WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. __2712

Mr. Speaker, Mr. Kiss and Ashley
(By Delegate _______ [By Request of the Executive] ______"

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Passed _______________________________ April 11, 1997

In Effect _______________________________ From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2712

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)
[By Request of the Executive]

[Passed April 11, 1997; in effect from passage.]

AN ACT to amend section nine-a, article one, chapter sixteen 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 thirteen-c, all relating to public water systems; definition of public water system; criminal penalties; civil and administrative penalties; violation of drinking water rules or regulations; creation of safe drinking water penalty fund; designation of division of health as instrumentality to enter into agreements for and accept grants made by the United States Environmental protection agency; creation of drinking water treatment revolving fund; legislative rules; administration and management of fund by division of health and water development authority; use of grant moneys generally; use of grant moneys for providing technical assistance services for small public water systems; use of grant moneys for disadvantaged communities; deposits of grant moneys; set-aside accounts; audit of grant moneys; remedies to enforce payment of loans from fund; and construction of article.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article one, chapter sixteen 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 thirteen-c, all to read as follows:

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; criminal, civil and administrative penalties; safe drinking water penalty fund.

(a) A public water system is any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system does not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

(b) (1) The division of health shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. Such rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer.
(2) It shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

(3) In addition, the division of health shall establish by legislative rule, as set out in chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, as set out in chapter twenty-nine-a of this code, establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water.

(c) Authorized representatives of the division of health shall have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing, and shall be furnished records or information reasonably required for a complete inspection.

(d) (1) Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who violates any provision of this section, or any of the rules or orders issued pursuant thereto, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, and each day's violation shall constitute a separate offense. In addition thereto, the division of health may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations.

(2) For a willful violation of a provision of this section, or of any of the regulations or orders issued thereunder for which a penalty is not otherwise provided under
subdivision (3) of this subsection, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day’s violation shall be grounds for a separate penalty.

(3) The division of health shall have the authority to assess administrative penalties and initiate such proceedings as may be necessary for the enforcement of drinking water regulations. The administrative penalty for a violation of any drinking water rule or regulation adopted by the division shall be a minimum of one thousand dollars per day per violation and each day’s violation shall be grounds for a separate penalty. In any action brought to enforce drinking water rules or regulation, the administrative penalty may not exceed an aggregate amount of five thousand dollars for systems serving a population of less than ten thousand persons and may not exceed twenty-five thousand dollars for systems serving a population of ten thousand persons or more. Payments shall be payable to the division of health. All moneys collected under this section shall be deposited into a restricted account known as the safe drinking water penalty fund, which is hereby created in the office of the state treasurer. All money deposited into the fund shall be used by the division of health to provide technical assistance to public water systems.

ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.

§16-13C-1. Definitions.

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

(1) “Authority” means the water development authority provided for in section four, article one, chapter twenty-two-c of this code.
(2) “Capacity development” means the technical, managerial and financial capability of a public water system.

(3) “Cost” means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

(4) “Disadvantaged community” means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) “Federal safe drinking water act” means the federal statute commonly known as the “Safe Drinking Water Act”, 42 U.S.C. 300f et seq., as enacted, amended, and as may be subsequently amended.

(6) “Fund” means the West Virginia drinking water treatment revolving fund created in this article.

(7) “Instrumentality” means the division of health which shall have the primary responsibility for administering the fund and this article pursuant to requirements of the federal safe drinking water act.

(8) “Local Entity” means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state which is empowered to construct and operate an eligible project.

(9) “Public water system” means that term as defined in section nine-a, article one, chapter sixteen of the code.

(10) “Project” means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) “Set-aside accounts” means those accounts that
may be set up for activities required by the federal safe
drinking water act and the moneys for these accounts may
be taken from the federal capitalization grant for these
nonproject activities before the capitalization grant is de-
posited into the fund.

(12) “Small system” means a public water system
serving 10,000 or fewer persons.

§16-13C-2. Designation of division of health as state instrumen-
tality; rules; small systems; disadvantaged com-
munities.

(a) The division of health shall act as the instrumen-
tality that is hereby empowered to enter into capitalization
agreements with the United States Environmental Protec-
tion Agency, to accept capitalization grant awards made
under the federal safe drinking water act, and to direct the
administration and management of the drinking water
treatment revolving fund created in this article in accor-
dance with the requirements of federal law.

(b) The division of health shall propose rules for
legislative approval in accordance with provisions of arti-
cle three, chapter twenty-nine-a of the code for the pur-
pose of effecting the administration of the provisions of
this article. The rules shall include, but are not limited to,
establishing requirements for: (1) Capacity development;
(2) environmental review; (3) disadvantaged community
designation; (4) receipt and disbursement of fund mon-
ey; and (5) establishment of a drinking water treatment
revolving fund program to direct the financial manage-
ment of the fund to water systems and establish the interest
rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization
grants made to this state shall be utilized to provide techni-
cal assistance services for small systems to assist those
systems in maintaining compliance with the federal safe
drinking water act. The division of health shall enter into
contracts to provide technical assistance services for small
systems with such nonprofit organizations that: (1) Have a
membership that represent at least twenty-five percent of
the small systems of this state; and (2) have at least five
years experience in providing on-site technical assistance
to small systems.

(d) The division of health shall, in accordance with
the provisions of the federal safe drinking water act, estab-
lish a program for loan subsidies to disadvantaged com-
munities. Thirty percent of the annual federal capitaliza-
tion grants made to this state shall be dedicated to the
funding of projects for disadvantaged communities.

§16-13C-3. Drinking water treatment revolving fund; duties of
division of health and water resources authori-
ty; set-aside accounts.

(a) There is hereby created in the office of the state
treasurer a special fund to be known as the “West Virginia
drinking water treatment revolving fund”. The fund shall
be administered and managed in accordance with the
provisions of the federal safe drinking water act.

(b) The fund shall be administered and managed by
the water development authority under the direction of the
division of health. The fund shall be comprised of mon-
ey allocated to the fund by the Legislature, moneys
allocated to the state by the federal government expressly
for the purpose of establishing and maintaining a drinking
water treatment revolving fund, all receipts from loans
made from the fund, 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 pri-
vate. Moneys in the fund shall be used solely to make
loans or provide other allowable financial assistance to
eligible projects for public water systems, as described in
the federal safe drinking water act.

(c) In order to carry out the administration and man-
agement of the fund, the authority is authorized to employ
officers, employees, agents, advisors and consultants, in-
cluding attorneys, financial advisors, engineers, other tech-
nical advisors 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 propose rules for legislative approval 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 the provisions of this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. Notwithstanding any provision of this code to the contrary, amounts in the fund shall be deposited by the authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the authority by competitive bid. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal safe drinking water act, set-aside accounts may be set up in accounts separate from the drinking water treatment revolving fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal safe drinking water act. The division of health shall direct the authority to establish and administer the set-aside accounts as permitted by the federal safe drinking water act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program.


The authority shall manage the funds received pursu-
§16-13C-5. Remedies to enforce payment.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement made between the state and a local entity, and notwithstanding 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:

(1) 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.

(2) 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.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to
(B) The enforcement and collection of service charges; and

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

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

§16-13C-6. Construction of article.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.
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 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 __ day of __, 1997.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/09/97
Time 3:00pm