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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

HOUSE BILL No. 4860

(By Delegates Kiss, Burke, Kelley,
Mezzatesta, Borden and Pacemyer)



Passed March 8, 1996

In Effect Ninety Days From Passage

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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
- 2 different meaning, as used in this article:
- 3 (a) "Authority" means the water development authority
- 4 provided for in section four, article one of this chapter.
- 5 (b) "Cost" as applied to any project financed under the

6 provisions of this article means the total of all costs in-
7 curred by a local entity that are reasonable and necessary
8 for carrying out all works and undertakings necessary or
9 incident to the accomplishment of any project including:

10 (1) Developmental, planning and feasibility studies,
11 surveys, plans and specifications;

12 (2) Architectural, engineering, financial, legal or other
13 special services;

14 (3) Acquisition of land and any buildings and im-
15 provements on the land or buildings, including the dis-
16 charge of any obligations of the sellers of the land, build-
17 ings or improvements;

18 (4) Site preparation and development, including de-
19 molition or removal of existing structures, construction
20 and reconstruction, labor, materials, machinery and equip-
21 ment;

22 (5) The reasonable costs of financing incurred by the
23 local entity in the course of the development of the pro-
24 ject, carrying charges incurred before placing the project
25 in service, interest on funds borrowed to finance the pro-
26 ject to a date subsequent to the estimated date the project
27 is to be placed in service, necessary expenses incurred in
28 connection with placing the project in service, and the
29 funding of accounts and reserves which the authority may
30 require; and

31 (6) Other items that the division of environmental
32 protection determines to be reasonable and necessary.

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

40 (d) "Instrumentality" means the division of environ-
41 mental protection or the agency designated by an order of

42 the governor as having the primary responsibility for
43 administering the fund pursuant to the federal clean water
44 act, as amended, and the federal safe drinking water act, as
45 amended, or other federal laws.

46 (e) "Local entity" means any county, city, town, mu-
47 nicipal corporation, authority, district, public service dis-
48 trict, commission, banking institution or political subdivi-
49 sion in West Virginia.

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

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

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

57 (3) Drainage facilities and projects;

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

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

63 (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.**

1 (a) Under the direction of the division of environmen-
2 tal protection, the water development authority shall estab-
3 lish, administer and manage a permanent and perpetual
4 fund, to be known as the "West Virginia Water Pollution
5 Control Revolving Fund." The fund shall be comprised of
6 moneys appropriated to the fund by the Legislature, mon-
7 eys allocated to the state by the federal government ex-
8 pressly for the purposes of establishing and maintaining a
9 state water pollution control revolving fund, all receipts

10 from loans made from the fund to local entities, all in-
11 come from the investment of moneys held in the fund,
12 and all other sums designated for deposits to the fund
13 from any source, public or private. Moneys in the fund
14 shall be used solely to make loans to local entities to fi-
15 nance or refinance the costs of a project: *Provided*, That
16 moneys in the fund shall be utilized to defray the costs
17 incurred by the authority and the division of environmen-
18 tal protection in administering the provisions of this arti-
19 cle: *Provided, however*, That moneys in the fund shall be
20 used to make grants for projects to the extent allowed or
21 authorized by federal law.

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

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

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

32 (c) In order to carry out the administration and man-
33 agement of the fund, the authority is authorized to employ
34 officers, employees, agents, advisers and consultants, in-
35 cluding attorneys, financial advisers, engineers, other tech-
36 nical advisers and public accountants and, notwithstanding
37 any provisions of this code to the contrary, to determine
38 their duties and compensation without the approval of any
39 other agency or instrumentality.

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

44 (e) All moneys belonging to the fund shall be kept in
45 appropriate depositories and secured in conformance with
46 this code. Disbursements from the fund shall be autho-

47 rized for payment by the director of the authority or the
48 director's designee. Any depository or officer of the de-
49 pository to which moneys of the fund are paid shall act as
50 trustee of the moneys and shall hold and apply them sole-
51 ly for the purposes for which the moneys are provided
52 under this article. Moneys in the fund shall not be com-
53 mingled with other money of the authority. If not needed
54 for immediate use or disbursement, moneys in the fund
55 may be invested or reinvested by the authority in obliga-
56 tions or securities which are considered lawful investments
57 for public funds under this code.

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

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

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

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

22 (c) The authority may, by civil action, mandamus or
23 other judicial or administrative proceeding, compel per-
24 formance by a local entity of all of the terms and condi-
25 tions of the loan agreement between the state and that
26 local entity including:

27 (1) The adjustment of service charges as required to
28 repay the loan or otherwise satisfy the terms of the loan
29 agreement;

30 (2) The enforcement and collection of service charges;
31 and

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

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

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

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

11 (b) The director of the division of environmental pro-
12 tection is authorized to direct a local entity, or its agent, to
13 implement all measures that, in the judgment of the direc-
14 tor, are necessary in order to mitigate or prevent adverse
15 impacts to the public health, safety or welfare or to the
16 environment that may result from a project funded under
17 this article. The director is further authorized to require
18 all projects to comply with all other appropriate federal
19 laws and regulations that are required of the projects un-
20 der the federal clean water act, as amended.

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

Handy Spoonover
Chairman Senate Committee

Handy Spoonover
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Robert E. Allen
Clerk of the Senate

Gregory M. Snow
Clerk of the House of Delegates

Carl Roy Joseph
President of the Senate

Carl Albert
Speaker of the House of Delegates

The within *is approved* this the *28th*
day of *March*, 1996.

Caston Caperton
Governor

NTED TO THE

VERNOR

Date 3/27/96

Time 3:03 pm