

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Com. Sub. for
HOUSE BILL No. 4084

(By ~~THE~~ Delegates Farley & R. Burk)



Passed March 10, 1990

In Effect from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4084
(By DELEGATES FARLEY AND R. BURK)

[Passed March 10, 1990; in effect from passage.]

AN ACT to amend article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the acquisition, construction and operation of municipal and county waterworks and electric power systems; defining terms; extension of corporate and county limits; notice provisions; right of eminent domain when acquiring, constructing, establishing or extending waterworks or electric power systems; providing for revenue bond financing for such projects; issuance of revenue bonds; providing for exemption from taxation of all such bonds and interest earned thereon; providing for exemption from taxation of municipally-owned waterworks systems and electric power systems; publication of abstract of ordinance or order; terms of bonds; bonds do not constitute indebtedness of municipality or county commission; lien of bondholders; covenants with bondholders; operating contract; rates or charges for water or electric power and disposition of surplus; service charges; authorizing municipality or county commission to determine amount of bonds; liens for delinquent service rates and charges; discontinuance of water or electric power service for nonpayment; bonds for additions, betterments and improvements; system of accounts; rights of bond-

holders; permitting acceptance of grants, loans, advances and agreements; alternative method for constructing or improving and for financing waterworks or electric power systems; alternatives procedure for acquisition, construction or improvement of waterworks or electric power system; and liberal construction.

Be it enacted by the Legislature of West Virginia:

That 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 AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.

1 (a) Subject to and in accordance with the provisions
2 of this article, any municipality or county commission
3 may acquire, construct, establish, extend, equip, repair,
4 maintain and operate or lease to others for operation, a
5 waterworks system or an electric power system or
6 construct, maintain and operate additions, betterments
7 and improvements to an existing waterworks system or
8 an existing electric power system, notwithstanding any
9 provision or limitation to the contrary in any other law
10 or charter: *Provided*, That such municipality or county
11 commission shall not serve or supply water facilities or
12 electric power facilities or services within the corporate
13 limits of any other municipality or county commission
14 without the consent of the governing body of such other
15 municipality or county commission.

16 (b) Any municipality or county commission which
17 intends to file an application with the federal energy
18 regulatory commission for a license to acquire, con-
19 struct, establish, extend, maintain and operate, or lease
20 to other for operation, an electric power system, shall

21 give written notice by certified mail, return receipt
22 requested and shall give public notice by Class I legal
23 advertisement in compliance with the provisions of
24 article three, chapter fifty-nine of this code and the
25 publication area shall be the municipality or county in
26 which the system is to be located to the governing body
27 of the municipality or the county commission in which
28 such system is or shall be located or, if such system is
29 or shall be located outside of a municipality or county,
30 to the county commission of the county in which such
31 system is or shall be located, at least sixty days prior
32 to the filing of such application: *Provided*, That the
33 provisions of this subsection shall not apply to any
34 municipality or county commission which, on the date
35 of the passage of this act, has obtained a license from
36 the federal energy regulatory commission to acquire,
37 construct, establish, extend, maintain and operate, or
38 lease to others for operation, an electric power system.
39 If the municipality or county commission receiving such
40 notice does not respond to the notice within sixty days
41 of receipt of such notice, then such other municipality
42 or the county commission shall be deemed to have
43 consented to the application for the proposed electric
44 power system. If such other municipality or the county
45 commission notifies the municipality or county commis-
46 sion that it objects to the proposed electric power
47 system, such other municipality or the county commis-
48 sion shall hold a public hearing on the proposed system
49 within sixty days of receipt of such notice from the
50 municipality or county commission.

51 (c) As used in this article:

52 (1) "Waterworks system" means a waterworks system
53 in its entirety or any integral part thereof, including
54 mains, hydrants, meters, valves, standpipes, storage
55 tanks, pump tanks, pumping stations, intakes, wells,
56 impounding reservoirs, pumps, machinery, purification
57 plants, softening apparatus and all other facilities
58 necessary, appropriate, useful, convenient or incidental
59 in connection with or to a water supply system.

60 (2) "Electric power system" means a system or facility
61 which produces electric power in its entirety or provides

62 for the distribution of electric power for local consump-
63 tion and use or for distribution and resale or any
64 combination thereof, or any integral part thereof,
65 including, but not limited to, power lines and wires,
66 power poles, guy wires, insulators, transformers,
67 generators, cables, power line towers, voltage regula-
68 tors, meters, power substations, machinery and all other
69 facilities necessary, appropriate, useful or convenient or
70 incidental in connection with or to an electric power
71 supply system.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establish-
2 ing or extending any waterworks system or electric
3 power system, or for the purpose of constructing any
4 additions, betterments or improvements to any water-
5 works or electric power system, or for the purpose of
6 acquiring any property necessary, appropriate, useful,
7 convenient or incidental for or to any waterworks or
8 electric power system, under the provisions of this
9 article, the municipality or county commission shall
10 have the right of eminent domain as provided in chapter
11 fifty-four of this code: *Provided*, That such right of
12 eminent domain for the acquisition of a privately owned
13 waterworks system, or electric power system, or any
14 part thereof, shall not be exercised without prior
15 approval of the public service commission, and in no
16 event shall any municipality or county commission
17 construct, establish or extend beyond the corporate
18 limits of said municipality or county line a municipal
19 or county waterworks or electric power system under
20 the provisions of this article to supply service in
21 competition with an existing privately or municipally or
22 county owned waterworks or electric power system in
23 such municipality or county or within the proposed
24 extension of such system, unless a certificate of public
25 convenience and necessity therefor shall have been
26 issued by the public service commission. *Provided*,
27 *however*, That a municipality or county commission may
28 not exercise such right of eminent domain over a
29 privately owned electric power system or any part

30 thereof for the purpose of acquiring, constructing,
31 establishing or extending an electric power system.

32 Subject to the provisions of this article and notwith-
33 standing the provisions of section nineteen, article
34 twelve of this chapter to the contrary, a municipality or
35 county commission may acquire, construct, establish,
36 extend, equip, repair, maintain and operate, or lease to
37 others for operation, electric generators or electric
38 generating systems or electric transmission systems
39 more than one mile beyond the corporate limits of such
40 municipality or county line and said electric generation
41 systems shall not be under the jurisdiction of the public
42 service commission.

PART IV. REVENUE BOND FINANCING.

**§8-19-4. Estimate of cost; ordinance or order for issuance
of revenue bonds; interest on bonds; rates for
services; exemption from taxation.**

1 Whenever a municipality or county commission shall,
2 under the provisions of this article, determine to
3 acquire, by purchase or otherwise, construct, establish,
4 extend or equip a waterworks system on an electric
5 power system, or to construct any additions, betterments
6 or improvements to any waterworks or electric power
7 system, it shall cause an estimate to be made of the cost
8 thereof, and may, by ordinance or order, provide for the
9 issuance of revenue bonds under the provisions of this
10 article, which ordinance or order shall set forth a brief
11 description of the contemplated undertaking, the
12 estimated cost thereof, the amount, rate or rates of
13 interest, the time and place of payment, and other
14 details in connection with the issuance of the bonds.
15 Such bonds shall be in such form and shall be negotiated
16 and sold in such manner and upon such terms as the
17 governing body of such municipality or county commis-
18 sion may by ordinance or order specify. All such bonds
19 and the interest thereon, shall be exempt from all
20 taxation by this state, or any county, municipality or
21 county commission, political subdivision or agency
22 thereof. Notwithstanding any other provision of this
23 code to the contrary, the real and personal property

24 which a municipality or county has acquired and
25 constructed according to the provisions of this article,
26 and any leasehold interest therein held by other persons,
27 shall be deemed public property and shall be exempt
28 from taxation by the state, or any county, municipality
29 or other levying body, so long as the same is owned by
30 such municipality or county. Such bonds shall bear
31 interest at a rate per annum set by the municipality or
32 county commission, payable at such times, and shall be
33 payable as to principal at such times, not exceeding fifty
34 years from their date, and at such place or places,
35 within or without the state, as shall be prescribed in the
36 ordinance or order providing for their issuance. Unless
37 the governing body of the municipality or county
38 commission shall otherwise determine, such ordinance
39 or order shall also declare that a statutory mortgage lien
40 shall exist upon the property so to be acquired,
41 constructed, established, extended or equipped, fix
42 minimum rates or charges for water or electricity to be
43 collected prior to the payment of all of said bonds and
44 shall pledge the revenues derived from the waterworks
45 or electric power system for the purpose of paying such
46 bonds and interest thereon, which pledge shall definitely
47 fix and determine the amount of revenues which shall
48 be necessary to be set apart and applied to the payment
49 of the principal of and interest upon the bonds and the
50 proportion of the balance of such revenues, which are
51 to be set aside as a proper and adequate depreciation
52 account, and the remainder shall be set aside for the
53 reasonable and proper maintenance and operation
54 thereof. The rates or charges to be charged for the
55 services from such waterworks or electric power system
56 shall be sufficient at all times to provide for the payment
57 of interest upon all bonds and to create a sinking fund
58 to pay the principal thereof as and when the same
59 become due, and reasonable reserves therefor, and to
60 provide for the repair, maintenance and operation of the
61 waterworks or electric power system, and to provide an
62 adequate depreciation fund, and to make any other
63 payments which shall be required or provided for in the
64 ordinance or order authorizing the issuance of said
65 bonds.

§8-19-5. Publication of abstract of ordinance or order and notice; hearing.

1 After the ordinance or order for any project under this
2 article has been adopted, an abstract of the ordinance
3 or order, determined by the governing body to contain
4 sufficient information as to give notice of the contents
5 of such ordinance or order, together with the following
6 described notice, shall be published as a Class II legal
7 advertisement in compliance with the provisions of
8 article three, chapter fifty-nine of this code, and the
9 publication area for such publication shall be the
10 municipality or county. The notice to be published with
11 said abstract of the ordinance or order shall state that
12 said ordinance or order has been adopted, that the
13 municipality or county commission contemplates the
14 issuance of the bonds described in the ordinance or
15 order, that any person interested may appear before the
16 governing body, upon a certain date, which shall be not
17 less than ten days subsequent to the date of the first
18 publication of such abstract and notice and which shall
19 not be prior to the date of the last publication by such
20 abstract and notice, and present protests, and that a
21 certified copy of the ordinance or order is on file with
22 the governing body for review by interested parties
23 during the office hours of the governing body. At such
24 hearing all protests and suggestions shall be heard and
25 the governing body shall take such action as it considers
26 proper in the premises: *Provided*, That if at such
27 hearing written protest is filed by thirty percent or
28 more of the freeholders of the municipality or county,
29 then the governing body of said municipality or county
30 shall not take further action unless four fifths of the
31 qualified members of said governing body assent
32 thereto.

§8-19-6. Amount, negotiability and execution of bonds.

1 Bonds herein provided for shall be issued in such
2 amounts as may be necessary to provide sufficient funds
3 to pay all costs of acquisition, construction, establish-
4 ment, extension or equipment, including engineering,
5 legal and other expenses, together with interest to a date
6 six months subsequent to the estimated date of comple-

7 tion. Bonds issued under the provisions of this article are
8 hereby declared to be negotiable instruments, and the
9 same shall be executed by the proper legally constituted
10 authorities of the municipality or county commission,
11 and be sealed with the corporate seal of the municipality
12 or certified by the county commission, and in case any
13 of the officers whose signatures appear on the bonds or
14 coupons shall cease to be such officers before delivery
15 of such bonds, such signatures shall nevertheless be
16 valid and sufficient for all purposes the same as if they
17 had remained in office until such delivery. All signa-
18 tures on the bonds or coupons and the corporate seal
19 may be mechanically reproduced if authorized in the
20 ordinance or order authorizing the issuance of the
21 bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.

1 Bonds issued under the provisions of this article shall
2 be payable solely from the revenues derived from such
3 waterworks or electric power system, and such bonds
4 shall not in any event constitute an indebtedness of such
5 municipality or county within the meaning of any
6 constitutional or statutory provision or limitation, and it
7 shall be plainly stated on the face of each bond that the
8 same has been issued under the provisions of this article,
9 and that it does not constitute an indebtedness of such
10 municipality or county within constitutional or statutory
11 provision or limitation. Subject to the provisions of
12 subsection (b), section twelve of this article, the
13 ordinance or order authorizing the issuance of the bonds
14 may contain such covenants and restrictions upon the
15 issuance of additional revenue bonds thereafter as may
16 be considered necessary or advisable for the assurance
17 of payment of the bonds thereby authorized and as may
18 thereafter be issued.

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

1 Unless the governing body shall otherwise determine
2 in the ordinance or order authorizing the issuance of
3 bonds under this article, there shall be and there is

4 hereby created and granted a statutory mortgage lien
5 upon the waterworks or electric power system so
6 acquired, constructed, established, equipped, extended
7 or improved from the proceeds of bonds hereby autho-
8 rized to be issued, which shall exist in favor of the
9 holder of said bonds and each of them, and to and in
10 favor of the holder of the coupons attached to said bonds,
11 and such waterworks or electric power system shall
12 remain subject to such statutory mortgage lien until
13 payment in full of the principal of and interest upon said
14 bonds.

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

§8-19-9. Covenants with bondholders.

1 Any ordinance or order authorizing the issuance of
2 bonds, hereunder, or any trust indenture with any
3 banking institution or trust company within or without
4 the state for the security of said bonds, which any such
5 municipality or county commission is hereby empow-
6 ered and authorized to enter into and execute, may
7 contain covenants with the holders of such bonds as to:

8 (a) The purpose or purposes to which the proceeds of
9 sale of such bonds or the revenues derived from said
10 waterworks or electric power system may be applied
11 and the securing, use and disposition thereof, including,
12 if deemed desirable, the appointment of a trustee or
13 depository for any of such funds;

14 (b) The pledging of all or any part of the revenues
15 derived from the ownership, control or operation of such
16 waterworks or electric power system, including any part
17 thereof heretofore or hereafter acquired, constructed,
18 established, extended or equipped or derived from any
19 other sources, to the payment of the principal of or
20 interest thereon of bonds issued hereunder and for such
21 reserve or other funds as may be considered necessary
22 or desirable;

23 (c) The fixing, establishing and collecting of such
24 rates or charges for the use of the services and facilities
25 of the waterworks or electric power system, including
26 the parts thereof heretofore or hereafter acquired,
27 constructed, established, extended or equipped and the
28 revision of same from time to time, as will always
29 provide revenues at least sufficient to provide for all
30 expenses of repair, maintenance and operation of such
31 waterworks or electric power system, the payment of the
32 principal of and interest upon all bonds or other
33 obligations payable from the revenues of such water-
34 works or electric power system, and all reserve and
35 other funds required by the terms of the ordinance or
36 order authorizing the issuance of such bonds;

37 (d) The transfer from the general funds of the
38 municipality or county commission to the account or
39 accounts of the waterworks or electric power system of

40 an amount equal to the cost of furnishing the municipi-
41 pality or county commission or any of its departments,
42 boards or agencies or the county commission with the
43 services and facilities of such waterworks or electric
44 power system;

45 (e) Subject to the provisions of subsection (b), section
46 twelve of this article, limitations or restrictions upon the
47 issuance of additional bonds or other obligations payable
48 from the revenues of such waterworks or electric power
49 system, and the rank or priority, as to lien and source
50 and security for payment from the revenues of such
51 waterworks or electric power system, between bonds
52 payable from such revenues;

53 (f) The manner and terms upon which all bonds and
54 other obligations issued hereunder may be declared
55 immediately due and payable upon the happening of a
56 default in the payment of the principal of or interest
57 thereon, or in the performance of any covenant or
58 agreement with bondholders, and the manner and terms
59 upon which such defaults may be declared cured and the
60 acceleration of the maturity of such bonds rescinded and
61 repealed;

62 (g) Budgets for the annual repair, maintenance and
63 operation of such waterworks or electric power system
64 and restrictions and limitations upon expenditures for
65 such purposes, and the manner of adoption, modifica-
66 tion, repeal or amendment thereof, including the
67 approval of such budgets by consulting engineers
68 designated by holders of bonds issued hereunder;

69 (h) The amounts of insurance to be maintained upon
70 such waterworks or electric power system, or any part
71 thereof, and the use and disposition of the proceeds of
72 any insurance; and

73 (i) The keeping of books of account, relating to such
74 undertakings and the audit and inspection thereof, and
75 the furnishing to the holders of bonds issued hereunder
76 or their representatives, reports prepared, certified or
77 approved by accountants designated or approved by the
78 holders of bonds issued hereunder.

79 Any such ordinance, order or trust indenture may also
80 contain such other additional covenants as shall be
81 considered necessary or desirable for the security of the
82 holders of bonds issued hereunder, notwithstanding that
83 such other covenants are not expressly enumerated
84 above, it being the intention hereof to grant to munic-
85 ipalities or county commissions plenary power and
86 authority to make any and all covenants or agreements
87 necessary in order to secure greater marketability for
88 bonds issued hereunder as fully and to the same extent
89 as such covenants or agreements could be made by a
90 private corporation rendering similar services and
91 facilities and to grant to municipalities and counties full
92 and complete power and authority to enter into any
93 contracts, covenants or agreements with holders of
94 bonds issued hereunder not inconsistent with the
95 constitution of this state.

§8-19-10. Operating contract.

1 Any such municipality or county commission may
2 enter into contracts or agreements with any persons for
3 (1) the repair, maintenance and operation and manage-
4 ment of the facilities and properties of said waterworks
5 or electric power system, or any part thereof, or (2) the
6 collection and disbursement of the income and revenues
7 therefor, or for both (1) and (2), for such period of time
8 and under such terms and conditions as shall be agreed
9 upon between such municipality or county commission
10 and such persons. Any such municipality or county
11 commission shall have plenary power and authority to
12 provide in the ordinance or order authorizing the
13 issuance of bonds hereunder, or in any trust indenture
14 securing such bonds, that such contracts or agreements
15 shall be valid and binding upon the municipality and
16 county commission as long as any of said bonds, or
17 interest thereon, is outstanding and unpaid.

**§8-19-11. Rates or charges for water and electric power
must be sufficient to pay bonds, etc.; dispo-
sition of surplus.**

1 Rates or charges for water or electric power fixed
2 precedent to the issuance of bonds shall not be reduced

3 until all of said bonds shall have been fully paid, and
4 may, whenever necessary, be increased in amounts
5 sufficient to provide for the payment of the principal of
6 and interest upon such bonds, and to provide proper
7 funds for the depreciation account and repair, mainte-
8 nance and operation charges. If any surplus shall be
9 accumulated in the repair, maintenance and operation
10 fund which shall be in excess of the cost of repairing,
11 maintaining and operating the waterworks or electric
12 power system during the remainder of the fiscal year
13 then current, and the cost of repairing, maintaining and
14 operating the said waterworks or electric power system
15 during the fiscal year then next ensuing, then any such
16 excess may be transferred to either the depreciation
17 account or to the bond and interest redemption account,
18 and if any surplus shall be accumulated in the depre-
19 ciation account over and above that which the munic-
20 ipality or county commission shall find may be neces-
21 sary for the probable replacements which may be
22 needed during the then present fiscal year, and the next
23 ensuing fiscal year, such excess may be transferred to
24 the bond and interest redemption account, and if any
25 surplus shall exist in the bond and interest redemption
26 account the same shall be applied insofar as possible in
27 the purchase or retirement of outstanding revenue
28 bonds payable from such account.

**§8-19-12. Service charges; sinking fund; amount of bonds;
additional bonds; surplus.**

1 (a) Every municipality or county commission issuing
2 bonds under the provisions of this article shall thereaf-
3 ter, so long as any of such bonds remain outstanding,
4 repair, maintain and operate its waterworks or electric
5 power system as hereinafter provided and shall charge,
6 collect and account for revenues therefrom as will be
7 sufficient to pay all repair, maintenance and operation
8 costs, provide a depreciation fund, retire the bonds and
9 pay the interest requirements of the bonds as the same
10 become due. The ordinance or order pursuant to which
11 any such bonds are issued shall pledge the revenues
12 derived from the waterworks or electric power system
13 to the purposes aforesaid and shall definitely fix and

14 determine the amount of revenues which shall be
15 necessary and set apart in a special fund for the bond
16 requirements. The amounts as and when so set apart
17 into said special fund for the bond requirements shall
18 be remitted to the West Virginia municipal bond
19 commission to be retained and paid out by said commis-
20 sion consistent with the provisions of this article and the
21 ordinance or order pursuant to which such bonds have
22 been issued: *Provided*, That payment of principal of and
23 interest on any bonds owned by the United States of
24 America or any agency or department thereof may be
25 made by the municipality or county commission directly
26 to the United States of America or said agency or
27 department thereof. The bonds hereby authorized shall
28 be issued in such amounts as may be determined
29 necessary to provide funds for the purpose for which
30 they are authorized, and in determining the amount of
31 bonds to be issued it shall be proper to include interest
32 on the bonds for a period not beyond six months from
33 the estimated date of completion.

34 (b) If the proceeds of the bonds, because of error or
35 otherwise, shall be less than the cost of the property or
36 undertaking for which authorized, additional bonds may
37 be issued to provide the amount of such deficit and such
38 additional bonds shall be considered to be of the same
39 issue and shall be entitled to payment from the same
40 fund without preference or priority over the bonds first
41 authorized and issued.

42 (c) If the proceeds of the bonds shall exceed the cost
43 of the property or undertaking, the surplus shall be
44 converted into the fund thereon.

**§8-19-12a. Lien for delinquent service rates and charges;
notice of delinquency; failure to cure delin-
quency; civil actions; deferral of filing fees
and costs in magistrate court action; limita-
tions with respect to foreclosure.**

1 (a) Whenever any rates and charges for water servi-
2 ces or facilities furnished remain unpaid for a period of
3 thirty days after the same become due and payable, the
4 property and the owner thereof, as well as the user of

5 the services and facilities provided shall be delinquent
6 and the owner, user and property shall be held liable
7 at law until such time as all such rates and charges are
8 fully paid: *Provided*, That in the event the user is a
9 tenant, the property owner shall be given notice of any
10 said delinquency by certified mail, return receipt
11 requested, and the user shall be given such notice by
12 first-class mail: *Provided, however*, That failure of the
13 user to cure the delinquency within a thirty-day period
14 after receipt of such notice shall constitute grounds to
15 terminate the user's lease of the premises concerned.

16 (b) All rates or charges for water service whenever
17 delinquent, as provided by ordinance of the municipality
18 or order of the county commission, shall be liens of equal
19 dignity, rank and priority with the lien on such premises
20 of state, county, school and municipal taxes for the
21 amount thereof upon the real property served, and the
22 municipality or county commission shall have plenary
23 power and authority from time to time to enforce such
24 lien in a civil action to recover the money due for such
25 services rendered plus court fees and costs and a
26 reasonable attorney's fee: *Provided*, That a municipality
27 or county commission shall have exhausted all remedies
28 available against such delinquent users before it may
29 proceed in a civil action against the owner.

30 (c) Municipalities and county commissions are hereby
31 granted a deferral of filing fees or other fees and costs
32 incidental to the bringing and maintenance of an action
33 in magistrate court for the collection of the delinquent
34 rates and charges. If the municipality or county
35 commission collects the delinquent account, plus fees
36 and costs, from its customer or other responsible party,
37 the municipality or county commission shall pay to the
38 magistrate court the filing fees or other fees and costs
39 which were previously deferred.

40 (d) No municipality or county commission may
41 foreclose upon the premises served by it for delinquent
42 rates or charges for which a lien is authorized by this
43 section except through the bringing and maintenance of
44 a civil action for such purpose brought in the circuit
45 court of the county or the county wherein the munic-

46 pality lies. In every such action, the court shall be
47 required to make a finding based upon the evidence and
48 facts presented that the municipality or county commis-
49 sion had exhausted all other remedies for the collection
50 of debts with respect to such delinquencies prior to the
51 bringing of such action. In no event shall foreclosure
52 procedures be instituted by any municipality or county
53 commission or on its behalf unless such delinquency had
54 been in existence or continued for a period of two years
55 from the date of the first such delinquency for which
56 foreclosure is being sought.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.

1 Any such municipality or county commission shall
2 also have plenary power and authority, and may
3 covenant with the holders of any bonds issued here-
4 under, to shut off and discontinue the supplying of the
5 water or electric power service of said waterworks or
6 electric power system for the nonpayment of the rates
7 or charges for said water or electric power service.

§8-19-14. Bonds for additions, betterments and improvements.

1 Whenever any municipality or county commission
2 shall now or hereafter own and operate a waterworks
3 or electric power system, whether acquired, constructed,
4 established, extended or equipped under the provisions
5 of this article or not, and shall desire to construct
6 additions, betterments or improvements thereto, it may
7 issue revenue bonds under the provisions of this article
8 to pay for the same, and the procedure therefor,
9 including the fixing of rates or charges and the
10 computation of the amount thereof, and the power and
11 authority in connection therewith, shall be the same as
12 in this article provided for the issuance of bonds for the
13 acquisition, construction, establishment, extension or
14 equipment of a waterworks system or electric power
15 system in a municipality or county which has not
16 heretofore owned and operated a waterworks or electric
17 power system: *Provided*, That nothing in this article
18 shall be construed as authorizing any municipality or

19 county commission to impair or commit a breach of the
 20 obligation of any valid lien or contract created or
 21 entered into by it, the intention being to authorize the
 22 pledging, setting aside and segregation of such revenues
 23 for the construction of such additions, betterments or
 24 improvements only where and to the extent consistent
 25 with outstanding obligations of such municipality or
 26 county commission, and in accordance with the provi-
 27 sions of this article.

§8-19-15. System of accounts; audit.

1 Any municipality or county commission operating a
 2 waterworks or electric power system under the provi-
 3 sions of this article shall set up and maintain a proper
 4 system of accounts in accordance with the requirements
 5 of the public service commission, showing the amount
 6 of revenues received from such waterworks or electric
 7 power system and the application of the same. At least
 8 once each year such municipality or county commission
 9 shall cause such accounts to be properly audited, and a
 10 report of such audit shall be open to the public for
 11 inspection at all reasonable times.

**§8-19-16. Protection and enforcement of rights of bond-
 holders, etc.; receivership.**

1 Any holder of any bonds issued under the provisions
 2 of this article or of any coupons representing interest
 3 accrued thereon may by civil action, mandamus or other
 4 proper proceeding enforce the statutory mortgage lien
 5 created and granted in section eight of this article,
 6 protect and enforce any and all rights granted here-
 7 under or under any such ordinance, order or trust
 8 indenture, and may enforce and compel performance of
 9 all duties required by the provisions of this article or
 10 by any such ordinance, order or trust indenture to be
 11 performed by the municipality or county commission, or
 12 by the governing body or any officer, including the
 13 making and collecting of reasonable and sufficient rates
 14 or charges for services rendered by the waterworks or
 15 electric power system. If there be default in the payment
 16 of the principal of or interest upon any of such bonds,
 17 or of both principal and interest, any court having

18 jurisdiction shall appoint a receiver to administer said
19 waterworks or electric power system on behalf of the
20 municipality or county commission, and the bondholders
21 or trustee, or both, with power to charge and collect
22 rates or charges sufficient to provide for the retirement
23 of the bonds and pay the interest thereon, and for the
24 payment of the repair, maintenance and operation
25 expenses, and such receiver shall apply the revenues in
26 conformity with the provisions of this article and the
27 ordinance or order pursuant to which such bonds have
28 been issued or any trust indenture, or both.

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
2 issuance of revenue bonds authorized by this article, any
3 municipality or county commission is hereby empow-
4 ered and authorized to accept loans or grants and
5 procure loans or temporary advances evidenced by notes
6 or other negotiable instruments issued in the manner,
7 and subject to the privileges and limitations, set forth
8 with respect to bonds authorized to be issued under the
9 provisions of this article, or otherwise enter into
10 agreement, including, but not limited to, agreements of
11 indemnity, assurance or guarantee with respect to, and
12 for the purpose of financing part or all of, the cost of
13 acquisition, construction, establishment, extension or
14 equipment of waterworks or electric power systems and
15 the construction of additions, betterments and improve-
16 ments to existing waterworks systems or to existing
17 electric power systems, and for the other purposes
18 herein authorized, from or with any authorized agency
19 of the state or from the United States of America or any
20 federal or public agency or department of the United
21 States or any private agency, corporation or individual,
22 which loans or temporary advances, including the
23 interest thereon, or the municipality's or county's
24 financial obligations contained in such other agree-
25 ments, which need not bear interest, may be repaid out
26 of the proceeds of bonds authorized to be issued under
27 the provisions of this article, the revenues of or proceeds

28 from the said waterworks system or electric power
 29 system or grants to the municipality or county commis-
 30 sion from any agency of the state or from the United
 31 States of America or any federal or public agency or
 32 department of the United States or any private agency,
 33 corporation or individual or from any combination of
 34 such sources of payment, and may be secured in the
 35 manner provided in sections eight, nine and sixteen of
 36 this article to secure bonds issued under the provisions
 37 of this article, but shall not otherwise be subject to the
 38 requirements of sections eleven and twelve of this
 39 article, and to enter into the necessary contracts and
 40 agreements to carry out the purposes hereof with any
 41 agency of the state, the United States of America or any
 42 federal or public agency or department of the United
 43 States, or with any private agency, corporation or
 44 individual.

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

**§8-19-18. Additional and alternative method for con-
 structing or improving and for financing
 waterworks or electric power system; cu-
 mulative authority.**

1 This article shall, without reference to any other
 2 statute or charter provision, be deemed full authority for
 3 the acquisition, construction, establishment, extension,
 4 equipment, additions, betterment, improvement, repair,
 5 maintenance and operation of or to a waterworks or
 6 electric power system or for the construction of any
 7 additions, betterments, improvements, repairs, mainte-
 8 nance or operation of or to an existing electric power
 9 system as herein provided and for the issuance and sale
 10 of the bonds or the alternative methods of financing by
 11 this article authorized, and shall be construed as an
 12 additional and alternative method therefor and for the
 13 financing thereof, and no petition, referendum or
 14 election or other or further proceeding with respect to
 15 any such undertaking or to the issuance or sale of bonds

16 or the alternative methods of financing under the
17 provisions of this article and no publication of any
18 resolution, ordinance, order, notice or proceeding
19 relating to any such undertaking or to the issuance or
20 sale of such bonds or the alternative methods of
21 financing shall be required, except as prescribed by this
22 article, any provisions of other statutes of the state to
23 the contrary notwithstanding: *Provided*, That all
24 functions, powers and duties of the state division of
25 health shall remain unaffected by this article.

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

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

1 As an alternative to the procedures hereinabove
2 provided, any municipality or county commission is
3 hereby empowered and authorized to acquire, construct,
4 establish, extend, equip, repair, maintain and operate a
5 waterworks or an electric power system or to construct,
6 maintain and operate additions, betterments and
7 improvements to an existing waterworks system or an
8 existing electric power system, whether acquired,
9 constructed, established, extended or equipped under
10 the provisions of this article or not, and to collect the
11 revenues therefrom for the services rendered thereby,
12 through the supervision and control of a committee, by
13 whatever name called, composed of all or a portion of
14 the governing body, or of a board or commission
15 appointed by such governing body, as may be provided
16 by the governing body, and if such alternative is
17 followed, said committee, board or commission shall
18 have and be limited to all the powers, authority and
19 duties granted to and imposed upon a board as provided
20 in article sixteen of this chapter.

§8-19-20. Article to be liberally construed.

1 This article is necessary for the public health, safety
2 and welfare and shall be liberally construed to effectu-
3 ate its purposes.

Enr. Com. Sub. for H. B. 4084] 22

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

Frederic T. Perkins

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect from passage.

Samuel E. Malone

Clerk of the Senate

Donald L. Hoopp

Clerk of the House of Delegates

Keith Benedict

President of the Senate

Robert C. Auburn

Speaker of the House of Delegates

The within is approved this the *18th*
day of *March* 1990.

W. Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/90

Time 10:10am

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