WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2696

(By Mr. Speaker, Mr. Charles, Del. R. Bush)

Passed April 8, 1989

In Effect July 1, 1989
ENROLLED

H. B. 2696

(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)

[By Request]

[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the creation of the West Virginia water pollution control revolving fund; definitions; designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency; disbursement of fund moneys; administration of the fund; annual audit; collection of money due to the fund; state construction grants program established; special fund created; promulgation of legislative rules; environmental review of funded projects; conflicting provisions.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-i, to read as follows:

ARTICLE 5I. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§20-5I-1. Definitions.

1. Unless the context in which used clearly requires a different meaning, as used in this article:


(a) "Authority" means the West Virginia water development authority created in section four, article five-c, chapter twenty of this code.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the department of natural resources determines to be reasonable and necessary.

c) "Fund" means the state water pollution control revolving fund created by this article.

d) "Instrumentality" means the agency of state government empowered with the primary responsibility associated with water pollution control activities regulating publicly-owned wastewater treatment
(e) "Local government" means any county, city, town, municipal corporation, authority, district, public service district commission or political subdivision in West Virginia.

(f) "Project" means any wastewater treatment facility located or to be located in this state by a local government and includes:

1. Sewage and wastewater collection, treatment and disposal facilities;
2. Drainage facilities and projects;
3. Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1) and (2) of this subsection;
4. Interests in land related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection; and
5. Other projects allowable under federal law.

§20-51-2. Designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

The department of natural resources shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under Title 6 of the federal clean water act, as amended, and to otherwise manage the fund created pursuant to this article in accordance with the requirements of said Title 6.

§20-51-3. West Virginia water pollution control revolving fund created; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the department of natural resources, the West Virginia water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund
shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the department of natural resources in administering the provisions of this article.

(b) The director of the department of natural resources, in consultation with the authority, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of loans from the fund to particular local governments and establish the interest rates and repayment terms of such loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance
with this code. Disbursements from the fund shall be
authorized for payment by the director of the authority
or his designee. Any depository or officer of such
depository to which moneys of the fund are paid shall
act as trustee of such moneys and shall hold and apply
them solely for the purposes for which said moneys are
provided under this article. Moneys in the fund shall not
be commingled with other money of the authority. If not
needed for immediate use or disbursement, moneys in
the fund may be invested or reinvested by the authority
in obligations or securities which are considered lawful
investments for public funds under this code.

§20-51-4. Annual audit.

The authority shall cause an audit of its books and
accounts to be made at least once each fiscal year by
certified public accountants, and the cost thereof may
be defrayed as a part of the cost of construction of a
project or as an administrative expense under the
provisions of subsection (a), section three of this article.

§20-51-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due
and owing to the fund under a revolving fund loan
agreement between the state and a local government,
and notwithstanding any provisions of this code to the
contrary, the authority shall have, and may, at its
option, exercise the following rights and remedies in the
event of any default by a local government under such
a loan agreement:

(a) The authority may directly impose, in its own
name and for its own benefit, service charges upon all
users of a project funded by a loan distributed to a local
government pursuant to this article, and may proceed
directly to enforce and collect such service charges,
together with all necessary costs of such enforcement
and collection.

(b) The authority may exercise, in its own name or in
the name of and as the agent for a particular local
government, all of the rights, powers and remedies of
the local government with respect to the project or
which may be conferred upon the local government by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local government pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local government of all of the terms and conditions of the loan agreement between the state and that local government including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local government of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section shall be in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§20-5I-6. State construction grants program established; special fund created.

(a) The director of the department of natural resources shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) A special fund designated “The West Virginia Construction Grants Fund” shall be established in the state treasury on the first day of July, one thousand eight hundred eighty-nine. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit
provide for the construction of water supply and treatment facilities, to the extent approved by the department of environmental management and the department of health and human resources, to the special fund from any source, public or private:

Provided. That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the department of natural resources, in accordance with chapter twenty-nine-a of this code, and which rules shall provide that no such assessments may be collected before the first day of July, one thousand nine hundred ninety. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section:

Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the department of natural resources in administering the provisions of this section.


(a) The department of natural resources shall conduct an environmental review on each project funded under this article. The director of the department of natural resources shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the environmental review of funded projects:

Provided. That said rules shall be consistent with the rules and regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the department of natural resources is authorized to direct a local government, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of such projects under the federal clean water act, as amended.


The provisions of this article shall be liberally construed to the end that its beneficial purposes may be
effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article shall be controlling.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Haren  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Joshua A. Matha  
Clerk of the Senate

Donald J. Kape
Clerk of the House of Delegates

Sam W. Brownlee  
President of the Senate

Robt. C. Cole  
Speaker of the House of Delegates

The within is approved this the 35th day of April, 1989. 

Martin N. O'Malley  
Governor