WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994

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ENROLLED

HOUSE BILL No. 5006

(By Delegate Mr. Speaker, Mr. Chambers, and Delegates Martin, Michael, Mezzatista, Howard, Kiss and Burke)

Passed March 18, 1994

In Effect July 1, 1994
AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated fifteen-a, relating to creating state infrastructure and jobs development act; defining terms; creating state infrastructure and jobs development council to coordinate the evaluation of disbursement of funds for water and waste water projects as well as other infrastructure projects and designating members of the council; advisory members of the council; requiring council to develop uniform guidelines for use by state agencies in evaluating funding requests for infrastructure projects and to create a preliminary application form to be used by all persons making such funding requests; providing requirements for project funding; providing exceptions for certain infrastructure projects and projects; permissible recommendations by council; setting forth powers and duties of council; requiring a comprehensive inventory and assessment of needs of water supply systems and sewage systems; authorizing the council to provide grants; coordination of infrastructure needs with division of highways; authorizing the appointment of local infrastructure planning teams; duties of planning teams; creation of infrastructure road improvement reserve account; a study on consolidating public service districts; exempting certain infrastruc-
ture projects which council determines are emergency projects from requirement to obtain certificate of public convenience and necessity from state public service commission and requiring public service commission to review requests for certificates with respect to certain other emergency projects within specified time periods; authorizing the public land corporation to acquire specified property; requiring the water development authority to establish and administer a permanent and special fund permitting water development authority to deposit moneys in infrastructure fund in one or more banking institutions located in this state; recommendations by the council; reservation of specified amount of funds for projects and infrastructure projects; providing water development authority additional powers in connection with infrastructure projects and projects; recommendations by council; prohibiting water development board from receiving benefits or distributions from infrastructure fund; declaring that infrastructure projects financed by water development authority shall not be considered to be “public improvements” within meaning of article five-a, chapter twenty of the code; setting forth procedures regarding competitive bids; and dedicating a portion of annual severance tax collection for funding of projects and infrastructure projects.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.**

§31-15A-1. **Short title.**

This article shall be known and may be cited as the “West Virginia Infrastructure and Jobs Development Act.”

§31-15A-2. **Definitions.**

For purposes of this article:
(a) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(b) "Cost" means, as applied to any project to be financed in whole or in part with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project:

Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not
determined to be consistent with the purposes and objectives of this article;

(c) "Council" means the West Virginia infrastructure and jobs development council created in section three of this article;

(d) "Division of environmental protection" means the division of environmental protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(e) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(g) "Emergency project" means a project which the council has determined (i) is essential to the immediate economic development of an area of the state and (ii) will not likely be developed in that area if construction of the project is not commenced immediately;

(h) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or waste water facilities or infrastructure projects;

(i) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(j) "Infrastructure fund" means the West Virginia
infrastructure fund created and established in section nine of this article;

(k) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or waste water facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(l) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(m) "Project" means any waste water facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(n) "Project sponsor" means any governmental agency
or person, or any combination thereof, including, but not
limited to, any public utility, which intends to plan,
acquire, construct, improve or otherwise develop a
project;

(o) "Public service commission" means the public
service commission of West Virginia created and
established under section three, article one, chapter
twenty-four of this code, or any successor to all or any
substantial part of its powers and duties;

(p) "Person" means any individual, corporation,
partnership, association, limited liability company or
any other form of business organization;

(q) "Public utility" means any person or persons, or
association of persons, however associated, whether
incorporated or not, including, without limitation, any
governmental agency, operating a waste water facility
or water facility as a public service, which is regulated
by the public service commission as a public utility
under chapter twenty-four of this code or which is
required to file its tariff with the public service
commission;

(r) "State development office" means the West
Virginia development office established under article
two, chapter five-b of this code, or any successor to all
or any substantial part of its powers and duties;

(s) "State infrastructure agency" means the division of
health, division of environmental protection, housing
development fund, public service commission, state
development office, water development authority,
economic development authority and any other state
agency, division, body, authority, commission, instrumentality or entity which now or in the future receives
applications for the funding of, and provides funding or
technical assistance to, the planning, acquisition,
construction or improvement of a project;

(t) "Waste water facility" means all facilities, land and
equipment used for or in connection with treating,
neutralizing, disposing of, stabilizing, cooling, segregat-
ing or holding waste water, including, without limita-
tion, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(u) “Water development authority” means the West Virginia water development authority established under article five-c, chapter twenty of this code, or any successor to all or any substantial part of its powers and duties; and

(v) “Water facility” means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§31-15A-3. West Virginia infrastructure and jobs development council created; members of council; staff of council.

(a) There is hereby created the West Virginia infrastructure and jobs development council. The council shall be a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of nine members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee; the director of the economic development authority or his or her designee; the director of the
water development authority or his or her designee, the executive director of the state development office or his or her designee; the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee; and two members representing the general public. The Governor shall appoint the public members of the council who shall serve three year terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The Governor shall appoint the legislative members of the council: Provided, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Five members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council shall receive any compensation or reimbursement of expenses for serving as a member.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if it considers it necessary.

(f) The water development authority shall provide
office space for the council, and each governmental
agency represented on the council shall provide staff
support for the council in the manner determined by the
council from time to time.

(g) The council shall invite to all its meetings one or
more representatives of the United States department
of agriculture, the farmers home administration, the
United States economic development agency and the
United States army corps of engineers or any successors
thereto.

§31-15A-4. Development of guidelines and preliminary
application for funding assistance.

(a) To implement and carry out the intent of this
article, the council shall promulgate legislative rules in
accordance with article three, chapter twenty-nine-a of
this code to develop comprehensive, uniform guidelines
for use by the council and other state infrastructure
agencies in evaluating any request by a project sponsor
for funding assistance to plan, acquire, construct,
improve or otherwise develop a project or infrastructure
project. The guidelines shall include the following
factors: (1) the public health benefits of the project or
infrastructure project; (2) the economic development
benefits of the project or infrastructure project; (3) the
degree to which the project or infrastructure project
will correct deficiencies in the compliance of water
supply or sewage treatment facilities with state or
federal laws, regulations or standards; (4) the degree to
which the project or infrastructure project encourages
effective and efficient consolidation of water or sewage
treatment systems consistent with the comprehensive
plan developed pursuant to section six, of this article;
(5) the cost effectiveness of the project or infrastructure
project as compared with alternatives which achieve
substantially the same public health or economic
development benefits, including the consideration of
providing maximum feasible fire protection; (6) the
availability of alternative sources of funding which
could finance all or a part of the project and infrastruc-
ture project, and the need for the assistance of the
council to finance the project or infrastructure project
or attract other sources of funding; (7) the applicant’s
ability to operate and maintain the system if the project
or infrastructure project is approved; (8) the degree to
which the project or infrastructure project achieves
other state or regional planning goals; (9) the estimated
date upon which the project or infrastructure project
could commence if funding were available and the
estimated completion date of the project or infrastruc-
ture project; and (10) such other considerations as the
council may consider necessary or appropriate to
accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application
form which shall be used by all project sponsors
requesting funding assistance from state infrastructure
agencies to plan, acquire, construct, improve or other-
wise develop an infrastructure project or project. The
preliminary application form shall contain all informa-
tion required by all state infrastructure agencies that
will be required to issue permits and/or certificates
regarding the project or infrastructure project. The
preliminary application shall require the project
sponsor to set forth the type and proposed location of the
infrastructure project or project; the estimated total cost
of the project; the amount of funding assistance required
and the specific uses of the funding; other sources of
funding available or potentially available for the
infrastructure project or project; information demon-
strating the need for the infrastructure project or
project and that the proposed funding of the project is
the most economically feasible and viable alternative to
completing the project or infrastructure project; and
such other information as the council considers neces-
sary to enable it to recommend the type of project or
infrastructure project financing, in terms of the kind,
amount and source of funding, which the project sponsor
should pursue and which the state infrastructure agency
or agencies should consider an appropriate investment
of public funds, and to otherwise carry out the intent
of this article.

§31-15A-5. Requirements for project funding assistance;
review of project preliminary applications
(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council's recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state
infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency.

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;
(3) Do all other acts necessary and proper to carry out
the powers expressly granted to the authority in this
article; and

(4) To make and execute contracts, commitments and
obligations and other instruments necessary or conven-
ient for the exercise of its powers.

(b) The council shall develop a comprehensive state-
wide inventory of water supply systems and sewage
treatment systems and an assessment of current and
future needs by the first day of July, one thousand nine
hundred ninety-six. The assessment shall identify the
areas of the state which do not have adequate public
water or sewage systems and offer recommendations for
the construction of new facilities or the extension or
expansion of existing facilities to meet the identified
needs. The council shall include in the assessment an
identification of the obstacles, issues and problems
which prevent or inhibit development of adequate infra-
structure throughout the state, including financial,
governmental, physical, or geographical factors and
make recommendation as the council considers appro-
priate regarding the obstacles, issues or problems
identified. This comprehensive inventory and assess-
ment shall be updated at least once in every three year
period after the initial assessment and inventory is
completed.

(c) The council shall study the viability of the
consolidation of public service districts throughout the
state: Provided, That the study shall encompass not only
public service districts but also any and all entities
which provide or supply water and sewer service to the
general public: Provided, however, That the council
shall, in the preparation of the study, consult with the
public service district division of the public service
commission and representatives of the West Virginia
rural water association and the West Virginia associa-
tion of public service districts, as needed. The council
shall report their findings and conclusions on or before
the sixteenth of January of the year one thousand nine
hundred ninety-five to the governor, speaker of the
house of delegates and president of the senate.
§31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office; a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the
local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance the plan developed under subsection (b) of this section. The reserve account shall be known as the “infrastructure road improvement reserve account”. The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term “new” means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality.
§31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or waste water facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven, article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five, article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.
(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (k), section two of this article and to include a water facility project as defined in subsection (m), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subdivision (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner’s powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) There is hereby created a special revenue account in the state treasury to be appropriated by the Legislature for use by the water development authority, which shall be designated and known as the “West Virginia infrastructure fund.” The infrastructure fund shall consist of (1) infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water
development authority to pay for the cost of a project
or infrastructure project; (4) insurance proceeds payable
to the water development authority or the infrastructure
fund in connection with any infrastructure project or
project; (5) all income earned on moneys held in the
infrastructure fund; and (6) all funds deposited in
accordance with section sixteen of this article. Amounts
in the infrastructure fund shall be segregated and
administered by the water development authority
separate and apart from its other assets and programs.
Amounts in the infrastructure fund may not be trans-
ferred to any other fund or account or used, other than
indirectly, for the purposes of any other program of the
water development authority, except that the water
development authority may use funds in the infrastruc-
ture fund to reimburse itself for any administrative
costs incurred by it and approved by the council in
connection with any loan, loan guarantee, grant or other
funding assistance made by the water development
authority pursuant to this article.

(b) Notwithstanding any provision of this code to the
contrary, amounts in the infrastructure fund may be
deposited by the water development authority in one or
more banking institutions located in this state and
selected by the water development authority. Pending
the disbursement of any money from the infrastructure
fund as authorized under this section, the water
development authority shall invest and reinvest the
moneys subject to the limitations set forth in article
eighteen, chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of
this article, the water development authority may
pledge infrastructure revenues and from time to time
establish one or more restricted accounts within the
infrastructure fund for the purpose of providing funds
to guarantee loans for infrastructure projects or
projects: Provided, That for any fiscal year the water
development authority may not deposit into the re-
stricted accounts more than twenty percent of the
aggregate amount of infrastructure revenues deposited
into the infrastructure fund during the fiscal year. No
loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from such loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.
(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

§31-15A-10. Recommendations by council for expenditures of funds by loan or grant.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine of this article, upon receipt of one or more recommendations from the council pursuant to section five of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That no loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, that no grant shall be made to a profit sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects or projects from time to time, and shall be submitted in the manner and on the preliminary application form prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that (1) the level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to
36 pay; or (2) the absence of a sufficient number of users
37 prevents funding of the project except through grants.
38 Therefore, the council may consider the economic or
39 financial conditions of the area to be served. As a
40 condition for receipt of a grant under this subsection,
41 the council may require, in addition to any other
42 conditions, that the applicant pursue other state or
43 federal grant or loan programs. Upon a recommenda-
44 tion by the council, the water development authority
45 shall provide the grant in accordance with the recom-
46 mendation. The council shall develop criteria to be
47 considered in making grants to project sponsors which
48 shall require consideration of the economic or financial
49 conditions of the area to be served and the availability
50 of other funding sources. The council shall adopt
51 procedural rules regarding the manner in which grants
52 will be awarded in conformity with this section. The
53 procedural rules shall be adopted pursuant to article
54 three, chapter twenty-nine-a of this code.

§31-15A-11. Reservation of funds for projects and infra-
structure projects.

1 Eighty percent of the funds deposited in the West
2 Virginia infrastructure fund shall be dedicated for the
3 purpose of providing funding for the cost of projects as
4 defined in subsection (m), section two of this article.
5 Twenty percent of the funds deposited in the West
6 Virginia infrastructure fund shall be dedicated for the
7 purpose of providing funding for costs of infrastructure
8 projects as defined in subsection (k), section two of this
9 article. Project sponsors of infrastructure projects shall
10 follow the application process as established by this
11 article: Provided, That notwithstanding any provision of
12 this article to the contrary, all applications for any
13 infrastructure project shall be submitted to the council
14 for community and economic development, or its
15 successor, for review, recommendation and approval
16 regarding infrastructure project funding.

§31-15A-12. Additional powers of water development
authority.

1 To accomplish the purpose and intent of this article,
the water development authority is hereby empowered,
in addition to all other powers granted to it under this
code, upon approval of the council, to (1) enter into
agreements or other transactions with any federal or
state agency in connection with any infrastructure
project or project; (2) receive or administer on behalf of
any federal or state agency grants, subsidies or other
payments to be applied to the costs of any infrastructure
project or project financed in whole or in part or
otherwise assisted by the water development authority,
including, but not limited to, payments to be applied to
operating costs and debt service or obligations of any
project sponsor; (3) receive and accept aid or contribu-
tions from any source of money, property, labor or other
things of value, to be held, used and applied only for the
purposes for which such grants and contributions are
made; (4) establish and amend the criteria and qualifi-
cations for making loans, loan guarantees or grants, or
providing any other assistance, for any infrastructure
project or project, and the terms of any loans, loan
guarantee, grant or assistance agreement for any
project; and (5) do all things which are necessary to
further the purposes and intent of this article.

§31-15A-13. Prohibition on funds inuring to the benefit of
or being distributable to water develop-
ment board; transactions between the
water development board and officers
having certain interests in such
transactions.

No part of the infrastructure fund shall inure to the
benefit of or be distributable to the water development
board directors or officers of the water development
authority except that the water development authority
is authorized and empowered to pay reasonable compen-
sation, other than to members of the water development
board, including the chairman, vice chairman, secre-
tary-treasurer for services rendered and to make loans
and exercise its other powers as previously specified in
furtherance of its corporate purpose: Provided, That no
loans shall be made, and no property shall be purchased
or leased from, or sold, leased or otherwise disposed of,
§31-15A-14. Termination or dissolution.

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors.

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code, as a result of such financing.

(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term "emer-
gency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.


(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure fund created pursuant to section nine of this article: Provided, That none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited: Provided, however, That the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section
twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1994.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 29th day of March, 1994.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/29/64
Time 3:01 pm