repair, maintain and operate or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks or electric power system; prohibiting municipalities from serving or supplying water or electricity within corporate limits of another municipality without consent; defining waterworks system and electric power system; relating to estimation of cost by municipality; relating to discretionary issuance of revenue bonds to finance; relating to content of ordinance respecting bond issuance; relating to issuance of bonds and the terms and conditions thereof; relating to the tax exempt status of bonds; relating to lien provisions; relating to the payment of bonds; relating to the sinking fund; relating to the depreciation fund; relating to the mortgage lien; providing for security interest in property of system or other related municipal property; relating to remedies of bondholders; relating to priority of mortgage or deed of trust upon recordation; relating to power of

municipality to accept or procure grants, loans or advances or enter into financing agreements; relating to repayment of loans or advances or other agreements and any interest; relating to security for loans, advances and agreements; relating to power to enter into necessary contracts and agreements; relating to loans, advances and agreements not a general obligation of municipality; relating to establishment of full authority; providing relation to other statutes; and providing authority is cumulative.

*Be it enacted by the Legislature of West Virginia:*

That sections one, four, eight, seventeen and eighteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.**

**PART 1. 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; definitions.**

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  
4 others for operation, a waterworks system, or construct,  
5 maintain and operate additions, betterments and  
6 improvements to an existing waterworks system or an  
7 existing electric power system, notwithstanding any  
8 provision or limitation to the contrary in any other law or  
9 charter: *Provided*, That such municipality shall not serve or  
10 supply water facilities or electric power facilities or  
11 services within the corporate limits of any other  
12 municipality without the consent of the governing body of  
13 such other municipality.

14 When used in this article, the term "waterworks system"  
15 shall be construed to mean and include a waterworks  
16 system in its entirety or any integral part thereof, including  
17 mains, hydrants, meters, valves, standpipes, storage tanks,  
18 pump tanks, pumping stations, intakes, wells, impounding

19 reservoirs, pumps, machinery, purification plants,  
20 softening apparatus and all other facilities necessary,  
21 appropriate, useful, convenient or incidental in connection  
22 with or to a water supply system.

23 When used in this article, the term "electric power  
24 system" means a system or facility which produces electric  
25 power in its entirety or provides for the distribution of  
26 electric power for local consumption and use or for  
27 distribution and resale or any combination thereof, or any  
28 integral part thereof, including, but not limited to, power  
29 lines and wires, power poles, guy wires, insulators,  
30 transformers, generators, cables, power line towers, voltage  
31 regulators, meters, power substations, machinery and all  
32 other facilities necessary, appropriate, useful or convenient  
33 or incidental in connection with or to an electric power  
34 supply system.

#### 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  
2 this article, determine to acquire, by purchase or otherwise,  
3 construct, establish, extend or equip a waterworks system,  
4 or to construct any additions, betterments or improvements  
5 to any waterworks or electric power system, it shall cause  
6 an estimate to be made of the cost thereof, and may, by  
7 ordinance, provide for the issuance of revenue bonds under  
8 the provisions of this article, which ordinance shall set forth  
9 a brief description of the contemplated undertaking, the  
10 estimated cost thereof, the amount, rate or rates of interest,  
11 the time and place of payment, and other details in  
12 connection with the issuance of the bonds. Such bonds shall  
13 be in such form and shall be negotiated and sold in such  
14 manner and upon such terms as the governing body of such  
15 municipality may by ordinance specify. All such bonds and  
16 the interest thereon, and all properties and revenues and  
17 income derived from such waterworks or electric power  
18 system, shall be exempt from all taxation by this state, or  
19 any county, municipality, political subdivision or agency  
20 thereof. Such bonds shall bear interest at a rate per annum  
21 set by the municipality, payable at such times, and shall be  
22 payable as to principal at such times, not exceeding fifty

23 years from their date, and at such place or places, within or  
24 without the state, as shall be prescribed in the ordinance  
25 providing for their issuance. Unless the governing body of  
26 the municipality shall otherwise determine, such ordinance  
27 shall also declare that a statutory mortgage lien shall exist  
28 upon the property so to be acquired, constructed,  
29 established, extended or equipped, fix minimum rates or  
30 charges for water or electricity to be collected prior to the  
31 payment of all of said bonds and shall pledge the revenues  
32 derived from the waterworks or electric power system for  
33 the purpose of paying such bonds and interest thereon,  
34 which pledge shall definitely fix and determine the amount  
35 of revenues which shall be necessary to be set apart and  
36 applied to the payment of the principal of and interest upon  
37 the bonds and the proportion of the balance of such  
38 revenues, which are to be set aside as a proper and adequate  
39 depreciation account, and the remainder shall be set aside  
40 for the reasonable and proper maintenance and operation  
41 thereof. The rates or charges to be charged for the services  
42 from such waterworks or electric power system shall be  
43 sufficient at all times to provide for the payment of interest  
44 upon all bonds and to create a sinking fund to pay the  
45 principal thereof as and when the same become due, and  
46 reasonable reserves therefor, and to provide for the repair,  
47 maintenance and operation of the waterworks or electric  
48 power system, and to provide an adequate depreciation  
49 fund, and to make any other payments which shall be  
50 required or provided for in the ordinance authorizing the  
51 issuance of said bonds.

**§8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.**

1 Unless the governing body shall otherwise determine in  
2 the ordinance authorizing the issuance of bonds under this  
3 article, there shall be and there is hereby created and  
4 granted a statutory mortgage lien upon the waterworks or  
5 electric power system so acquired, constructed, established,  
6 equipped, extended or improved from the proceeds of bonds  
7 hereby authorized to be issued, which shall exist in favor of  
8 the holder of said bonds and each of them, and to and in  
9 favor of the holder of the coupons attached to said bonds,  
10 and such waterworks or electric power system shall remain  
11 subject to such statutory mortgage lien until payment in full

12 of the principal of and interest upon said bonds.  
13 Any municipality in acquiring an existing waterworks  
14 system or in improving an existing waterworks or electric  
15 power system may provide that financing therefor may be  
16 made by issuing revenue bonds and delivering the same at  
17 such prices as may be agreed upon within the limitations  
18 prescribed in section six hereof. Any revenue bonds so  
19 issued to provide financing for such an existing waterworks  
20 or for any improvements to an existing waterworks or  
21 electric power system may be secured by a mortgage or deed  
22 of trust upon and security interest in the property so  
23 acquired or improved or any other interest of the  
24 municipality in property related thereto as determined by  
25 the municipality in the ordinance authorizing the issuance  
26 of such revenue bonds; and in such event the holders thereof  
27 shall have, in addition to any other remedies and rights  
28 prescribed by this article, such remedies and rights as may  
29 now or hereafter exist in law in the case of mortgages or  
30 deeds of trust on real property and security interests in  
31 personal property. Such mortgage or deed of trust, upon its  
32 recordation, shall have priority over all other liens or  
33 encumbrances, however created or arising, on the property  
34 covered by such mortgage or deed of trust, to the same  
35 extent and for the same amount as if the municipality were  
36 obligated to pay the full amount secured by such mortgage  
37 or deed of trust immediately upon the recordation of such  
38 mortgage or deed of trust and remained so obligated until  
39 the obligations secured are fully discharged.

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

**§8-19-17. Grants, loans, advances and agreements.**

1 As an alternative to, or in conjunction with, the issuance  
2 of revenue bonds authorized by this article, any  
3 municipality is hereby empowered and authorized to accept  
4 loans or grants and procure loans or temporary advances  
5 evidenced by notes or other negotiable instruments issued  
6 in the manner, and subject to the privileges and limitations,  
7 set forth with respect to bonds authorized to be issued  
8 under the provisions of this article, or otherwise enter into  
9 agreements, including, but not limited to, agreements of  
10 indemnity, assurance or guarantee with respect to, and for

11 the purpose of financing part or all of, the cost of  
12 acquisition, construction, establishment, extension or  
13 equipment of waterworks systems and the construction of  
14 additions, betterments and improvements to existing  
15 waterworks systems or to existing electric power systems,  
16 and for the other purposes herein authorized, from or with  
17 any authorized agency of the state or from the United States  
18 of America or any federal or public agency or department of  
19 the United States or any private agency, corporation or  
20 individual, which loans or temporary advances, including  
21 the interest thereon, or the municipality's financial  
22 obligations contained in such other agreements, which need  
23 not bear interest, may be repaid out of the proceeds of bonds  
24 authorized to be issued under the provisions of this article,  
25 the revenues of or proceeds from the said waterworks  
26 system or electric power system or grants to the  
27 municipality from any agency of the state or from the  
28 United States of America or any federal or public agency or  
29 department of the United States or any private agency,  
30 corporation or individual or from any combination of such  
31 sources of payment, and may be secured in the manner  
32 provided in sections eight, nine and sixteen of this article to  
33 secure bonds issued under the provisions of this article, but  
34 shall not otherwise be subject to the requirements of  
35 sections eleven and twelve of this article, and to enter into  
36 the necessary contracts and agreements to carry out the  
37 purposes hereof with any agency of the state, the United  
38 States of America or any federal or public agency or  
39 department of the United States, or with any private  
40 agency, corporation or individual.

41 In no event shall any such loan or temporary advance or  
42 agreement be a general obligation of the municipality and  
43 such loans or temporary advances or agreements, including  
44 the interest thereon, shall be paid solely from the sources  
45 specified in this section.

**§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  
3 acquisition, construction, establishment, extension,  
4 equipment, additions, betterment, improvement, repair,

5 maintenance and operation of or to a waterworks system or  
6 for the construction of any additions, betterments,  
7 improvements, repairs, maintenance or operation of or to  
8 an existing electric power system as herein provided and for  
9 the issuance and sale of the bonds or the alternative  
10 methods of financing by this article authorized, and shall be  
11 construed as an additional and alternative method therefor  
12 and for the financing thereof, and no petition, referendum  
13 or election or other or further proceeding with respect to  
14 any such undertaking or to the issuance or sale of bonds or  
15 the alternative methods of financing under the provisions of  
16 this article and no publication of any resolution, ordinance,  
17 notice or proceeding relating to any such undertaking or to  
18 the issuance or sale of such bonds or the alternative  
19 methods of financing shall be required, except as  
20 prescribed by this article, any provisions of other statutes of  
21 the state to the contrary notwithstanding: *Provided*, That  
22 all functions, powers and duties of the state department of  
23 health shall remain unaffected by this article.

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

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

*Brian O. Williams*

Chairman Senate Committee

*Floyd Fuller*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*John C. Smith*

Clerk of the Senate

*Donald L. Kopp*  
Clerk of the House of Delegates

*Sam Tomlinson*  
President of the Senate

*Joseph P. Allright*  
Speaker House of Delegates

The within *approved* this the *25th*  
day of *May*, 1986.  
*Arthur A. Shouse, Jr.*  
Governor



PRESENTED TO THE  
GOVERNOR  
Date 5/22/86  
Time 3:19 p.m.

OFFICIALS

1933 MAY 29 PM 1:30

25 66th Street I. S. S. B.