WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1986

ENROLLED
SENATE BILL NO. 5

(By Senator [Signature]

PASSED May 16, 1986
In Effect from Passage
ENROLLED

Senate Bill No. 5

(By Senators Tonkovich, Mr. President (By Request) and Harman)

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

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.

Subject to and in accordance with the provisions of this article, any municipality may 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 system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term “waterworks system” shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding
reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

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

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at a rate per annum set by the municipality, payable at such times, and shall be payable as to principal at such times, not exceeding fifty
years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Unless the governing body of the municipality shall otherwise determine, such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds.

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

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

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six hereof. Any revenue bonds so issued to provide financing for such an existing waterworks or for any improvements to an existing waterworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality in property related thereto as determined by the municipality in the ordinance authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality were obligated to pay the full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged.

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


As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreements, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for
the purpose of financing part or all of, the cost of
acquisition, construction, establishment, extension or
equipment of waterworks systems and the construction of
additions, betterments and improvements to existing
waterworks systems or to existing electric power systems,
and for the other purposes herein authorized, from or with
any authorized agency of the state or from the United States
of America or any federal or public agency or department of
the United States or any private agency, corporation or
individual, which loans or temporary advances, including
the interest thereon, or the municipality's financial
obligations contained in such other agreements, which need
not bear interest, may be repaid out of the proceeds of bonds
authorized to be issued under the provisions of this article,
the revenues of or proceeds from the said waterworks
system or electric power system or grants to the
municipality from any agency of the state or from the
United States of America or any federal or public agency or
department of the United States or any private agency,
corporation or individual or from any combination of such
sources of payment, and may be secured in the manner
provided in sections eight, nine and sixteen of this article to
secure bonds issued under the provisions of this article, but
shall not otherwise be subject to the requirements of
sections eleven and twelve of this article, and to enter into
the necessary contracts and agreements to carry out the
purposes hereof with any agency of the state, the United
States of America or any federal or public agency or
department of the United States, or with any private
agency, corporation or individual.

In no event shall any such loan or temporary advance or
agreement be a general obligation of the municipality and
such loans or temporary advances or agreements, including
the interest thereon, shall be paid solely from the sources
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.

This article shall, without reference to any other statute
or charter provision, be deemed full authority for the
acquisition, construction, establishment, extension,
equipment, additions, betterment, improvement, repair,
maintenance and operation of or to a waterworks system or
for the construction of any additions, betterments,
 improvements, repairs, maintenance or operation of or to
an existing electric power system as herein provided and for
the issuance and sale of the bonds or the alternative
methods of financing by this article authorized, and shall be
construed as an additional and alternative method therefor
and for the financing thereof, and no petition, referendum
or election or other or further proceeding with respect to
any such undertaking or to the issuance or sale of bonds or
the alternative methods of financing under the provisions of
this article and no publication of any resolution, ordinance,
otice or proceeding relating to any such undertaking or to
the issuance or sale of such bonds or the alternative
methods of financing shall be required, except as
prescribed by this article, any provisions of other statutes of
the state to the contrary notwithstanding: Provided, That
all functions, powers and duties of the state department of
health shall remain unaffected by this article.
This article shall be construed as cumulative authority
for any undertaking herein authorized, and shall not be
construed to repeal any existing laws with respect thereto.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clare M. Wells

Clerk of the House of Delegates

President of the Senate

Dan T. Johnson

Speaker House of Delegates

The within is approved this the 25th day of May, 1986.

Governor

 legislators
PRESENTED TO THE GOVERNOR
Date 5/23/86
Time 3:19 p.m.