WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 673

(By Senator Oliverio, et al)

PASSED March 8, 2004

In Effect 90 days from Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all relating generally to the Local Powers Act; giving counties plenary power and authority to impose, administer, collect and enforce payment of voter-approved service fees to pay for or finance cost of special infrastructure projects within their counties; defining certain terms; giving county commissions authority to issue revenue bonds to finance special infrastructure projects; and including authority to issue refunding bonds and to take other actions to finance and complete such projects as the county commission deems prudent or necessary.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all to read as follows:

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-11. Additional powers.

(a) In addition to any other powers which a county may now have and not withstanding the provisions of section six of this article, each county, by and through its county commission, shall have the following powers:

(1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more infrastructure projects, or additions thereto, which shall be located within the county;

(2) To lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any infrastructure projects for such rentals or amounts and upon such terms and conditions as the county commission may deem advisable;

(3) To establish a special infrastructure fund as a separate fund into which all special service fees and other revenues designated by the county commission shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if special infrastructure revenue bonds are issued by the county commission; and

(4) To impose a countywide service fee to pay the costs of one or more infrastructure projects, including, but not limited to, the payment of debt service on any revenue bonds issued under section thirteen of this article.

(b) For purposes of this section and its implementation and use:
(1) "Capital improvements" means the following public facilities or assets that are owned, supported or established by a county commission:

(A) Water treatment and distribution facilities;

(B) Wastewater treatment and disposal facilities;

(C) Sanitary sewers;

(D) Storm water, drainage and flood control facilities;

and

(E) Public road systems, including, but not limited to, rights-of-way, lighting, sidewalks and gutters.

"Capital improvements" as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. "Capital improvement" does not include costs associated with the operation, repair, maintenance or full replacement of capital improvements. "Capital improvement" does include reasonable costs for planning, design, engineering, land acquisition and other costs directly associated with the capital improvements described herein, whether incurred prior to or subsequent to imposition of a countywide service fee. This includes costs incurred by a developer prior to imposition of the countywide service fee that would have been incurred by the county commission as part of the cost of capital improvement, provided such costs were not incurred more than thirty-six months before the county commission adopts the order imposing the countywide service fee, or such shorter period, as determined to be reasonable in the sole discretion of the county commission.

(2) "Plan" means the plan for special infrastructure projects that includes one or more capital improvements, as defined in this section that is adopted by a county
commission in conformity with the requirements of this article.

(c) Before commencing certain infrastructure projects, the county commission shall obtain written confirmations from an affected public utility or the West Virginia Department of Transportation or other agency, as provided in this section:

(1) If the project includes water, wastewater or sewer improvements, the county commission shall obtain from the utility or utilities that provide service in the area or areas where the improvements will be made that the utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless the project will continue to be owned by the county commission.

(2) If the special infrastructure project includes improvements other than as set forth in subdivision (1), subsection (b) of this section that will be transferred to the West Virginia Department of Transportation or other governmental agency, written evidence that the department or agency will accept the transfer if the infrastructure project is built in conformance with requirements of the Department of Transportation, or other agency, pursuant to plans and specifications approved by the department or other agency.
§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least thirty days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary, general or a special election held in the county.

(4) The order of the county commission shall provide for the administration, collection and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms “employed”, “employee”, “employer” and “self-employed” have the following meaning:

(A) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or
member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) "Employee" means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages or other compensation.

(C) "Employer" means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) "Self-employed individual" means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the county's geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to section thirteen of this article.
70 and any costs related to the administration, collection and
71 enforcement of the service fee.

72 (b) Any order entered by a county commission imposing
73 a countywide service fee pursuant to this part, or increas-
74 ing or decreasing a countywide service fee previously
75 adopted pursuant to this part, shall be published as a Class
76 II legal advertisement in compliance with the provisions of
77 article three, chapter fifty-nine of this code and the
78 publication area for the publication shall be the county.
79 The order shall not become effective until it is ratified by
80 a majority of the lawful votes cast thereon by the qualified
81 voters of the county at a primary, general or special
82 election, as the county commission shall direct. Voting
83 thereon shall not take place until after notice of the
84 referendum shall have been given by publication as above
85 provided for the publication of the order after it is adopted
86 by the county commission. The notice of referendum shall
87 at a minimum include: (1) The date of the referendum; (2)
88 the amount of countywide service fee; (3) a general de-
89 scription of the capital improvement or improvements
90 included in the special infrastructure project to be fi-
91 nanced with the service fee; (4) whether revenue bonds will
92 be issued; and (5) if bonds are to be issued, the estimated
93 term of the revenue bonds. The county commission may
94 include additional information in the notice of referen-
95 dum.


1 (a) The county commission, in its discretion, may use the
2 moneys in such special infrastructure fund to finance the
3 costs of the special infrastructure projects on a cash basis.
4 The county commission periodically may issue special
5 infrastructure revenue bonds of the county as provided in
6 this section to finance all or part of such special infra-
7 structure projects and pledge all or any part of the moneys
8 in such special infrastructure fund for the payment of the
9 principal of and interest on such special infrastructure
10 revenue bonds and for reserves therefor. Any pledge of the
11 special infrastructure fund for special infrastructure
12 revenue bonds shall be a prior and superior charge on the
13 special infrastructure fund over the use of any of the
14 moneys in the fund to pay for the cost of any of such
15 purposes on a cash basis.

16 (b) Such special infrastructure revenue bonds periodi-
17 cally may be authorized and issued by the county commis-
18 sion to finance, in whole or in part, the special infrastruc-
19 ture projects in an aggregate principal amount not exceed-
20 ing the amount which the county commission determines
21 can be paid as to both principal and interest and reason-
22 able margins for a reserve therefor from the moneys in
23 such special infrastructure fund.

24 (c) The issuance of special infrastructure revenue bonds
25 shall be authorized by an order of the county commission
26 and such special infrastructure revenue bonds shall bear
27 such date or dates; mature at such time or times not
28 exceeding forty years from their respective dates; be in
29 such denomination; be in registered form, with such
30 exchangeability and interchangeability privileges; be
31 payable in such medium of payment and at such place or
32 places, within or without the state; be subject to such
33 terms of prior redemption at such prices; and shall have
34 such other terms and provisions as determined by the
35 county commission. Such special infrastructure revenue
36 bonds shall be signed by the president of the county
37 commission under the seal of the county commission,
38 attested by the clerk of the county commission. Special
39 infrastructure revenue bonds shall be sold in such manner
40 as the county commission determines is for the best
41 interests of the county.

42 (d) The county commission may enter into trust agree-
43 ments with banks or trust companies, within or without
44 the state, and in such trust agreements or the resolutions
45 authorizing the issuance of such bonds may enter into
46 valid and legally binding covenants with the holders of
47 such special infrastructure revenue bonds as to the cus-
(e) After the issuance of any of the special infrastructure revenue bonds, the service fee pledged to the payment thereof may not be reduced as long as any of the special infrastructure revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the order, trust agreement or other proceedings under which the special infrastructure revenue bonds were issued.

(f) The special infrastructure revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the special infrastructure revenue bonds may not be considered to be obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the state or of the county issuing the bonds may not be pledged therefor,
but the special infrastructure revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(g) A holder of the special infrastructure revenue bonds shall have a lien against the special infrastructure fund for payment of the special infrastructure revenue bond and the interest thereon and may bring suit to enforce the lien.

(h) A county commission may issue and secure additional bonds payable out of the special infrastructure fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the special infrastructure fund.

(i) For purposes of this article:

(1) "Special infrastructure revenue bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a county commission, the proceeds of which are used directly or indirectly to finance or refinance special infrastructure projects within the county and financing costs and that are secured by or payable from the special service fees;

(2) "Special infrastructure project" means "capital improvements" as that term is defined in section eleven of this article; and

(3) "Special infrastructure fund" means that fund established and held by the sheriff of the county or a trustee for bondholders, as the case may be, into which the special fees imposed pursuant to section twelve of this article are deposited.

§7-20-14. Use of proceeds from sale of bonds.

(a) The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That
any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) The costs of acquiring any special infrastructure project shall be deemed to include the following:

1. Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

2. Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

3. Real property acquisition costs;

4. Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

5. Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees in connection with the implementation of a project;

6. Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;
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(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the implementation of project plans;

(8) Payments made, in the discretion of the county commission, which are found to be necessary or convenient to the implementation of project plans; and

(9) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

§7-20-15. No contribution by county.

(a) No county commission shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing a special infrastructure project to be acquired, constructed or financed, in whole or in part, out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county from accepting donations of property to be used as a part of an infrastructure project or to be used for defraying any part of the cost of any infrastructure project or from imposing a service fee as provided in section twelve of this article, which is dedicated, in whole or in part, to the infrastructure project or to payment of debt service on revenue bonds issued pursuant to this article.

(b) The bonds issued pursuant to this article shall be payable solely from: (1) The revenue derived from the infrastructure project or the financing thereof; (2) the service fee imposed pursuant to section twelve of this article; or (3) any combination of these sources.
(c) No county commission shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an infrastructure project. However, all necessary preliminary expenses actually incurred by a county commission in the making of surveys, taking options, preliminary planning and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by the county commission out of any surplus contained in any item of budgetary appropriation or any revenues, including, but not limited to, service fees, collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

§7-20-16. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

§7-20-17. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election on issuance of the bonds by the voters of a county prior to the issuance of bonds hereunder by the county commission and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

§7-20-18. No notice, consent or publication required.

No notice to or consent or approval by any other governmental body or public officer shall be required as a
3 prerequisite to the issuance or sale of any bonds or the
4 making of any agreement, a mortgage or deed of trust
5 under the authority of this article. No publication or
6 notice shall be necessary to the validity of any resolution
7 or proceeding had under this article, except where publi-
8 cation or notice is expressly required by this article.

§7-20-19. Public officials exempt from personal liability.

1 No member of a county commission or other county
2 officer shall be personally liable on any contract or
3 obligation executed pursuant to the authority contained in
4 this article. Nor shall the issuance of bonds under this
5 article be considered as misfeasance in office.

§7-20-20. Cooperation by public bodies.

1 For the purpose of aiding and cooperating in the plan-
2 ning, undertaking or carrying out of a special infrastruc-
3 ture project located, in whole or in part, within the area in
4 which it is authorized to act, any public body may, upon
5 such terms, with or without consideration, as it may
6 determine:

7 (1) Dedicate, sell, convey or lease any of its interest in
8 any property, or grant easements, licenses or any other
9 rights or privileges therein to an authority;

10 (2) Cause parks, playgrounds, recreational, community,
11 educational, water, sewer or drainage facilities, or any
12 other works which it is otherwise empowered to under-
13 take, to be furnished in connection with an infrastructure
14 project;

15 (3) Furnish, dedicate, close, vacate, pave, install, grade,
16 regrade, plan or replan streets, roads, sidewalks, ways or
17 other places, which it is otherwise empowered to under-
18 take;

19 (4) Plan or replan, zone or rezone any parcel of land
20 within the jurisdiction of the public body or make excep-
21 tions from building regulations and ordinances if such
functions are of the character which the public body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished for the special infrastructure project of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a special infrastructure project that is, in whole or in part, located in its jurisdiction;

(8) Lend, grant or contribute funds to a county commission for purposes of a special infrastructure project; and

(9) Employ any funds belonging to or within the control of the public body, including funds derived from the sale or furnishing of property, service, or facilities to a county commission for a special infrastructure project, in the purchase of the bonds or other obligations of a county commission issued under this article and, as the holder of such bonds or other obligations, exercise the rights connected therewith.

§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.

(a) In the event a county commission determines that any public utility line or facility located upon, across or under any portion of a street, avenue, highway, road or other public place or way shall be temporarily or permanently readjusted, removed, relocated, changed in grade or otherwise altered (each and all hereinafter for convenience referred to as “relocation”) in order to accommodate any infrastructure project undertaken pursuant to the provi-
sions of this article, the cost of the relocation shall be borne by the county commission.

(b) For purposes of this section, the term "cost of relocation" shall include the entire amount paid by such utility, exclusive of any right-of-way costs incurred by such utility, properly attributable to such relocation after deducting therefrom any increase in the value of the new line or facility and salvage derived from the old line or facility.

(c) The cost of relocating utility lines or facilities, as defined herein, in connection with any special infrastructure project is hereby declared to be a cost of the project.

§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any special infrastructure project acquired, constructed or financed, in whole or in part, by service fees imposed by a county commission under section twelve of this article shall be considered to be a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

(b) The county commission shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code and compliance with article one-c of said chapter for any special infrastructure project funded pursuant to section twelve of this article exceeding twenty-five thousand dollars in total cost.

(c) Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: *Provided,* That the county
commission or other person soliciting the bids may reject all bids and solicit new bids on the project.

(d) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(e) This section does not:

(1) Apply to work performed on construction projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the county commission: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the county commission comes to an agreement with volunteers, or a volunteer group, by which the county commission will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the county commission: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.
§7-20-23. Excess funds; termination of service fee.
(a) When revenue bonds have been issued as provided in this article and the amount of service fees imposed pursuant to section twelve of this article and collected by the sheriff, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the finding of required debt service and maintenance reserves, the additional amount shall be set aside in a separate fund and used to retire some or all of the outstanding revenue bonds before their maturity date.

(b) Once the revenue bonds issued as provided in this article are no longer outstanding or the county commission determines that sufficient reserves have been or will be accumulated as of a specified date to pay all future debt service on the outstanding bonds, the service fee to payable services on a subsequent issue of revenue bonds imposed pursuant to section twelve of this article may not be imposed or collected for subsequent weeks after that date. Termination of the service fee as provided in this section shall not bar or otherwise prevent the county commission from collecting service fees that accrued before the termination date.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.
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 ................. this the 23rd Day of ................., 2006.

Governor