ENROLLED

Committee Substitute for

SENATE BILL NO. 700

(By Senator M. Cage, et al)

PASSED April 9, 2005

In Effect 90 days from Passage
ENROLLED

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

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

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


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

(a) “Certificate of appropriateness” shall refer to the document evidencing approval of a project and is issued by the Secretary of the Department of Environmental Protection pursuant to the provisions of this article. The issuance of such a certificate shall exempt the project from the provisions of section eleven of article two, chapter twenty-four of this code and, in the case of a public service district, from the provisions of section twenty-five, article thirteen-a, chapter sixteen of this code.

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

(c) “Community infrastructure investment project” shall refer to any newly constructed or enlarged and improved project facility that may be transferred to a municipal utility or public service district without cost to the municipal utility or public service district pursuant to the provisions of this article.
(d) "Person" shall refer to any individual, partnership, firm, society, association, trust, corporation or other business entity.

(e) "Project cost" shall refer to the capital cost of proposed community infrastructure investment project facilities to be constructed pursuant to the provisions of this article. "Project cost" shall also refer to newly constructed or enlarged and improved existing project facilities. Project cost shall not refer to any of the costs or expenses of ordinary operation and maintenance of the project facilities once they become operational.

(f) "Project facilities" shall refer to waste water treatment plants or water treatment plants constructed pursuant to the provisions of this article and include, but are not limited to, related storage buildings or structures, meters, hydrants, pump stations, force and gravity mains, transmission lines and other such fixtures related to the construction of water or sewer facilities. Project facilities shall not refer to the ordinary extension of collection and distribution lines or facilities from or to the project constructed pursuant to the provisions of this article to the property of any user of project facilities.

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

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

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

(a) There is hereby created a Community Infrastructure Investment Program within the Department of Environmental Protection. This Program will facilitate the con-
struction or expansion of project facilities for the promo-
tion of economic development and the protection of public
health and environment in the state. Any public service
district or municipal utility that wishes to accept a project
facility constructed pursuant to a community infrastruc-
ture investment agreement with a project cost not to
exceed ten million dollars, may apply to the secretary for
approval of such project. Nothing herein shall be con-
strued to require a public service district or municipal
utility to use this program.

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

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

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

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

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

(b) Notwithstanding any other provision in this code to
the contrary, the secretary shall have the power and the
authority to review and approve all such community
infrastructure investment agreements pursuant to this
article.

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

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

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

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

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

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

(6) The rates charged by the municipal utility or public
service district to new customers to be served by the
project facility shall be the rates in effect at the time of
transfer of the project facility to the utility plus any
additional cost of service borne by the municipal utility or
public service district as a result of the project facility until such time as new rates may be finally enacted by the municipal utility or proposed by the public service district and approved by the Public Service Commission and the rates charged by the municipal utility or the public service district to existing customers shall not be impacted as a result of the obligation of the public service district or municipal utility pursuant to the community infrastructure investment agreement;

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

(8) Proof that necessary permits, where applicable, have been obtained from the Division of Health and the Department of Environmental Protection;

(9) Evidence that the person responsible for the construction of or improvements to the public facility has provided funding to the municipal utility or public service district for the engagement of an engineer qualified to design and certify the structural integrity and capacity of the project facility;

(10) Proof that the person responsible for construction of or improvements to the public facility has obtained a performance bond payable to the municipal utility or public service district equal to the estimated cost of construction: Provided, That the form of the bond required by this section shall be approved by the Secretary and may include, at the option of the Secretary, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation as established by the Secretary, self-bonding or a combination of these methods; and

(11) Any other conditions that the Secretary may determine to be relevant as established.
(d) Where the Secretary has found that the community infrastructure investment agreement meets the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the parties as evidence of such approval.

(e) Not later than thirty days prior to the issuance of a certificate of appropriateness for any community infrastructure investment project, the Secretary shall first submit a report of the same to the Joint Committee on Government and Finance.

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

Nothing contained in this article shall be construed to affect the authority of the Department of Environmental Protection pursuant to the provisions of this chapter, nor the authority of the Division of Health pursuant to the provisions of chapter sixteen of this code. Facilities discharging into the Potomac River watershed and its tributaries, shall be designed to achieve nutrient reductions, for both Nitrogen and Phosphorus, consistent with West Virginia's participation in the Chesapeake Bay Program upon implementation of the Chesapeake Bay standards by the Secretary.

§22-28-6. Time for approval.

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

§22-28-7. Fees.

The Secretary shall establish by legislative rule a schedule of fees reasonably calculated to pay for the costs 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 to the provisions of this article shall be exempt from the provisions of chapter twenty-four of this code until such time as title to the public facility shall be transferred to the municipal utility or public service district. Nothing herein shall be construed to give the Public Service Commission authority to regulate or intervene in the approval and construction of any project or agreement provided in this article. Notwithstanding any other provision of this code to the contrary, the acquisition of a project facility by a municipality or public service district under the provisions of this article shall not require the issuance of a certificate of convenience and necessity from the Public Service Commission.


1 The Secretary shall have the authority to propose legislative rules for promulgation in accordance with the provisions of section one, article three, chapter twenty-nine-a of this code to effectuate the purposes of this article. Notwithstanding any provision of this code to the contrary, the proposed legislative rules for this article filed in the state register by the first day of August, two thousand five, may be filed as emergency rules.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 27 2005

Time 10:05 AM