

SB 700

FILED

2005 MAY -4 P 4: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 700

(By Senator MCCABE, ET AL)



PASSED APRIL 9, 2005

In Effect 90 Days From Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 700

(SENATORS MCCABE, BAILEY AND MINARD, *original sponsors*)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-28-1, §22-28-2, §22-28-3, §22-28-4, §22-28-5, §22-28-6, §22-28-7, §22-28-8 and §22-28-9, all relating to the creation of a Community Infrastructure Investment Program within the Department of Environmental Protection; legislative findings; definitions; granting rule-making authority; authority to promulgate emergency rules; establishing process for issuance of certificate of appropriateness; providing for community infrastructure investment agreements; setting minimum terms; authority of Division of Health and Department of Environmental Protection not affected; requiring report to Joint Committee on Government and Finance; providing for administrative fees; establishing exemption from authority of Public Service Commission; and setting time limits for approval.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-28-1, §22-28-2, §22-28-3, §22-28-4, §22-28-5, §22-28-6, §22-28-7, §22-28-8 and §22-28-9, all to read as follows:

ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.

§22-28-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) There is a growing need for the extension of public
3 water and sewer services throughout the state and that the
4 extension of such services and facilities maintains the
5 health and economic vitality of the citizens of West
6 Virginia. In addition, access to such infrastructure facili-
7 ties is equal essential to development in all regions of the
8 state.

9 (b) The extension of public water and sewer services
10 promotes public health and safety in that it enables
11 businesses, residences, municipalities and other entities to
12 comply with state and federal water quality standards.

13 (c) The cost of publicly owned sewer and water facilities
14 are normally born by the state, its subdivisions and the
15 citizens of West Virginia and public indebtedness incurred
16 to construct such facilities constitutes a financial burden
17 on the state and its political subdivisions, as well as
18 residential consumers.

19 (d) The rates for public water and sewer services charged
20 to customers of all service classes have risen in recent
21 years due primarily to the cost of utility construction and
22 the cost of debt service associated with such construction.

23 (e) There are private business entities that are in need of
24 water and sewer services for various residential, commer-
25 cial and industrial projects throughout the state and that
26 those entities are willing to pay the cost associated with
27 constructing needed public water and sewer services and

28 to dedicate the facility to the local certificated public
29 utility after construction of such facilities.

30 (f) Those private business entities need a method by
31 which to enter into agreements with municipal utilities or
32 public service districts that would enable the construction
33 of new infrastructure as well as the expansion of existing
34 facilities.

35 (g) The dedication of such infrastructure facilities to the
36 local certificated public utility without cost greatly
37 benefits the citizens of the state and promotes industrial,
38 commercial and economic development.

§22-28-2. Definitions.

1 For the purposes of this article, the following words or
2 terms defined have the meaning ascribed to them herein:

3 (a) "Certificate of appropriateness" shall refer to the
4 document evidencing approval of a project and is issued by
5 the Secretary of the Department of Environmental Protec-
6 tion pursuant to the provisions of this article. The issu-
7 ance of such a certificate shall exempt the project from the
8 provisions of section eleven of article two, chapter twenty-
9 four of this code and, in the case of a public service
10 district, from the provisions of section twenty-five, article
11 thirteen-a, chapter sixteen of this code.

12 (b) "Community infrastructure investment agreement"
13 shall refer to a written agreement between a municipal
14 utility or public service district and a person that provides
15 for the transfer of legal title to a project facility from the
16 person to the municipal utility or public service district.

17 (c) "Community infrastructure investment project" shall
18 refer to any newly constructed or enlarged and improved
19 project facility that may be transferred to a municipal
20 utility or public service district without cost to the municipi-
21 pal utility or public service district pursuant to the
22 provisions of this article.

23 (d) "Person" shall refer to any individual, partnership,
24 firm, society, association, trust, corporation or other
25 business entity.

26 (e) "Project cost" shall refer to the capital cost of
27 proposed community infrastructure investment project
28 facilities to be constructed pursuant to the provisions of
29 this article. "Project cost" shall also refer to newly con-
30 structed or enlarged and improved existing project facili-
31 ties. Project cost shall not refer to any of the costs or
32 expenses of ordinary operation and maintenance of the
33 project facilities once they become operational.

34 (f) "Project facilities" shall refer to waste water treat-
35 ment plants or water treatment plants constructed pursu-
36 ant to the provisions of this article and include, but are not
37 limited to, related storage buildings or structures, meters,
38 hydrants, pump stations, force and gravity mains, trans-
39 mission lines and other such fixtures related to the con-
40 struction of water or sewer facilities. Project facilities
41 shall not refer to the ordinary extension of collection and
42 distribution lines or facilities from or to the project
43 constructed pursuant to the provisions of this article to the
44 property of any user of project facilities.

45 (g) "Public service district" shall refer to those public
46 corporations and political subdivisions of the state created
47 pursuant to the provisions of section two, article thirteen-
48 a, chapter sixteen of this code.

49 (h) "Secretary" shall refer to the Secretary of the
50 Department of Environmental Protection established in
51 section six, article one of this chapter.

**§22-28-3. Creation of community infrastructure investment
project; certificate of appropriateness; rule-mak-
ing authority.**

1 (a) There is hereby created a Community Infrastructure
2 Investment Program within the Department of Environ-
3 mental Protection. This Program will facilitate the con-

4 construction or expansion of project facilities for the promo-
5 tion of economic development and the protection of public
6 health and environment in the state. Any public service
7 district or municipal utility that wishes to accept a project
8 facility constructed pursuant to a community infrastruc-
9 ture investment agreement with a project cost not to
10 exceed ten million dollars, may apply to the secretary for
11 approval of such project. Nothing herein shall be con-
12 strued to require a public service district or municipal
13 utility to use this program.

14 (b) Where the Secretary shall have found that the
15 community infrastructure investment project shall have
16 met the requirements contained in this article, the Secre-
17 tary shall issue a certificate of appropriateness to the
18 municipal utility or public service district as evidence of
19 such approval.

20 (c) Municipal utilities or public service districts may
21 jointly enter into agreements with persons for the purpose
22 of applying to the Secretary of the Department of Envi-
23 ronmental Protection for approval of project facilities.
24 The minimum terms and conditions of such agreements are
25 established by the provisions of section four of this article.

26 (d) The Secretary will, by legislative rule, establish the
27 criteria for the approval of such projects and shall have
28 sole authority to make such determination.

**§22-28-4. Community infrastructure investment agreements;
report to Joint Committee on Government and
Finance.**

1 (a) Municipal utilities and public service districts have
2 the power and authority to enter into community infra-
3 structure investment agreements with any person for the
4 purpose of constructing new project facilities or substan-
5 tially improving or expanding project facilities.

6 (b) Notwithstanding any other provision in this code to
7 the contrary, the secretary shall have the power and the

8 authority to review and approve all such community
9 infrastructure investment agreements pursuant to this
10 article.

11 (c) Each such agreement shall contain as a minimum the
12 following terms and conditions to be performed by the
13 parties thereto:

14 (1) The project facilities shall be engineered and con-
15 structed in accordance with the requirements for new
16 construction established by the municipal utility or public
17 service district;

18 (2) Proof or certification of the financial ability of the
19 municipal utility or public service district to maintain and
20 operate the public facilities;

21 (3) Certification that upon completion and activation of
22 the project facility or improvements to the project facility,
23 the title to the public facility shall be transferred without
24 cost to the municipal utility or public service district;

25 (4) A finding that the construction of the new public
26 facility, or the substantial improvement or expansion of an
27 existing public facility, either: (i) Fosters economic growth
28 by promoting commercial, industrial or residential devel-
29 opment; and (ii) improves water quality or otherwise
30 enables the affected territory to achieve compliance with
31 any applicable state or federal health or environmental
32 law;

33 (5) The municipal utility or public service district will
34 receive or otherwise obtain without cost to the public all
35 necessary rights of way for the operation of the public
36 facility;

37 (6) The rates charged by the municipal utility or public
38 service district to new customers to be served by the
39 project facility shall be the rates in effect at the time of
40 transfer of the project facility to the utility plus any
41 additional cost of service borne by the municipal utility or

42 public service district as a result of the project facility
43 until such time as new rates may be finally enacted by the
44 municipal utility or proposed by the public service district
45 and approved by the Public Service Commission and the
46 rates charged by the municipal utility or the public service
47 district to existing customers shall not be impacted as a
48 result of the obligation of the public service district or
49 municipal utility pursuant to the community infrastruc-
50 ture investment agreement;

51 (7) Confirmation that the agreement does not violate any
52 of the bond covenants imposed on the municipal utility or
53 public service district;

54 (8) Proof that necessary permits, where applicable, have
55 been obtained from the Division of Health and the Depart-
56 ment of Environmental Protection;

57 (9) Evidence that the person responsible for the con-
58 struction of or improvements to the public facility has
59 provided funding to the municipal utility or public service
60 district for the engagement of an engineer qualified to
61 design and certify the structural integrity and capacity of
62 the project facility;

63 (10) Proof that the person responsible for construction of
64 or improvements to the public facility has obtained a
65 performance bond payable to the municipal utility or
66 public service district equal to the estimated cost of
67 construction: *Provided*, That the form of the bond re-
68 quired by this section shall be approved by the Secretary
69 and may include, at the option of the Secretary, surety
70 bonding, collateral bonding (including cash and securi-
71 ties), establishment of an escrow account, letters of credit,
72 performance bonding fund participation as established by
73 the Secretary, self-bonding or a combination of these
74 methods; and

75 (11) Any other conditions that the Secretary may deter-
76 mine to be relevant as established.

77 (d) Where the Secretary has found that the community
78 infrastructure investment agreement meets the require-
79 ments contained in this article, the Secretary shall issue a
80 certificate of appropriateness to the parties as evidence of
81 such approval.

82 (e) Not later than thirty days prior to the issuance of a
83 certificate of appropriateness for any community infra-
84 structure investment project, the Secretary shall first
85 submit a report of the same to the Joint Committee on
86 Government and Finance.

§22-28-5. Authority of the Department of Environmental Protection and Division of Health not affected.

1 Nothing contained in this article shall be construed to
2 affect the authority of the Department of Environmental
3 Protection pursuant to the provisions of this chapter, nor
4 the authority of the Division of Health pursuant to the
5 provisions of chapter sixteen of this code. Facilities
6 discharging into the Potomac River watershed and its
7 tributaries, shall be designed to achieve nutrient reduc-
8 tions, for both Nitrogen and Phosphorus, consistent with
9 West Virginia's participation in the Chesapeake Bay
10 Program upon implementation of the Chesapeake Bay
11 standards by the Secretary.

§22-28-6. Time for approval.

1 The Secretary shall approve or reject all applications for
2 a community investment infrastructure project or agree-
3 ment within thirty days, unless, by mutual agreement,
4 such time period is extended. In no case shall the time
5 period extend beyond ninety days.

§22-28-7. Fees.

1 The Secretary shall establish by legislative rule a
2 schedule of fees reasonably calculated to pay for the costs
3 of the administration of the provisions of this article.

§22-28-8. Exemption from Public Service Commission approval.

1 All project facilities constructed or improved pursuant
2 to the provisions of this article shall be exempt from the
3 provisions of chapter twenty-four of this code until such
4 time as title to the public facility shall be transferred to
5 the municipal utility or public service district. Nothing
6 herein shall be construed to give the Public Service
7 Commission authority to regulate or intervene in the
8 approval and construction of any project or agreement
9 provided in this article. Notwithstanding any other
10 provision of this code to the contrary, the acquisition of a
11 project facility by a municipality or public service district
12 under the provisions of this article shall not require the
13 issuance of a certificate of convenience and necessity from
14 the Public Service Commission.

§22-28-9. Rule-making authority.

1 The Secretary shall have the authority to propose
2 legislative rules for promulgation in accordance with the
3 provisions of section one, article three, chapter twenty-
4 nine-a of this code to effectuate the purposes of this
5 article. Notwithstanding any provision of this code to the
6 contrary, the proposed legislative rules for this article filed
7 in the state register by the first day of August, two thou-
8 sand five, may be filed as emergency rules.

Enr. Com. Sub. for S. B. No. 700] 10

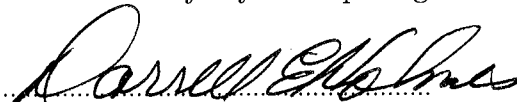
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

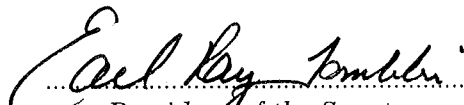

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Chairman House Committee

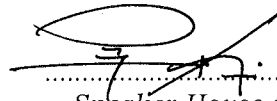
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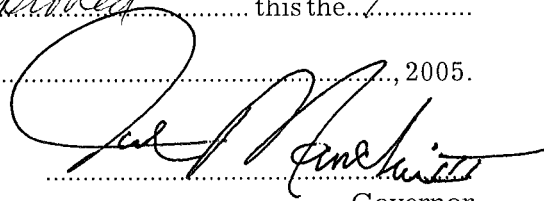
In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *4th*
Day of *May*, 2005.

.....
Governor

PRESENTED TO THE
GOVERNOR

APR 27 2005

Time 10:05 am