WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

HOUSE BILL No. 4860

(By Delegate Kiss, Burke, Kelly, Mezzatesta, Bordu and Sacco-Myer)

Passed March 8, 1996

In Effect Ninety Days from Passage
ENROLLED

H. B. 4860

(BY DELEGATES KISS, BURKE, KELLEY, MEZZATESTA, BORDER AND FACEMYER)

[Passed March 8, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, five and seven, article two, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions in the water pollution control revolving fund act; changing the term "local government" to "local entity"; adding banking institutions to the definition of "local entity"; establishing a revolving fund; promulgation of rules; disbursement from the fund; collection of money due the fund; and review of funded projects.

Be it enacted by the Legislature of West Virginia:

That sections one, three, five and seven, article two, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; all to read as follows:

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

3 (a) "Authority" means the water development authority provided for in section four, article one of this chapter.

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

1. Developmental, planning and feasibility studies, surveys, plans and specifications;
2. Architectural, engineering, financial, legal or other special services;
3. Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
4. Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
5. The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and
6. Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of
the governor as having the primary responsibility for
administering the fund pursuant to the federal clean water
act, as amended, and the federal safe drinking water act, as
amended, or other federal laws.

(e) "Local entity" means any county, city, town, mu-
nicipal corporation, authority, district, public service dis-
trict, commission, banking institution or political subdivi-

(f) "Project" means any public water or wastewater
treatment facility located or to be located in or outside this
state by a local entity and includes:

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

(2) Public water transportation, treatment and distribu-
tion facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laborato-
ry facilities related to the facilities delineated in subdivi-
sions (1), (2) and (3) of this subsection;

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

(6) Other projects allowable under federal law.

§22C-2-3. West Virginia water pollution control revolving
fund; disbursement of fund moneys; adminis-
tration of the fund.

(a) Under the direction of the division of environmen-
tal protection, the water development authority shall estab-
lish, administer and manage a permanent and perpetual
fund, to be known as the "West Virginia Water Pollution
Control Revolving Fund." The fund shall be comprised of
moneys appropriated to the fund by the Legislature, mon-
ey allocated to the state by the federal government ex-
pressly for the purposes of establishing and maintaining a
state water pollution control revolving fund, all receipts
from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

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

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be autho-
rized for payment by the director of the authority or the
director's designee. Any depository or officer of the de-
pository to which moneys of the fund are paid shall act as
trustee of the moneys and shall hold and apply them sole-
ly for the purposes for which the moneys are provided
under this article. Moneys in the fund shall not be com-
mingled with other money of the authority. If not needed
for immediate use or disbursement, moneys in the fund
may be invested or reinvested by the authority in obliga-
tions or securities which are considered lawful investments
for public funds under this code.

§22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due
and owing to the fund under a revolving fund loan agree-
ment between the state and a local entity, and notwith-
standing any provisions of this code to the contrary, the
authority has and may, at its option, exercise the following
rights and remedies in the event of any default by a local
entity under a loan agreement:

(a) The authority may directly impose, in its own
name and for its own benefit, service charges upon all
users of a project funded by a loan distributed to a local
entity pursuant to this article, and may proceed directly to
enforce and collect the service charges, together with all
necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in
the name of and as the agent for a particular local entity,
all of the rights, powers and remedies of the local entity
with respect to the project or which may be conferred
upon the local entity by statute, rule, regulation or judicial
decision, including all rights and remedies with respect to
users of the project funded by the loan distributed to that
local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or
other judicial or administrative proceeding, compel per-
formance by a local entity of all of the terms and condi-
tions of the loan agreement between the state and that
local entity including:
(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges;

and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended.
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 ninety days from passage.

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 28th day of March, 1996.

Governor