

NO. 2696

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



# ENROLLED

HOUSE BILL No. 2696

(By Mr. Speaker, M. Charles, + Del. R. Bunk)  
[By Request]



Passed April 8, 1989

In Effect July 1, 1989 ~~Repeal~~

ENROLLED  
**H. B. 2696**

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)  
[By Request]

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

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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
- 2 different meaning, as used in this article:

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

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

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

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

16 (3) Acquisition of land and any buildings and improve-  
17 ments thereon, including the discharge of any obliga-  
18 tions of the sellers of such land, buildings or  
19 improvements;

20 (4) Site preparation and development, including  
21 demolition or removal of existing structures, construc-  
22 tion and reconstruction, labor, materials, machinery and  
23 equipment;

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

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

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

37 (d) "Instrumentality" means the agency of state  
38 government empowered with the primary responsibility  
39 associated with water pollution control activities  
40 regulating publicly-owned wastewater treatment

41 facilities.

42 (e) "Local government" means any county, city, town,  
43 municipal corporation, authority, district, public service  
44 district commission or political subdivision in West  
45 Virginia.

46 (f) "Project" means any wastewater treatment facility  
47 located or to be located in this state by a local govern-  
48 ment and includes:

49 (1) Sewage and wastewater collection, treatment and  
50 disposal facilities;

51 (2) Drainage facilities and projects;

52 (3) Administrative, maintenance, storage and labora-  
53 tory facilities related to the facilities delineated in  
54 subdivisions (1) and (2) of this subsection;

55 (4) Interests in land related to the facilities delineated  
56 in subdivisions (1), (2) and (3) of this subsection; and

57 (5) Other projects allowable under federal law.

**§20-5I-2. Designation of department of natural resources  
as state instrumentality for purposes of  
capitalization agreements with the United  
States environmental protection agency.**

1 The department of natural resources shall act as the  
2 instrumentality that is empowered to enter into capital-  
3 ization agreements with the United States environmen-  
4 tal protection agency, to accept capitalization grant  
5 awards made under Title 6 of the federal clean water  
6 act, as amended, and to otherwise manage the fund  
7 created pursuant to this article in accordance with the  
8 requirements of said Title 6.

**§20-5I-3. West Virginia water pollution control revolving  
fund created; disbursement of fund moneys;  
administration of the fund.**

1 (a) Under the direction of the department of natural  
2 resources, the West Virginia water development author-  
3 ity shall establish, administer and manage a permanent  
4 and perpetual fund, to be known as the "West Virginia  
5 Water Pollution Control Revolving Fund." The fund

6 shall be comprised of moneys appropriated to said fund  
7 by the Legislature, moneys allocated to the state by the  
8 federal government expressly for the purposes of  
9 establishing and maintaining a state water pollution  
10 control revolving fund, all receipts from loans made  
11 from the fund to local governments, all income from the  
12 investment of moneys held in the fund, and all other  
13 sums designated for deposits to the fund from any  
14 source, public or private. Moneys in the fund shall be  
15 used solely to make loans to local governments to finance  
16 or refinance the costs of a project: *Provided*, That  
17 moneys in the fund shall be utilized to defray the costs  
18 incurred by the authority and the department of natural  
19 resources in administering the provisions of this article.

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

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

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

30 (c) In order to carry out the administration and  
31 management of the fund, the authority is authorized to  
32 employ officers, employees, agents, advisers and consul-  
33 tants, including attorneys, financial advisers, engineers,  
34 other technical advisers and public accountants and,  
35 notwithstanding any provisions of this code to the  
36 contrary, to determine their duties and compensation  
37 without the approval of any other agency or  
38 instrumentality.

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

43 (e) All moneys belonging to the fund shall be kept in  
44 appropriate depositories and secured in conformance

45 with this code. Disbursements from the fund shall be  
46 authorized for payment by the director of the authority  
47 or his designee. Any depository or officer of such  
48 depository to which moneys of the fund are paid shall  
49 act as trustee of such moneys and shall hold and apply  
50 them solely for the purposes for which said moneys are  
51 provided under this article. Moneys in the fund shall not  
52 be commingled with other money of the authority. If not  
53 needed for immediate use or disbursement, moneys in  
54 the fund may be invested or reinvested by the authority  
55 in obligations or securities which are considered lawful  
56 investments for public funds under this code.

**§20-5I-4. Annual audit.**

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

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

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

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

16 (b) The authority may exercise, in its own name or in  
17 the name of and as the agent for a particular local  
18 government, all of the rights, powers and remedies of  
19 the local government with respect to the project or

20 which may be conferred upon the local government by  
21 statute, rule, regulation or judicial decision, including  
22 all rights and remedies with respect to users of the  
23 project funded by the loan distributed to that local  
24 government pursuant to this article.

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

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

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

35 (3) The enforcement by the local government of all  
36 rights and remedies conferred by statute, rule, regula-  
37 tion or judicial decision.

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

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

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

8 (b) A special fund designated "The West Virginia  
9 Construction Grants Fund" shall be established in the  
10 state treasury on the first day of July, one thousand nine  
11 hundred eighty-nine. The special fund shall be com-  
12 prised of moneys appropriated to said fund by the  
13 Legislature, assessments on existing wastewater treat-  
14 ment facilities, and all other sums designated for deposit

15 to the special fund from any source, public or private:  
16 *Provided*, That such assessments shall be made and  
17 collected in accordance with fee schedules to be  
18 established by legislative rules promulgated by the  
19 director of the department of natural resources, in  
20 accordance with chapter twenty-nine-a of this code, and  
21 which rules shall provide that no such assessments may  
22 be collected before the first day of July, one thousand  
23 nine hundred ninety. Moneys in the special fund shall  
24 be used solely for the state construction grants program  
25 established under subsection (a) of this section:  
26 *Provided, however*, That moneys in the special fund may  
27 be utilized to defray the costs incurred by the depart-  
28 ment of natural resources in administering the provi-  
29 sions of this section.

**§20-5I-7. Environmental review of funded projects.**

1 (a) The department of natural resources shall conduct  
2 an environmental review on each project funded under  
3 this article. The director of the department of natural  
4 resources shall promulgate rules in accordance with the  
5 provisions of chapter twenty-nine-a of this code to  
6 implement the environmental review of funded projects:  
7 *Provided*, That said rules shall be consistent with the  
8 rules and regulations promulgated by the United States  
9 environmental protection agency pursuant to the federal  
10 clean water act, as amended.

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

**§20-5I-8. Conflicting provisions.**

1 The provisions of this article shall be liberally  
2 construed to the end that its beneficial purposes may be



3 effectuated. Insofar as the provisions of this article are  
4 inconsistent with the provisions of any other general,  
5 special or local law, the provisions of this article shall  
6 be controlling.

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

*Fredrick L. Parker*  
-----  
Chairman Senate Committee

*Bernard V. Kelly*  
-----  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

*Isaac C. Wicks*  
-----  
Clerk of the Senate

*Donald L. Hoyle*  
-----  
Clerk of the House of Delegates

*Sam R. Tucker*  
-----  
President of the Senate

*Robert H. Poole*  
-----  
Speaker of the House of Delegates

The within *is approved* this the *26<sup>th</sup>*  
day of *April*, 1989.

*Yaston Caperton*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/89

Time 2:56 *JC*