

710-5

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1986

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ENROLLED

SENATE BILL NO. 5

(By Senator Tondorick, Mr. President, et al.)

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PASSED May 11 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.

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 Tuller
Chairman House Committee

Originated in the Senate.

In effect from passage.

John C. Hulse
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Sam Tonkervil
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.

