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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,
Mezzatesta, Howvouras, Kiss and Burke)

Passed March 18, 1994

In Effect July 1, 1994 Passage

ENROLLED
H. B. 5006

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATES MARTIN,
MICHAEL, MEZZATESTA, HOUVOURAS, KISS AND BURK)

[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.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Infrastructure and Jobs Development
- 3 Act."

§31-15A-2. Definitions.

- 1 For purposes of this article:

2 (a) "Code" means the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended;

4 (b) "Cost" means, as applied to any project to be
5 financed in whole or in part with infrastructure
6 revenues or funds otherwise provided pursuant to this
7 article, the cost of planning, acquisition, improvement
8 and construction of the project; the cost of preliminary
9 design and analysis, surveys, borings; the cost of
10 environmental, financial, market and engineering
11 feasibility studies, assessments, applications, approvals,
12 submissions or clearances; the cost of preparation of
13 plans and specifications and other engineering services;
14 the cost of acquisition of all land, rights-of-way, property
15 rights, easements, franchise rights and any other
16 interests required for the acquisition, repair, improve-
17 ment or construction of the project; the cost of demol-
18 ishing or removing any buildings or structures on land
19 so acquired, including the cost of acquiring any lands
20 to which buildings or structures may be moved; the cost
21 of excavation, grading, shaping or treatment of earth,
22 demolishing or removing any buildings or structures;
23 the cost of constructing any buildings or other improve-
24 ments; the cost of all pumps, tanks, vehicles, apparatus
25 and other machinery, furnishings and equipment; loan
26 or origination fees and all finance charges and interest
27 incurred prior to and during the construction and for
28 no more than six months after completion of construc-
29 tion; the cost of all legal services and expenses; the cost
30 of all plans, specifications, surveys and estimates of cost;
31 all working capital and other expenses necessary or
32 incident to determining the feasibility or practicability
33 of acquiring, repairing, improving or constructing any
34 project; the cost of placing any project in operation; and
35 all other costs and expenses of any kind or nature
36 incurred or to be incurred by the project sponsor
37 developing the project that are reasonable and necessary
38 for carrying out all works and undertakings necessary
39 or incident to the accomplishment of any project:
40 *Provided*, That costs shall not include any amounts
41 related to the ongoing operations of the owner or
42 operator, depreciation thereof or any other cost which
43 the council or the water development authority has not

44 determined to be consistent with the purposes and
45 objectives of this article;

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

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

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

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

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

68 (h) "Governmental agency" means any county; munic-
69 ipality; watershed improvement district; assessment
70 district; soil conservation district; sanitary district;
71 public service district; drainage district; regional
72 governmental authority and any other state governmen-
73 tal agency, entity, political subdivision or public
74 corporation or agency authorized to acquire, construct
75 or operate water or waste water facilities or infrastruc-
76 ture projects;

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

81 (j) "Infrastructure fund" means the West Virginia

82 infrastructure fund created and established in section
83 nine of this article;

84 (k) "Infrastructure project" means a project in the
85 state which the council determines is likely to foster and
86 enhance economic growth and development in the area
87 of the state in which the project is developed, for
88 commercial, industrial, community improvement or
89 preservation or other proper purposes, including,
90 without limitation, tourism and recreational housing,
91 land, air or water transportation facilities and bridges,
92 industrial or commercial projects and facilities, mail
93 order, warehouses, wholesale and retail sales facilities
94 and other real and personal properties, including
95 facilities owned or leased by this state or any other
96 project sponsor, and includes, without limitation (1) the
97 process of acquiring, holding, operating, planning,
98 financing, demolition, construction, improving, expand-
99 ing, renovation, leasing or otherwise disposing of the
100 project or any part thereof or interest therein, and (2)
101 preparing land for construction and making, installing
102 or constructing improvements on the land, including
103 water or waste water facilities or any part thereof,
104 steam, gas, telephone and telecommunications and
105 electric lines and installations, roads, bridges, railroad
106 spurs, buildings, docking and shipping facilities, curbs,
107 gutters, sidewalks, and drainage and flood control
108 facilities, whether on or off the site;

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

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

121 (n) "Project sponsor" means any governmental agency

122 or person, or any combination thereof, including, but not
123 limited to, any public utility, which intends to plan,
124 acquire, construct, improve or otherwise develop a
125 project;

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

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

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

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

147 (s) "State infrastructure agency" means the division of
148 health, division of environmental protection, housing
149 development fund, public service commission, state
150 development office, water development authority,
151 economic development authority and any other state
152 agency, division, body, authority, commission, instru-
153 mentality or entity which now or in the future receives
154 applications for the funding of, and provides funding or
155 technical assistance to, the planning, acquisition,
156 construction or improvement of a project;

157 (t) "Waste water facility" means all facilities, land and
158 equipment used for or in connection with treating,
159 neutralizing, disposing of, stabilizing, cooling, segregat-
160 ing or holding waste water, including, without limita-

161 tion, facilities for the treatment and disposal of sewage,
162 industrial wastes or other wastes, waste water, and the
163 residue thereof; facilities for the temporary or perman-
164 ent impoundment of waste water, both surface and
165 underground; and sanitary sewers or other collection
166 systems, whether on the surface or underground,
167 designed to transport waste water together with the
168 equipment and furnishings therefor or thereof and their
169 appurtenances and systems, whether on the surface or
170 underground including force mains and pumping
171 facilities therefor;

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

177 (v) "Water facility" means all facilities, land and
178 equipment used for or in connection with the collection
179 and/or storage of water, both surface and underground,
180 transportation of water, storage of water, treatment of
181 water and distribution of water all for the purpose of
182 providing potable, sanitary water suitable for human
183 consumption and use.

**§31-15A-3. West Virginia infrastructure and jobs devel-
opment council created; members of coun-
cil; staff of council.**

1 (a) There is hereby created the West Virginia infra-
2 structure and jobs development council. The council
3 shall be a governmental instrumentality of the state.
4 The exercise by the council of the powers conferred by
5 this article and the carrying out of its purpose and
6 duties shall be considered and held to be, and are hereby
7 determined to be, essential governmental functions and
8 for a public purpose.

9 (b) The council shall consist of nine members,
10 including the executive director of the housing develop-
11 ment fund or his or her designee, the director of the
12 division of environmental protection or his or her
13 designee; the director of the economic development
14 authority or his or her designee; the director of the

15 water development authority or his or her designee, the
16 executive director of the state development office or his
17 or her designee; the director of the division of health or
18 his or her designee, the chairman of the public service
19 commission or his or her designee; and two members
20 representing the general public. The Governor shall
21 appoint the public members of the council who shall
22 serve three year terms. The commissioner of the division
23 of highways, the executive director of the state rail
24 authority, two members of the West Virginia Senate,
25 two members of the West Virginia House of Delegates,
26 one representative of the board of directors of the state
27 college system and one representative of the board of
28 trustees of the university of West Virginia shall serve
29 as advisory members of the council. The Governor shall
30 appoint the legislative members of the council: *Provided*,
31 That no more than three of the legislative members may
32 be of the same political party. The governor shall
33 appoint the representatives of the governing boards
34 from a list of three names submitted by each governing
35 board. The advisory members shall be ex officio,
36 nonvoting members of the council.

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

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

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

54 (f) The water development authority shall provide

55 office space for the council, and each governmental
56 agency represented on the council shall provide staff
57 support for the council in the manner determined by the
58 council from time to time.

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

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

1 (a) To implement and carry out the intent of this
2 article, the council shall promulgate legislative rules in
3 accordance with article three, chapter twenty-nine-a of
4 this code to develop comprehensive, uniform guidelines
5 for use by the council and other state infrastructure
6 agencies in evaluating any request by a project sponsor
7 for funding assistance to plan, acquire, construct,
8 improve or otherwise develop a project or infrastructure
9 project. The guidelines shall include the following
10 factors: (1) the public health benefits of the project or
11 infrastructure project; (2) the economic development
12 benefits of the project or infrastructure project; (3) the
13 degree to which the project or infrastructure project
14 will correct deficiencies in the compliance of water
15 supply or sewage treatment facilities with state or
16 federal laws, regulations or standards; (4) the degree to
17 which the project or infrastructure project encourages
18 effective and efficient consolidation of water or sewage
19 treatment systems consistent with the comprehensive
20 plan developed pursuant to section six, of this article;
21 (5) the cost effectiveness of the project or infrastructure
22 project as compared with alternatives which achieve
23 substantially the same public health or economic
24 development benefits, including the consideration of
25 providing maximum feasible fire protection; (6) the
26 availability of alternative sources of funding which
27 could finance all or a part of the project and infrastruc-
28 ture project, and the need for the assistance of the
29 council to finance the project or infrastructure project

30 or attract other sources of funding; (7) the applicant's
31 ability to operate and maintain the system if the project
32 or infrastructure project is approved; (8) the degree to
33 which the project or infrastructure project achieves
34 other state or regional planning goals; (9) the estimated
35 date upon which the project or infrastructure project
36 could commence if funding were available and the
37 estimated completion date of the project or infrastruc-
38 ture project; and (10) such other considerations as the
39 council may consider necessary or appropriate to
40 accomplish the purpose and intent of this article.

41 (b) The council shall create a preliminary application
42 form which shall be used by all project sponsors
43 requesting funding assistance from state infrastructure
44 agencies to plan, acquire, construct, improve or other-
45 wise develop an infrastructure project or project. The
46 preliminary application form shall contain all informa-
47 tion required by all state infrastructure agencies that
48 will be required to issue permits and/or certificates
49 regarding the project or infrastructure project. The
50 preliminary application shall require the project
51 sponsor to set forth the type and proposed location of the
52 infrastructure project or project; the estimated total cost
53 of the project; the amount of funding assistance required
54 and the specific uses of the funding; other sources of
55 funding available or potentially available for the
56 infrastructure project or project; information demon-
57 strating the need for the infrastructure project or
58 project and that the proposed funding of the project is
59 the most economically feasible and viable alternative to
60 completing the project or infrastructure project; and
61 such other information as the council considers neces-
62 sary to enable it to recommend the type of project or
63 infrastructure project financing, in terms of the kind,
64 amount and source of funding, which the project sponsor
65 should pursue and which the state infrastructure agency
66 or agencies should consider an appropriate investment
67 of public funds, and to otherwise carry out the intent
68 of this article.

**§31-15A-5. Requirements for project funding assistance;
review of project preliminary applications**

by council.

1 (a) No project sponsor may apply for or receive any
2 loan, loan guarantee, grant or other funding assistance
3 for a project or infrastructure project from any state
4 infrastructure agency (i) unless the project sponsor
5 requiring the funding assistance first submits a com-
6 pleted preliminary application to the council on the form
7 prepared for such purpose by the council pursuant to
8 section four of this article, and (ii) except as may be
9 recommended by the council after consideration of the
10 preliminary application: *Provided*, That any project
11 sponsor which has an infrastructure project or project
12 with either acceptable bids or all funding in place on
13 the effective date of this act is not required to comply
14 with the provisions of this section.

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

34 (c) The council shall provide a copy of its recommen-
35 dation with respect to each preliminary application,
36 together with a copy of the preliminary application, to
37 all appropriate state infrastructure agencies, which
38 shall take into account the council's recommendations
39 with respect to a project or infrastructure project before
40 taking any action with respect to the project. No state

41 infrastructure agency shall take any action inconsistent
42 with the recommendation of the council unless the
43 governing body of the agency, or the head of the agency
44 if it has no governing body, expressly finds and
45 determines that the recommendation is not in the best
46 interest of the state or the area in which the proposed
47 infrastructure project or project is to be located.

48 (d) In reviewing each preliminary application, the
49 council shall use the engineering, financial and technical
50 expertise of the respective staffs of the state infrastruc-
51 ture agencies represented on the council so as to
52 recommend for funding those projects or infrastructure
53 projects which are consistent with the purposes and
54 intent of this article and with the policies and priorities
55 of this state generally. The council may include in its
56 findings a recommendation that a state infrastructure
57 agency consider technical reports on the project pre-
58 pared by other infrastructure agencies or by any federal
59 agency.

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

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

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

10 (2) Periodically prepare a list of infrastructure
11 projects or projects which cannot meet the established
12 funding guidelines of the various state infrastructure
13 agencies, other than the housing development fund, but
14 which are consistent with the mandates of this article
15 and recommend to the water development authority that
16 it make a grant or loan to the project sponsors from the
17 infrastructure fund to finance the cost of one or more
18 such projects or infrastructure projects;

19 (3) Do all other acts necessary and proper to carry out
20 the powers expressly granted to the authority in this
21 article; and

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

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

45 (c) The council shall study the viability of the
46 consolidation of public service districts throughout the
47 state: *Provided*, That the study shall encompass not only
48 public service districts but also any and all entities
49 which provide or supply water and sewer service to the
50 general public: *Provided, however*, That the council
51 shall, in the preparation of the study, consult with the
52 public service district division of the public service
53 commission and representatives of the West Virginia
54 rural water association and the West Virginia associa-
55 tion of public service districts, as needed. The council
56 shall report their findings and conclusions on or before
57 the sixteenth of January of the year one thousand nine
58 hundred ninety-five to the governor, speaker of the
59 house of delegates and president of the senate.

§31-15A-7. Current and prospective planning; roads and highways; report to division of highways.

1 (a) The council shall take into account the current and
2 prospective infrastructure needs in relation to plans of
3 the division of highways for the development and
4 building of new roads. Upon completion an environmen-
5 tal impact study, the commissioner of highways shall
6 provide the council with plans for any and all new roads.
7 In a timely manner, the council shall advise the
8 commissioner of the division of highways on the
9 feasibility of the expansion of new or existing water and
10 sewer lines concomitant to the construction of the new
11 roads.

12 (b) The council has the authority to appoint local
13 infrastructure planning teams. The local infrastructure
14 planning teams may consist of the following: A designee
15 of the division of highways from the region where the
16 new road is being built; a designee of the division of
17 highways from the central state office; a designee from
18 the environmental engineers division of the department
19 of health and human resources; a designee from the local
20 developmental authority where the new road is being
21 built; a designee from the regional developmental
22 authority in the area where the new road is being built;
23 a designee from the public service commission; a
24 designee from the division of environmental protection;
25 a designee from the county commission where the new
26 road is being built who shall serve as chairperson of the
27 planning team; a citizen of the county where the new
28 road is being built to be chosen by the county commis-
29 sion; and the elected state delegates and senators from
30 the area where the new road is being built. In order to
31 avoid delay of any highway project, immediately upon
32 appointment of a local infrastructure planning team, the
33 director of the division of highways shall submit to the
34 council a time frame within which the planning team
35 must act and within which the planning team must
36 submit any plans, maps, recommendations or reports
37 developed pursuant to this subsection. The local infra-
38 structure planning team shall meet prior to the devel-
39 opment and building of a new road. Members of the

40 local infrastructure planning team shall only receive
41 payment for actual expenses incurred. The local infra-
42 structure planning team shall advise the commissioner
43 of the division of highways on the feasibility of an
44 infrastructure plan. The local infrastructure planning
45 team shall meet to develop an infrastructure plan that
46 includes an assessment study of existing water and
47 sewer lines and a feasibility study on future develop-
48 ment and laying of water and sewer lines. After these
49 studies are completed, a developmental map shall be
50 drawn of the proposed road route with overlays of the
51 proposed water and sewer lines. These studies and the
52 map shall be presented to the commissioner of the
53 division of highways and shall be used by the commis-
54 sioner in the planning, developing and building of the
55 road.

56 (c) The water development authority shall establish a
57 restricted account within the infrastructure fund to be
58 expended for the construction of water and sewage lines
59 as may be recommended by the council in accordance
60 with this article and specifically, in accordance the plan
61 developed under subsection (b) of this section. The
62 reserve account shall be known as the "infrastructure
63 road improvement reserve account". The council and the
64 division of highways may enter into agreements to share
65 the cost of financing projects approved in accordance
66 with this section from moneys available in the infras-
67 tructure road reserve account and moneys available
68 from the state road fund. Annually, the council may
69 direct the water development authority to transfer funds
70 from the infrastructure fund in an amount not to exceed
71 one million dollars to the restricted account: *Provided,*
72 That at no time may the balance of the restricted
73 account exceed one million dollars.

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

76 (e) After the construction of water and sewer lines
77 adjacent to the new road these new lines shall be turned
78 over to existing utilities by expansion of boundaries of
79 public service districts or shall be main extensions from
80 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.

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

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

31 (c) Projects that are not emergency projects are
32 subject to the requirements of section eleven, article two,
33 chapter twenty-four of this code to the extent they would
34 be otherwise.

35 (d) The North Fork Hughes River watershed project,
36 proposed to enhance economic growth and development
37 through tourism as provided in subsection (k), section
38 two of this article and to include a water facility project
39 as defined in subsection (m), section two of this article,
40 is hereby specifically exempted from any requirement
41 imposed by this article, except that the provisions of
42 subdivision (a) of this section are specifically made
43 applicable to the project. The project is hereby specif-
44 ically authorized and the public land corporation shall
45 have and may exercise the power of eminent domain and
46 all authority otherwise prescribed by law to acquire
47 necessary land and rights-of-way, to include approxi-
48 mately four hundred seventy-eight acres, in connection
49 with the project. Funding for the project shall be
50 provided by the federal government from the Appalach-
51 ian regional commission through the United States soil
52 conservation service. Upon completion of the project, the
53 property acquired shall be transferred to the state park
54 system. The commissioner of the division of tourism and
55 parks or the successor to the commissioner's powers and
56 duties is directed to expand the boundaries of North
57 Bend state park to include the project area and to
58 operate the expanded park property, including im-
59 proved recreational facilities, from funds appropriated
60 for that purpose.

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

1 (a) There is hereby created a special revenue account
2 in the state treasury to be appropriated by the Legis-
3 lature for use by the water development authority,
4 which shall be designated and known as the "West
5 Virginia infrastructure fund." The infrastructure fund
6 shall consist of (1) infrastructure revenues; (2) any
7 appropriations, grants, gifts, contributions, loan pro-
8 ceeds or other revenues received by the infrastructure
9 fund from any source, public or private; (3) amounts
10 received as payments on any loans made by the water

11 development authority to pay for the cost of a project
12 or infrastructure project; (4) insurance proceeds payable
13 to the water development authority or the infrastructure
14 fund in connection with any infrastructure project or
15 project; (5) all income earned on moneys held in the
16 infrastructure fund; and (6) all funds deposited in
17 accordance with section sixteen of this article. Amounts
18 in the infrastructure fund shall be segregated and
19 administered by the water development authority
20 separate and apart from its other assets and programs.
21 Amounts in the infrastructure fund may not be trans-
22 ferred to any other fund or account or used, other than
23 indirectly, for the purposes of any other program of the
24 water development authority, except that the water
25 development authority may use funds in the infrastruc-
26 ture fund to reimburse itself for any administrative
27 costs incurred by it and approved by the council in
28 connection with any loan, loan guarantee, grant or other
29 funding assistance made by the water development
30 authority pursuant to this article.

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

41 (c) To further accomplish the purposes and intent of
42 this article, the water development authority may
43 pledge infrastructure revenues and from time to time
44 establish one or more restricted accounts within the
45 infrastructure fund for the purpose of providing funds
46 to guarantee loans for infrastructure projects or
47 projects: *Provided*, That for any fiscal year the water
48 development authority may not deposit into the re-
49 stricted accounts more than twenty percent of the
50 aggregate amount of infrastructure revenues deposited
51 into the infrastructure fund during the fiscal year. No

52 loan guarantee shall be made pursuant to this article
53 unless recourse under the loan guarantee is limited
54 solely to amounts in the restricted account or accounts.
55 No person shall have any recourse to any restricted
56 accounts established pursuant to this subsection other
57 than those persons to whom the loan guarantee or
58 guarantees have been made.

59 (d) Each loan, loan guarantee, grant or other assist-
60 ance made or provided by the water development
61 authority shall be evidenced by a loan, loan guarantee,
62 grant or assistance agreement between the water
63 development authority and the project sponsor to which
64 the loan, loan guarantee, grant or assistance shall be
65 made or provided, which agreement shall include,
66 without limitation and to the extent applicable, the
67 following provisions:

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

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

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

81 (4) The agreement of the governmental agency to
82 comply with all applicable federal and state laws, and
83 all rules and regulations issued or imposed by the water
84 development authority or other state, federal or local
85 bodies regarding the acquisition, construction, improve-
86 ment or operation of the infrastructure project or
87 project and granting the water development authority
88 the right to appoint a receiver for the project or
89 infrastructure if the project sponsor should default on
90 any terms of the agreement.

91 (e) Any resolution of the water development authority
92 approving loan, loan guarantee, grant or other assist-
93 ance shall include a finding and determination that the
94 requirements of this section have been met.

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

1 (a) To further accomplish the purpose and intent of
2 this article, the water development authority shall use
3 the moneys in the infrastructure fund created pursuant
4 to section nine of this article, upon receipt of one or more
5 recommendations from the council pursuant to section
6 five of this article, to make loans, with or without
7 interest, loan guarantees or grants and to provide other
8 assistance, financial, technical or otherwise, to finance
9 all or part of the costs of infrastructure projects or
10 projects to be undertaken by a project sponsor: *Provided*,
11 That no loan, loan guarantee, grant or other assistance
12 shall be made or provided except upon a determination
13 by the council that the loan, loan guarantee, grant or
14 other assistance and the manner in which it will be
15 provided are necessary or appropriate to accomplish the
16 purposes and intent of this article, based upon an
17 application submitted to the council: *Provided, however*,
18 That no grant shall be made to a profit sponsor that is
19 not a governmental agency or a not for profit corpora-
20 tion under the provisions of section 501(c) of the Internal
21 Revenue Code of 1986, as amended. Applications for
22 loans, loan guarantees, grants or other assistance may
23 be submitted by a project sponsor for one or more
24 infrastructure projects or projects from time to time,
25 and shall be submitted in the manner and on the
26 preliminary application form prepared by the council
27 pursuant to section four of this article. Any recommen-
28 dation of the council approving a loan, loan guarantee,
29 grant or other assistance shall include a finding and
30 determination by the council that the requirements of
31 this section have been met.

32 (b) The council has the authority in its sole discretion
33 to make grants to project sponsors if it finds that (1) the
34 level of rates for the users would otherwise be an
35 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,

2 the water development authority is hereby empowered,
3 in addition to all other powers granted to it under this
4 code, upon approval of the council, to (1) enter into
5 agreements or other transactions with any federal or
6 state agency in connection with any infrastructure
7 project or project; (2) receive or administer on behalf of
8 any federal or state agency grants, subsidies or other
9 payments to be applied to the costs of any infrastructure
10 project or project financed in whole or in part or
11 otherwise assisted by the water development authority,
12 including, but not limited to, payments to be applied to
13 operating costs and debt service or obligations of any
14 project sponsor; (3) receive and accept aid or contribu-
15 tions from any source of money, property, labor or other
16 things of value, to be held, used and applied only for the
17 purposes for which such grants and contributions are
18 made; (4) establish and amend the criteria and qualifi-
19 cations for making loans, loan guarantees or grants, or
20 providing any other assistance, for any infrastructure
21 project or project, and the terms of any loans, loan
22 guarantee, grant or assistance agreement for any
23 project; and (5) do all things which are necessary to
24 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.**

1 No part of the infrastructure fund shall inure to the
2 benefit of or be distributable to the water development
3 board directors or officers of the water development
4 authority except that the water development authority
5 is authorized and empowered to pay reasonable compen-
6 sation, other than to members of the water development
7 board, including the chairman, vice chairman, secre-
8 tary-treasurer for services rendered and to make loans
9 and exercise its other powers as previously specified in
10 furtherance of its corporate purpose: *Provided*, That no
11 loans shall be made, and no property shall be purchased
12 or leased from, or sold, leased or otherwise disposed of,

13 to any water development board member or officer of
14 the water development authority.

§31-15A-14. Termination or dissolution.

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

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

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

7 (b) The state and its subdivisions shall, except as
8 provided in this subsection, solicit competitive bids and
9 require the payment of prevailing wage rates as
10 provided in article five-a, chapter twenty-one of this
11 code for every project or infrastructure project funded
12 pursuant to this article exceeding twenty-five thousand
13 dollars in total cost. Following the solicitation of the
14 bids, the construction contract shall be awarded to the
15 lowest qualified responsible bidder, who shall furnish a
16 sufficient performance and payment bond: *Provided*,
17 That the state and its subdivisions may reject all bids
18 and solicit new bids on the project. Nothing in this
19 subsection applies to work performed on construction or
20 repair projects not exceeding a total cost of twenty-five
21 thousand dollars by regular full-time employees of the
22 state or its subdivisions, nor shall anything in this
23 subsection prevent students enrolled in vocational
24 educational schools from being utilized in the construc-
25 tion or repair projects when such use is a part of the
26 students' training program. Nothing in this subsection
27 applies to emergency repairs to building components
28 and systems: *Provided, however*, That the term "emer-

29 agency repairs” means repairs that if not made imme-
30 diately will seriously impair the use of the building
31 components and systems or cause danger to those
32 persons using the building components and systems.
33 This subsection shall not apply to any situation where
34 the state or a subdivision thereof comes to an agreement
35 with volunteers, or a volunteer group, whereby the
36 governmental body will provide construction or repair
37 materials, architectural, engineering, technical or any
38 other professional services and the volunteers will
39 provide the necessary labor without charge to, or
40 liability upon, the governmental body: *Provided further*,
41 That the total cost of the construction or repair projects
42 does not exceed twenty-five thousand dollars.

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

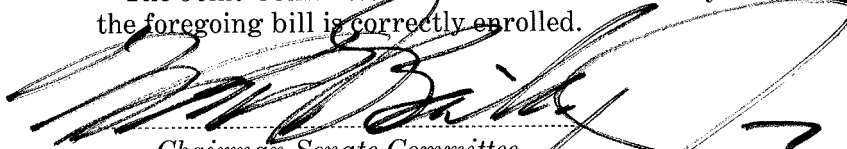
§31-15A-16. Dedication of severance tax proceeds.

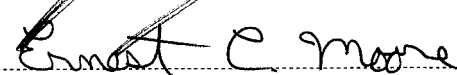
1 (a) There shall be dedicated an annual amount from
2 the collections of the tax collected pursuant to article
3 thirteen-a, chapter eleven of this code for the construc-
4 tion, extension, expansion, rehabilitation, repair and
5 improvement of water supply and sewage treatment
6 systems and for the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

9 (b) Notwithstanding any other provision of this code
10 to the contrary, beginning on the first day of July, one
11 thousand nine hundred ninety-five, the first sixteen
12 million dollars of the tax collected pursuant to article
13 thirteen-a, chapter eleven of this code shall be deposited
14 to the credit of the West Virginia infrastructure fund
15 created pursuant to section nine of this article: *Provided*,
16 That none of the collections from the tax imposed
17 pursuant to section six, article thirteen-a, chapter eleven
18 of this code shall be so dedicated or deposited: *Provided*,
19 *however*, That the portion of the tax imposed by article
20 thirteen-a, chapter eleven and dedicated for purposes of
21 medicaid and the division of forestry pursuant to section

22 twenty-a of said article thirteen-a shall remain dedi-
23 cated for the purposes set forth in said section
24 twenty-a.

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

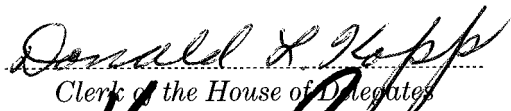

Chairman Senate Committee


Chairman House Committee

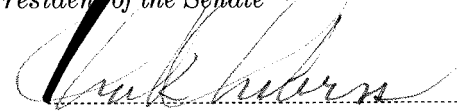
Originating in the House.

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 3/29/94

Time 3:01 pm