WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Com. Sub. for

HOUSE BILL No. 2037

(By Delegate Mr. Speaker, Mr. Chambers
and Delegate Ashley)

[By Request of the Executive]

Passed

March 10, 1995

In Effect

From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2037

(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[By Request of the Executive]

[Passed March 10, 1995; in effect from passage.]

AN ACT to amend and reenact sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fifteen-b, all relating to authorizing the sale of bonds for water, sewer and infrastructure purposes; increasing the number of public members of council; specifying qualifications for public members; authorizing expenses for public members of council; exempting economic development authority and civil contingent fund from council review; providing for the deposit of proceeds in the infrastructure fund derived from the sale of bonds; providing that the fund may be operated as a trust account in a local bank; establishing minimum rates for loans; providing for engineering assistance program; limiting types of engineering information required; providing requirements for disbursement of funds by loan or grant; setting minimum end user utility rates; providing for disbursements to pay debt service on infrastructure general obligation bonds; empower-
ing the governor to issue infrastructure general obligation bonds; creating the infrastructure obligation debt service fund; funding the infrastructure general obligation debt service funds; providing terms for general obligation bonds; setting forth a cap on the interest rate of bonds; directing the use of funds deposited in infrastructure general obligation debt service fund; setting forth the covenants of the state; providing for the sale of general obligation bonds and their minimum price; prohibiting funds inuring to the benefit of or being distributable to directors or officers; providing that infrastructure general obligation bonds are lawful investments; authorizing the water development authority to issue refunding bonds; providing for the termination or dissolution of the water development authority; allowing the governor to select legal advisors; setting forth duties of bond counsel; authorizing the treasurer to select financial advisor; allowing the payment of expenses from debt service fund.

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

That sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article fifteen-b, all to read as follows:

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

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is 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 eleven 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 four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered 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. Six 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 who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(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 necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(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, Rural Economic Community Development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article.

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

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit 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; (6) all funds deposited in accordance with section four of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.

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 transferred to any other fund or account or used, other than indirect-
ly, for the purposes of any other program of the water
development authority, except that the water development
authority may use funds in the infrastructure fund to re-
imburse 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 shall be de-
posited by the water development authority in one or
more banking institutions: Provided, That any moneys so
deposited shall be deposited in a banking institution locat-
ed in this state. The banking institution shall be selected
by the water development authority by competitive bid.
Pending the disbursement of any money from the infra-
structure fund as authorized under this section, the water
development authority shall invest and reinvest the mon-
ey 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 and article fifteen-b of this chapter, 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 pro-
jects or projects: Provided, That for any fiscal year the
water development authority may not deposit into the
restricted accounts more than twenty percent of the aggre-
gate amount of infrastructure revenues deposited into the
infrastructure fund during the fiscal year. No loan guar-
antee 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 pursu-
ant 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 the 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.
(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance.

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

(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 any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. 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 project 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 on preliminary application forms 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. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(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 pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other condi-
tions, that the applicant pursue other state or federal grant
or loan programs. Upon a recommendation by the coun-
cil, the water development authority shall provide the grant
in accordance with the recommendation. The council
shall develop criteria to be considered in making grants to
project sponsors which shall require consideration of the
economic or financial conditions of the area to be served
and the availability of other funding sources. The council
shall adopt procedural rules regarding the manner in
which grants will be awarded in conformity with this sec-
tion. The procedural rules shall be adopted pursuant to
article three, chapter twenty-nine-a of this code.

(c) The council shall affix a mandatory minimum end
user utility rate that must be met by the project sponsor
before grant assistance may be awarded. The mandatory
minimum utility rate shall be established by legislative rule
promulgated in accordance with article three, chapter
twenty-nine-a of this code. The rule shall provide that the
mandatory minimum utility rate be based upon a uniform
statewide percentage of the median household income in a
particular geographic area which is rationally related to
the geographic area of the project to be served.

(d) No loan or grant funds may be made available for
a project if the project to be funded will provide subsi-
dized services to certain users in the service area of the
project.

(e) Notwithstanding any other provision of this article
to the contrary, engineering studies and requirements
imposed by the council for preliminary applications shall
not exceed those engineering studies and requirements
which are necessary for the council to determine the eco-
nomic feasibility of the project. If the council determines
that the engineering studies and requirements for the
pre-application would impose an undue hardship on any
project sponsor, the council may provide funding assis-
tance to project sponsors to defray the expenses of the
pre-application process from moneys available in the
Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the pre-application process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually.


(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 general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter: 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.

(c) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

ARTICLE 15B. INFRASTRUCTURE BONDS.

§31-15B-1. Definitions.

For purposes of this article and article fifteen-a of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three, article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the Constitution of this State entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two of this article.

(d) "Water development authority" means the West Virginia water development authority established under article one, chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties.

§31-15B-2. Infrastructure general obligation bonds; amount; when may issue.
Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold solely 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 as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such denominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which sixteen million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which fact shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state.
§31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.

There is hereby created a special account in the state treasury, which shall be designated and known as the "West Virginia Infrastructure General Obligation Debt Service Fund", into which shall be deposited amounts pursuant to the provisions of section sixteen, article fifteen-a of this chapter, as well as any amounts appropriated by the Legislature.

§31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.

All money from any and all appropriations made by the state, all moneys transferred pursuant to the provisions of section sixteen, article fifteen-a, of this chapter and all moneys from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon shall be deposited into the infrastructure general obligation debt service fund. Moneys shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the infrastructure general obligation debt service fund shall be deposited in the state treasury to the credit thereof.

This fund shall be applied by the treasurer to the payment of the principal and interest on such bonds as shall become due as herein provided. Any funds remaining after certification of the amount necessary for the payment of principal and interest as provided by section sixteen, article fifteen-a and expenses authorized pursuant to section thirteen of this article shall be deposited to the credit of the infrastructure fund.

§31-15B-5. Covenants of state.
The state of West Virginia covenants and agrees with
the holders of the bonds issued pursuant hereto as follows:

(1) That such bonds shall constitute a direct and general
obligation of the state of West Virginia; (2) that the full
faith and credit of the state is hereby pledged to secure the
payment of the principal and interest of such bonds; (3)
that an annual state tax shall be collected in an amount
sufficient to pay as it may accrue the interest on such
bonds and the principal thereof; and (4) that such tax shall
be levied in any year only to the extent that the moneys
transferred to the infrastructure general obligation debt
service fund as provided in section sixteen, article fifteen-a
of this chapter which are irrevocably set aside and appro-
priated for and applied to the payment of the interest on
and principal of any bond becoming due and payable in
such year are insufficient therefor.

§31-15B-6. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at
such time or times as the council, by resolution, may de-
termine necessary to provide funds for purposes set forth
in this article and article fifteen-a of this chapter. Sales
shall be at not less than par and accrued interest.

The bonds must be offered for competitive bids from
recognized financial investment institutions before the
bonds may be sold: Provided, That the bid process is not
subject to the provisions of article three-a, chapter five-a
of this code. Any and all of the bids may be rejected. If
the bonds are not sold pursuant to the competitive bid
process, the bonds may, within sixty days after the date the
bids are received, be sold at private sale: Provided, That
no private sale shall be made at a price less than the high-
est bid received.

§31-15B-7. Prohibition on funds inuring to the benefit of or
being distributable to directors or officers; transactions between the council and West
Virginia water development authority and di-
rectors or 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 commissioners of the
3 public service commission, the council, or the West Virgin-
4 ia water development authority's directors or officers. The
5 council may approve and the water development authority
6 make loans and exercise other powers as previously speci-
7 fied in furtherance of their corporate purpose: Provided,
8 That no loans shall be made, nor shall any property be
9 purchased or leased from, or sold, leased or otherwise
10 disposed of, to any commissioner, director or officer of
11 the council, the public service commission or the West
12 Virginia water development authority.

§31-15B-8. Infrastructure bonds lawful investments.

1 All infrastructure bonds issued pursuant to this article
2 shall be lawful investments for banking institutions, societ-
3 ies for savings, building and loan associations, savings and
4 loan associations, deposit guarantee associations, trust
5 companies, insurance companies, including domestic for
6 life and domestic not for life insurance companies.


1 Any infrastructure general obligation bonds which are
2 outstanding may at any time be refunded by the issuance
3 of refunding bonds in an amount deemed necessary to
4 refund the principal of the bonds to be refunded, together
5 with any unpaid interest thereon; to accomplish the pur-
6 pose of this article and article fifteen-a of this chapter; and
7 to pay any premiums and commissions necessary to be
8 paid in connection therewith. Any refunding may be
9 effected whether the infrastructure general obligation
10 bonds to be refunded shall have then matured or shall
11 thereafter mature. Any refunding bonds issued pursuant
12 to this article shall be payable from the infrastructure
13 general obligation bond debt service fund, and shall be
14 subject to the provisions contained in section eleven, arti-
§31-15B-10. Termination or dissolution.

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

§31-15B-11. Treasurer to determine financial advisor.

The treasurer shall select a competent person or firm to serve as financial advisor for the issuance and sale of general obligation bonds issued pursuant to this article.


The governor shall select a competent person or firm to serve as bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the council in court, render advice to the council and provide other legal services as may be requested by the council regarding any bond issuance pursuant to this article and all other matter relating to the bond issue.

§31-15B-13. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any general obligation bonds pursuant to this article shall be paid out of the infrastructure general obligation debt service fund. The amount of any expenses incurred shall be certified to the water development authority.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoenover  
Chairman Senate Committee

Ernest E. Moore  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Russell Chambers  
Clerk of the Senate

Donald L. Hoff  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Earl Ray Tomblin  
Speaker of the House of Delegates

The within is approved this the 24th day of March, 1993.

Governor