

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4447

(By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Claton, Mezzatesta, Varner and Ashley)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE
FOR

H. B. 4447

(By Mr. SPEAKER, Mr. KISS, AND DELEGATES MARTIN, MICHAEL,
STATON, MEZZATESTA, VARNER AND ASHLEY)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, eight, ten, eleven, thirteen and sixteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto eight new sections, designated sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; and to amend and reenact section two, article fifteen-b of said chapter, all relating to infrastructure development generally; defining infrastructure revenue bond and needs of the project sponsor; requiring application of mandatory minimum end user rate; establishing uniform statewide percentage of the median household income in a particular geographic area; consideration of surveys of income of households; division of funding assistance among regions; prohibiting water development board members and water development authority officers from receiving any benefit or distribution from West Virginia infrastructure revenue debt service fund; exceptions; increasing portion of dedicated tax to be deposited into infrastructure government obligation debt service fund; authorizing water development

authority to issue infrastructure revenue bonds; restrictions; permitted uses of revenue bond proceeds; required documentation from infrastructure council; creation of West Virginia infrastructure revenue debt service fund; sources of funding of revenue debt service fund; purposes for which revenue debt service fund may be used; procedures for the issuance of revenue bonds; revenue bond requirements; authorized revenue bond provisions and agreements; procedures for certification of deficiency in reserves pledged for payment of revenue bonds; liability of water development board members and water development authority officers; trust agreements required to secure revenue bonds; required and authorized trust agreement provisions; requirements of depositories of funds; remedies of bondholders; legality of investments in revenue bonds; redemption and refunding of revenue bonds; providing that revenue bonds do not constitute debt or pledge of state; exemption from taxation; and increasing limitation on amount of outstanding government obligation bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, eight, ten, eleven, thirteen 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; that said article be further amended by adding thereto eight new sections, designated sections seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four; and that section two, article fifteen-b of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS
DEVELOPMENT COUNCIL.**

§31-15A-2. Definitions.

1 For purposes of this article:

2 (a) "Bond" or "infrastructure revenue bond" means
3 a revenue bond, note, or other obligation issued by the
4 water development authority pursuant to this article,
5 including bonds to refund such bonds and notes to renew
6 such notes, and notes in anticipation of and payable from
7 the proceeds of such bonds.

8 (b) "Code" means the code of West Virginia, one
9 thousand nine hundred thirty-one, as amended;

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

49 development authority has not determined to be consistent
50 with the purposes and objectives of this article;

51 (d) "Council" means the West Virginia infrastructure
52 and jobs development council created in section three of
53 this article;

54 (e) "Division of environmental protection" means the
55 division of environmental protection established under
56 article one, chapter twenty-two of this code, or any
57 successor to all or any substantial part of its powers and
58 duties;

59 (f) "Division of health" means the division of health
60 created in article one, chapter sixteen of this code, or any
61 successor to all or any substantial part of its powers and
62 duties;

63 (g) "Economic development authority" means the
64 economic development authority established under article
65 fifteen, chapter thirty-one of the code, or any successor to
66 all or any substantial part of its powers and duties;

67 (h) "Emergency project", means a project which the
68 council has determined(1) is essential to the immediate
69 economic development of an area of the state and(2) will
70 not likely be developed in that area if construction of the
71 project is not commenced immediately;

72 (i) "Governmental agency" means any county;
73 municipality; watershed improvement district; assessment
74 district; soil conservation district; sanitary district; public
75 service district; drainage district; regional governmental
76 authority and any other state governmental agency, entity,
77 political subdivision or public corporation or agency
78 authorized to acquire, construct or operate water or
79 wastewater facilities or infrastructure projects;

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

84 (k) "Infrastructure fund" means the West Virginia
85 infrastructure fund created and established in section nine
86 of this article;

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

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

119 (n) "Need of the project sponsors" means there is a
120 public need for a project. The council shall construe a
121 population increase evidenced by the last two decennial
122 censuses in a county in which a project is proposed, as a

123 factor supporting the conclusion that a need exists for
124 projects in that county.

125 (o) "Project" means any wastewater facility, water
126 facility project or any combination thereof, constructed or
127 operated or to be constructed or operated by a project
128 sponsor;

129 (p) "Project sponsor" means any governmental agency
130 or person, or any combination thereof, including, but not
131 limited to, any public utility, which intends to plan,
132 acquire, construct, improve or otherwise develop a project;

133 (q) "Public service commission" means the public
134 service commission of West Virginia created and
135 established under section three, article one, chapter
136 twenty-four of this code, or any successor to all or any
137 substantial part of its powers and duties;

138 (r) "Person" means any individual, corporation,
139 partnership, association, limited liability company or any
140 other form of business organization;

141 (s) "Public utility" means any person or persons, or
142 association of persons, however associated, whether
143 incorporated or not, including, without limitation, any
144 governmental agency, operating a wastewater facility or
145 water facility as a public service, which is regulated by the
146 public service commission as a public utility under chapter
147 twenty-four of this code or which is required to file its
148 tariff with the public service commission;

149 (t) "State development office" means the West Virginia
150 development office established under article two, chapter
151 five-b of this code, or any successor to all or any
152 substantial part of its powers and duties;

153 (u) "State infrastructure agency" means the division of
154 health, division of environmental protection, housing
155 development fund, public service commission, state
156 development office, water development authority,
157 economic development authority and any other state
158 agency, division, body, authority, commission,
159 instrumentality or entity which now or in the future
160 receives applications for the funding of, and provides

161 funding or technical assistance to, the planning,
162 acquisition, construction or improvement of a project;

163 (v) "Waste water facility" means all facilities, land and
164 equipment used for or in connection with treating,
165 neutralizing, disposing of, stabilizing, cooling, segregating
166 or holding waste water, including, without limitation,
167 facilities for the treatment and disposal of sewage,
168 industrial wastes or other wastes, wastewater, and the
169 residue thereof; facilities for the temporary or permanent
170 impoundment of wastewater, both surface and
171 underground; and sanitary sewers or other collection
172 systems, whether on the surface or underground, designed
173 to transport wastewater together with the equipment and
174 furnishings therefor or thereof and their appurtenances
175 and systems, whether on the surface or underground
176 including force mains and pumping facilities therefor;

177 (w) "Water development authority" means the West
178 Virginia water development authority continued pursuant
179 to the provisions of article one, chapter twenty-two-c of
180 this code, or any successor to all or any substantial part of
181 its powers and duties; and

182 (x) "Water facility" means all facilities, land and
183 equipment used for or in connection with the collection
184 and/or storage of water, both surface and underground,
185 transportation of water, storage of water, treatment of water
186 and distribution of water all for the purpose of providing
187 potable, sanitary water suitable for human consumption
188 and use.

**§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 wastewater facility, and if the
5 council finds in its recommendation that the construction

6 and acquisition of the emergency project will have no
7 effect on the public utility's customer rates and will have
8 no significant effect on its operational costs as a result of
9 the project cost, then the emergency project is exempt
10 from the requirement to obtain a certificate of public
11 convenience and necessity under section eleven, article
12 two, chapter twenty-four of this code. If the public utility
13 is a public service district, it is exempt from the approval
14 of the public service commission required under section
15 twenty-five, article thirteen-a, chapter sixteen of this code.

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

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

34 (d) The North Fork Hughes River watershed project,
35 proposed to enhance economic growth and development
36 through tourism as provided in subsection(l), section two
37 of this article and to include a water facility project as
38 defined in subsection(n), section two of this article, is
39 hereby specifically exempted from any requirement
40 imposed by this article, except that the provisions of
41 subsection (a) of this section are specifically made
42 applicable to the project. The project is hereby
43 specifically authorized and the public land corporation
44 shall have and may exercise the power of eminent domain
45 and all authority otherwise prescribed by law to acquire

46 necessary land and rights-of-way, to include
 47 approximately four hundred seventy-eight acres, in
 48 connection with the project. Funding for the project shall
 49 be provided by the federal government from the
 50 Appalachian regional commission through the United
 51 States soil conservation service. Upon completion of the
 52 project, the property acquired shall be transferred to the
 53 state park system. The commissioner of the division of
 54 tourism and parks or the successor to the commissioner's
 55 powers and duties is directed to expand the boundaries of
 56 North Bend state park to include the project area and to
 57 operate the expanded park property, including improved
 58 recreational facilities, from funds appropriated for that
 59 purpose.

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

1 (a) To further accomplish the purpose and intent of
 2 this article, the water development authority shall use the
 3 moneys in the infrastructure fund created pursuant to
 4 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 interest,
 7 loan guarantees or grants and to provide other assistance,
 8 financial, technical or otherwise, to finance all or part of
 9 the costs of infrastructure projects or projects to be
 10 undertaken by a project sponsor: *Provided*, That any
 11 moneys disbursed from the infrastructure fund in the
 12 form of grants shall not exceed twenty percent of the total
 13 funds available for the funding of projects. No loan, loan
 14 guarantee, grant or other assistance shall be made or
 15 provided except upon a determination by the council that
 16 the loan, loan guarantee, grant or other assistance and the
 17 manner in which it will be provided are necessary or
 18 appropriate to accomplish the purposes and intent of this
 19 article, based upon an application submitted to the
 20 council: *Provided, however*, That no grant shall be made
 21 to a project sponsor that is not a governmental agency or a
 22 not for profit corporation under the provisions of section
 23 501(c) of the Internal Revenue Code of 1986, as
 24 amended. Applications for loans, loan guarantees, grants

25 or other assistance may be submitted by a project sponsor
26 for one or more infrastructure projects on preliminary
27 application forms prepared by the council pursuant to
28 section four of this article. Any recommendation of the
29 council approving a loan, loan guarantee, grant or other
30 assistance shall include a finding and determination by the
31 council that the requirements of this section have been
32 met. The council shall base any decisions to loan money
33 for projects to project sponsors pursuant to this article
34 solely on the need of the project sponsors.

35 (b) The council has the authority in its sole discretion
36 to make grants to project sponsors if it finds that: (1) The
37 level of rates for the users would otherwise be an
38 unreasonable burden given the users' likely ability to pay;
39 or (2) the absence of a sufficient number of users prevents
40 funding of the project except through grants: *Provided,*
41 That no project sponsor shall receive infrastructure grant
42 money in an amount in excess of fifty percent of the total
43 cost of the project. Therefore, the council may consider
44 the economic or financial conditions of the area to be
45 served. As a condition for receipt of a grant under this
46 subsection, the council may require, in addition to any
47 other conditions, that the applicant pursue other state or
48 federal grant or loan programs. Upon a recommendation
49 by the council, the water development authority shall
50 provide the grant in accordance with the recommendation.
51 The council shall develop criteria to be considered in
52 making grants to project sponsors which shall require
53 consideration of the economic or financial conditions of
54 the area to be served and the availability of other funding
55 sources. The council shall adopt procedural rules
56 regarding the manner in which grants will be awarded in
57 conformity with this section. The procedural rules shall
58 be adopted pursuant to article three, chapter twenty-nine-a
59 of this code.

60 (c) Notwithstanding any other provision of this article
61 to the contrary, the council shall apply a mandatory
62 minimum end user utility rate that must be met by the
63 project sponsor before funding assistance may be
64 awarded. The mandatory minimum end utility rate shall
65 be based upon a uniform statewide percentage of the

66 median household income in a particular geographic area
 67 and said rate shall not exceed six tenths of one percent:
 68 *Provided*, That funding assistance made from the
 69 proceeds of any general obligation bonds and revenue
 70 bonds issued after the fifteenth day of March, one
 71 thousand nine hundred ninety-eight, after transfers
 72 required to make the state match for the water and
 73 wastewater revolving loan programs pursuant to article
 74 two, chapter twenty-two-c and article thirteen-c, chapter
 75 sixteen of this code, shall be provided by the council on a
 76 pro rata basis divided equally among the congressional
 77 districts of this state as delineated in accordance with
 78 section three, article two, chapter one of this code:
 79 *Provided, however*, That infrastructure projects as defined
 80 in subsection (1), section two of this article shall not be
 81 subject to pro rata distribution. When determining median
 82 household income of a geographic area of the project to
 83 be served, the council shall consider any surveys of the
 84 income of the households that will be served by the
 85 project.

86 (d) No loan or grant funds may be made available for
 87 a project if the project to be funded will provide
 88 subsidized services to certain users in the service area of
 89 the project.

90 (e) Notwithstanding any other provision of this article
 91 to the contrary, engineering studies and requirements
 92 imposed by the council for preliminary applications shall
 93 not exceed those engineering studies and requirements
 94 which are necessary for the council to determine the
 95 economic feasibility of the project. If the council
 96 determines that the engineering studies and requirements
 97 for the pre-application would impose an undue hardship
 98 on any project sponsor, the council may provide funding
 99 assistance to project sponsors to defray the expenses of the
 100 pre-application process from moneys available in the
 101 infrastructure fund for making loans: *Provided*, That the
 102 council may only provide funding assistance in an amount
 103 equal to five thousand dollars or fifty percent of the total
 104 preapplication cost of the project, whichever amount is
 105 greater. If the project is ultimately approved for a loan by
 106 the council, the amount of funding assistance provided to

107 the project sponsor for the pre-application process shall be
108 included in the total amount of the loan to be repaid by
109 the project sponsor. If the project is not ultimately
110 approved by the council, then the amount of funding
111 assistance provided to the project sponsor will be
112 considered a grant by the council and the total amount of
113 the assistance shall be forgiven. In no event may the
114 amount of funding assistance provided to all project
115 sponsors exceed, in the aggregate, one hundred thousand
116 dollars annually.

117 (f) The council shall report to the governor, the
118 speaker of the House of Delegates and the president of the
119 Senate during each regular and interim session of the
120 Legislature, on its activities and decisions relating to
121 distribution or planned distribution of grants and loans
122 under the criteria to be developed pursuant to this article.

**§31-15A-11. Reservation of funds for projects and infrastruc-
ture 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(n), 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(l), section two of this
9 article. Project sponsors of infrastructure projects shall
10 follow the application process as established by this article:
11 *Provided*, That notwithstanding any provision of this
12 article to the contrary, all applications for any
13 infrastructure project shall be submitted to the council for
14 community and economic development, or its successor,
15 for review, recommendation and approval regarding
16 infrastructure project funding.

**§31-15A-13. Prohibition on funds inuring to the benefit of or
being distributable to water development
board; transactions between the water
development board and officers having certain
interests in such transactions.**

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

§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 construction,
 4 extension, expansion, rehabilitation, repair and
 5 improvement of water supply and sewage treatment
 6 systems and for the acquisition, preparation, construction
 7 and improvement of sites for economic development in
 8 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 to
 14 the credit of the West Virginia infrastructure general
 15 obligation debt service fund created pursuant to section
 16 three, article fifteen-b of this chapter: *Provided*, That
 17 beginning on the first day of July, one thousand nine
 18 hundred ninety-eight, the first twenty-four million dollars
 19 of the tax annually collected pursuant to article thirteen-a
 20 of this code shall be deposited to the credit of the West
 21 Virginia infrastructure general obligation debt service
 22 fund created pursuant to section three, article fifteen-b of
 23 this chapter.

24 (c) Notwithstanding any provision of subsection (b) of
25 this section to the contrary: (1) none of the collections
26 from the tax imposed pursuant to section six, article
27 thirteen-a, chapter eleven of this code shall be so dedicated
28 or deposited; and (2) the portion of the tax imposed by
29 article thirteen-a, chapter eleven and dedicated for
30 purposes of medicaid and the division of forestry pursuant
31 to section twenty-a of said article thirteen-a shall remain
32 dedicated for the purposes set forth in said section twenty-
33 a.

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

**§31-15A-17. Water development authority empowered to
issue infrastructure revenue bonds and
refunding bonds; creation of infrastructure
revenue debt service fund; funding of
infrastructure revenue debt service fund;
requirements and manner of such issuance.**

1 (a) To accomplish the purpose and intent of this
2 article, the water development authority is hereby
3 empowered at the written request of the council to issue
4 from time to time infrastructure revenue bonds of the state
5 in such principal amounts as the council deems necessary
6 to make loans and loan guarantees and other forms of
7 financial assistance to project sponsors for one or more
8 projects or infrastructure projects: *Provided*, That the
9 water development authority may not issue any such
10 bonds, other than refunding bonds, unless the council by
11 resolution determines that the aggregate cost of the
12 projects or infrastructure projects expected to be
13 constructed during any annual period exceeds (1) the
14 projected annual infrastructure revenues for the same
15 period, and (2) the principal and interest payments not
16 otherwise pledged to the infrastructure revenue debt

17 service fund that are due the water development authority
18 on all outstanding loans previously made by the water
19 development authority pursuant to the provisions of this
20 article.

21 (b) The proceeds of infrastructure revenue bonds shall
22 be used solely for the purpose of making loans and loan
23 guarantees and other forms of financial assistance to
24 sponsors of one or more projects or infrastructure
25 projects, and shall be deposited in one or more special
26 accounts with the trustee under the trust agreement
27 securing such bonds and disbursed from time to time for
28 projects or infrastructure projects in accordance with this
29 article: *Provided*, That notwithstanding any provision of
30 this code to the contrary, twenty percent of the funds
31 deposited in the special account shall be dedicated for the
32 purpose of providing funding for costs of infrastructure
33 projects as defined in subsection (1), section two of this
34 article.

35 (c) The water development authority may not
36 authorize the disbursement of any proceeds of
37 infrastructure revenue bonds unless it has received
38 documentation from the council pursuant to the
39 provisions of section ten of this article.

40 (d) There is hereby created in the water development
41 authority a special fund which shall be designated and
42 known as the "West Virginia Infrastructure Revenue Debt
43 Service Fund," into which shall be transferred solely from
44 the loan repayments deposited in the infrastructure fund
45 the amounts certified by the director of the water
46 development authority as necessary to pay the principal,
47 premium, if any, and interest on infrastructure revenue
48 bonds and any reserve requirements, subject to the terms
49 of any agreement with the holders of the infrastructure
50 revenue bonds. All amounts deposited in the West
51 Virginia infrastructure revenue debt service fund shall be
52 pledged to the repayment of the principal, interest and
53 redemption premium, if any, on any infrastructure
54 revenue bonds authorized by this article: *Provided*, That
55 amounts on deposit in the fund may be used to establish
56 or maintain reserves created for the purposes of securing

57 such infrastructure revenue bonds. The pledge shall be
58 valid and binding from the time the pledge is made, and
59 the West Virginia infrastructure revenue debt service fund
60 so pledged shall immediately be subject to the lien of the
61 pledge without any physical delivery thereof or further
62 act, and the lien of any such pledge shall be valid and
63 binding as against all parties having claims of any kind in
64 tort, contract or otherwise against the water development
65 authority irrespective of whether the parties have notice
66 thereof.

67 (e) Except as may otherwise be expressly provided in
68 this article or by resolution of the water development
69 authority, every issue of infrastructure revenue bonds shall
70 be special obligations of the water development authority
71 payable solely from amounts in the West Virginia
72 infrastructure revenue debt service fund, and the reserves
73 created for this purpose by the water development
74 authority, without preference or priority among the bonds
75 regardless of when issued, subject only to any agreements
76 with the holders of any bonds to the contrary. All such
77 bonds are hereby declared to be negotiable instruments.

78 (f) Infrastructure revenue bonds shall be authorized
79 by resolution of the water development authority. These
80 bonds shall bear such dates and shall mature at such
81 times, in case of any note or renewal thereof not
82 exceeding five years from the date of issue of the original
83 note, and in the case of any bond not exceeding fifty
84 years from the date of issue, as the resolution may
85 provide. Infrastructure revenue bonds shall bear interest
86 at a rate or rates, including variable rates, shall be taxable
87 or tax-exempt, shall be in the denominations, shall be in
88 registered form, shall carry the registration privileges, shall
89 be payable in the medium and place of payment, and shall
90 be subject to the terms of redemption as the water
91 development authority may authorize. Infrastructure
92 revenue bonds may be sold by the water development
93 authority at public or private sale at the price the water
94 development authority determines in consultation with the
95 council. Infrastructure revenue bonds shall be executed
96 by the chairman and the vice chairman of the water
97 development authority, either or both of whom may use a

98 facsimile signature. The official seal of the water
99 development authority or a facsimile thereof shall be
100 affixed thereto or printed thereon and attested by manual
101 or facsimile signature by the secretary-treasurer of the
102 water development authority. If any officer whose
103 signature, or a facsimile of whose signature appears on
104 any infrastructure revenue bond ceases to be such officer
105 before delivery of such bond, such signature or facsimile
106 is nevertheless sufficient for all purposes to the same
107 extent as if he or she had remained in office until such
108 delivery, and if the seal of the water development authority
109 has been changed after a facsimile has been imprinted on
110 such bond, the facsimile will continue to be sufficient for
111 all purposes.

112 (g) Any resolution authorizing any infrastructure
113 revenue bonds may contain provisions, subject to any
114 agreement with bondholders or noteholders which may
115 then exist, which agreements shall be part of the contract
116 with the holder thereof, with respect to the pledge of or
117 other use and disposition of amounts in the infrastructure
118 revenue debt service fund; the setting aside of reserve
119 funds; the disposition of any assets of the water
120 development authority; limitations on the purpose to
121 which the proceeds of sale of bonds may be applied; the
122 authorization of notes issued in anticipation of the
123 issuance of bonds; an agreement of the water development
124 authority to do all things necessary for the authorization,
125 issuance and sale of such bonds in such amounts as may
126 be necessary for the timely retirement of such notes;
127 limitations on the issuance of additional bonds; the terms
128 upon which additional bonds may be issued and secured;
129 the refunding of outstanding bonds and the renewal of
130 outstanding notes; the procedures, if any, by which the
131 terms of any contract with bondholders or noteholders
132 may be amended or abrogated; the amount of bonds the
133 holders of which must consent thereto and the manner in
134 which such consent may be given; and any other matter
135 which in any way affects the security for or protection of
136 the bonds.

137 (h) In the event that the sum of all reserves pledged to
138 the payment of the bonds is less than the minimum reserve

139 requirements established in any resolution or resolutions
140 authorizing the issuance of the bonds, the chairman or the
141 director of the water development authority shall certify,
142 on or before the first day of December of each year, the
143 amount of such deficiency to the governor of the state for
144 inclusion, if the governor shall so elect, of the amount of
145 such deficiency in the budget to be submitted to the next
146 session of the Legislature for appropriation to the water
147 development authority to be pledged for payment of such
148 bonds: *Provided*, That the Legislature shall not be
149 required to make any appropriations so requested, and the
150 amount of such deficiencies shall not constitute a debt or
151 liability of the state.

152 (i) Neither the officers or board members of the water
153 development authority, nor any person executing the
154 infrastructure revenue bonds, shall be liable personally on
155 the bonds or be subject to any personal liability or
156 accountability by reason of the issuance thereof.

**§31-15A-18. Trustee for holders of infrastructure revenue
bonds; contents of trust agreement.**

1 (a) Any infrastructure revenue bonds issued by the
2 water development authority under this article shall be
3 secured by a trust agreement between the water
4 development authority and a corporate trustee, which
5 trustee may be any trust company or banking institution
6 having the powers of a trust company within this state.

7 (b) Any trust agreement may pledge or assign the
8 infrastructure revenue debt service fund. Any trust
9 agreement or any resolution providing for the issuance of
10 such bonds may contain such provisions for protecting
11 and enforcing the rights and remedies of the bondholders
12 or noteholders as are reasonable and proper and not in
13 violation of law, including the provisions contained in
14 section seventeen of this article, and covenants setting
15 forth the duties of the water development authority in
16 respect to the payment of the principal of and interest,
17 charges and fees on loans made to, or bond purchases
18 from, governmental agencies from the proceeds of the
19 bonds, and the custody, safeguarding and application of
20 all moneys. Any banking institution or trust company

21 incorporated under the laws of this state which may act as
 22 depository of the proceeds of bonds or of the
 23 infrastructure debt service fund shall furnish such
 24 indemnifying bonds or pledge securities as are required
 25 by the water development authority. The trust agreement
 26 may set forth the rights and remedies of the bondholders
 27 and noteholders and of the trustee and may restrict
 28 individual rights of action by bondholders and
 29 noteholders as customarily provided in trust agreements or
 30 trust indentures securing similar bonds and notes. The
 31 trust agreement may contain such other provisions as the
 32 water development authority deems reasonable and proper
 33 for the security of the bondholders or noteholders. All
 34 expenses incurred in carrying out the provisions of any
 35 such trust agreement may be treated as part of the cost of
 36 the construction, renovation, repair, improvement or
 37 acquisition of a project or infrastructure project.

**§31-15A-19. Legal remedies of infrastructure revenue
 bondholders or noteholders and trustees.**

1 Any holder of infrastructure revenue bonds issued
 2 pursuant to this article and the trustee under any trust
 3 agreement, except to the extent the rights given by this
 4 article may be restricted by the applicable resolution or
 5 trust agreement, may by civil action, mandamus or other
 6 proceedings protect and enforce any rights granted under
 7 the laws of this state or granted under this article, by the
 8 trust agreement or by the resolution in the issuance of the
 9 bonds, and may enforce and compel the performance of
 10 all duties required by this article, pursuant to the trust
 11 agreement or resolution, to be performed by the water
 12 development authority or any officer thereof.

§31-15A-20. Infrastructure revenue bonds lawful investments.

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

§31-15A-21. Purchase and cancellation of infrastructure revenue bonds.

1 (a) The water development authority, subject to such
2 agreements with noteholders or bondholders as may then
3 exist, shall have the power, from any funds available
4 therefor, to purchase or redeem infrastructure revenue
5 bonds of the water development authority.

6 (b) If the infrastructure revenue bonds are then
7 redeemable, the price of the purchase shall not exceed the
8 redemption price then applicable, plus accrued interest to
9 the next interest payment date thereon. If the
10 infrastructure revenue bonds are not then redeemable, the
11 price of the purchase shall not exceed the redemption
12 price applicable on the first date after the purchase upon
13 which the bonds become subject to redemption, plus
14 accrued interest to such date. Upon purchase or
15 redemption, the bonds shall be canceled.

§31-15A-22. Refunding revenue bonds.

1 Any infrastructure revenue bonds issued pursuant to
2 the provisions of this article and at any time outstanding
3 may at any time and from time to time be refunded by the
4 water development authority by the issuance of its
5 refunding revenue bonds in an amount it deems necessary
6 to refund the principal of the bonds to be refunded,
7 together with any unpaid interest thereon, to provide
8 additional funds for the water development authority to
9 accomplish the purpose of this article, and to pay any
10 premiums and commissions necessary to be paid in
11 connection therewith. Any refunding may be effected
12 whether the infrastructure revenue bonds to be refunded
13 shall have then matured or shall thereafter mature:
14 *Provided*, That the holders of any infrastructure revenue
15 bonds so to be refunded shall not be compelled without
16 their consent to surrender their infrastructure revenue
17 bonds for payment or exchange prior to the date on which
18 they are payable or, if they are called for redemption,
19 prior to the date on which they are by their terms subject
20 to redemption. Any refunding revenue bonds issued
21 pursuant to this article shall be payable from the West
22 Virginia infrastructure revenue debt service fund, and shall

23 be subject to the provisions contained in section seventeen
24 of this article, and shall be secured in accordance with the
25 provisions of sections seventeen and eighteen of this
26 article.

**§31-15A-23. Infrastructure revenue bonds not debt of state,
county, municipality or any political
subdivision.**

1 Infrastructure revenue bonds issued pursuant to the
2 provisions of this article shall not constitute a debt or a
3 pledge of the faith and credit or taxing power of this state
4 or of any county, municipality or any other political
5 subdivision of this state. The holders or owners thereof
6 shall have no right to have taxes levied by the Legislature
7 or the taxing authority of any county, municipality or any
8 other political subdivision of this state for the payment of
9 the principal thereof or interest thereon. The bonds shall
10 be payable solely from the revenues and funds pledged
11 for their payment as authorized by this article. All such
12 bonds shall contain on the face thereof a statement to the
13 effect that the bonds, as to both principal and interest, are
14 not debts of the state or any county, municipality or
15 political subdivision thereof, but are payable solely from
16 revenues and funds pledged for their payment.

**§31-15A-24. Infrastructure revenue bonds exempt from
taxation.**

1 The exercise of the powers granted to the water
2 development authority by this article will be in all respects
3 for the benefit of the people of the state, for the
4 improvement of their health, safety, convenience and
5 welfare and for the enhancement of their residential,
6 agricultural, recreational, economic, commercial and
7 industrial opportunities and is for a public purpose. As
8 the construction, acquisition, repair or renovation of
9 projects or infrastructure projects will constitute the
10 performance of essential governmental functions, the
11 water development authority shall not be required to pay
12 any taxes or assessments upon any project or upon any
13 property acquired or used by the water development
14 authority or upon the income therefrom. The
15 infrastructure revenue bonds and all interest and income

16 thereon shall be exempt from all taxation by this state, or
17 any county, municipality, political subdivision or agency
18 thereof, except estate taxes.

ARTICLE 15B. INFRASTRUCTURE BONDS.

**§31-15B-2. Infrastructure general obligation bonds; amount;
when may issue.**

1 Bonds of the state of West Virginia, under authority of
2 the infrastructure improvement amendment of 1994, of
3 the par value not to exceed in the aggregate three hundred
4 million dollars, are hereby authorized to be issued and
5 sold solely for the construction, extension, expansion,
6 rehabilitation, repair and improvement of water supply
7 and sewage treatment systems and for the acquisition,
8 preparation, construction and improvement of sites for
9 economic development as provided for by the constitution
10 and the provisions of this article.

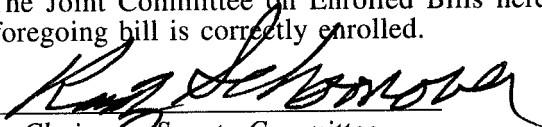
11 These bonds may be issued by the governor upon
12 resolution by the infrastructure council and certification to
13 the governor. The bonds shall bear such date and mature
14 at such time, bear interest at such rate not to exceed eight
15 percent per annum, be in such amounts, be in such
16 denominations, be in such registered form, carry such
17 registration privileges, be due and payable at such time
18 and place and in such amounts, and subject to such terms
19 of redemption as such resolution may provide: *Provided,*
20 That in no event may the amount of bonds outstanding
21 exceed an amount for which twenty-four million dollars
22 would not be sufficient to provide annual service on the
23 total amount of debt outstanding.

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

31 The bonds shall be executed on behalf of the state of
32 West Virginia, by the manual or facsimile signature of the

33 treasurer thereof, under the great seal of the state or a
34 facsimile thereof, and countersigned by the manual or
35 facsimile signature of the auditor of the state.

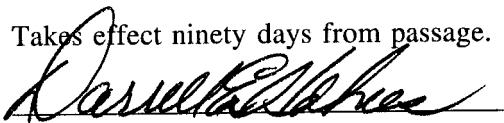
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

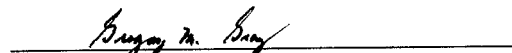

Chairman Senate Committee

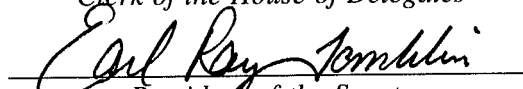

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

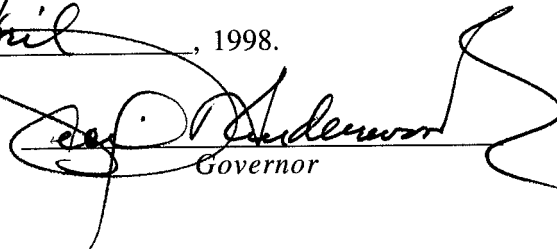

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 7th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date

4/6/98

Time

12:55an