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2007 APR -4 PM 3: 57

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 425

(SENATORS KESSLER AND MCKENZIE, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 425

(SENATORS KESSLER AND MCKENZIE, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §16-13E-2, §16-13E-4 and §16-13E-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22C-2-1 and §22C-2-5 of said code, all relating to enhancement of existing public infrastructure funding sources; adding water treatment and wastewater treatment as authorized projects in community enhancement districts; expanding the definition of “local entity” for purposes of eligibility for funding from the Water Pollution Control Revolving Fund; and authorizing

Enr. Com. Sub. for S. B. No. 425] 2

the Water Development Authority to take security or other interest in certain property to secure loans made from the fund.

Be it enacted by the Legislature of West Virginia:

That §16-13E-2, §16-13E-4 and §16-13E-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22C-2-1 and §22C-2-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.

1 For purposes of this article:

2 (a) "Assessment bonds" means special obligation
3 bonds or notes issued by a community enhancement
4 district which are payable from the proceeds of
5 assessments.

6 (b) "Assessment" means the fee, including interest,
7 paid by the owner of real property located within a
8 community enhancement district to pay for the cost of
9 a project or projects constructed upon or benefitting or
10 protecting such property and administrative expenses
11 related thereto, which fee is in addition to all taxes and
12 other fees levied on the property.

13 (c) "Board" means a community enhancement board
14 created pursuant to this article.

15 (d) "Code" means the code of West Virginia, one

16 thousand nine hundred thirty-one, as amended.

17 (e) "Community enhancement district" or "district"
18 means a community enhancement district created
19 pursuant to this article.

20 (f) "Cost" means the cost of:

21 (1) Construction, reconstruction, renovation and
22 acquisition of all lands, structures, real or personal
23 property, rights, rights-of-way, franchises, easements
24 and interests acquired or to be acquired by the district;

25 (2) All machinery and equipment, including
26 machinery and equipment needed to expand or enhance
27 county or city services to the district;

28 (3) Financing charges and interest prior to and during
29 construction and, if deemed advisable by the district or
30 governing body, for a limited period after completion of
31 the construction;

32 (4) Interest and reserves for principal and interest,
33 including costs of municipal bond insurance and any
34 other type of financial guaranty;

35 (5) Costs of issuance in connection with the issuance
36 of assessment bonds;

37 (6) The design of extensions, enlargements, additions
38 and improvements to the facilities of any district;

39 (7) Architectural, engineering, financial and legal
40 services;

41 (8) Plans, specifications, studies, surveys and
42 estimates of costs and revenues;

43 (9) Administrative expenses necessary or incident to
44 determining to proceed with any project; and

45 (10) Other expenses as may be necessary or incident to
46 the construction, acquisition and financing of a project.

47 (g) "County commission" means the governing body of
48 a county as defined in section one, article one, chapter
49 seven of this code.

50 (h) "Governing body" means, in the case of a county,
51 the county commission and in the case of a
52 municipality, the mayor and council together, the
53 council or the board of directors as charged with the
54 responsibility of enacting ordinances and determining
55 the public policy of such municipality.

56 (i) "Governmental agency" means the state
57 government or any agency, department, division or unit
58 thereof; counties; municipalities; any watershed
59 enhancement districts, soil conservation districts,
60 sanitary districts, public service districts, drainage
61 districts, school districts, urban renewal authorities or
62 regional governmental authorities established pursuant
63 to this code.

64 (j) "Municipality" means a municipality as defined in
65 section two, article one, chapter eight of this code.

66 (k) "Person" means an individual, firm, partnership,
67 corporation, voluntary association or any other type of
68 entity.

69 (l) "Project" means the design, construction,
70 reconstruction, establishment, acquisition,
71 improvement, renovation, extension, enlargement,
72 equipping, maintenance, repair (including
73 replacements) and start-up operation of water source of
74 supply, treatment, transmission and distribution
75 facilities, sewage treatment, collection and transmission
76 facilities, stormwater systems, police stations, fire
77 stations, libraries, museums, schools, other public
78 buildings, hospitals, piers, docks, terminals, drainage
79 systems, culverts, streets, roads, bridges (including
80 approaches, causeways, viaducts, underpasses and
81 connecting roadways), motor vehicle parking facilities
82 (including parking lots, buildings, ramps, curb-line
83 parking, meters and other facilities deemed necessary,
84 appropriate, useful, convenient or incidental to the
85 regulation, control and parking of motor vehicles),
86 public transportation, public recreation centers, public
87 recreation parks, swimming pools, tennis courts, golf
88 courses, equine facilities, motor vehicle competition and
89 recreational facilities, flood protection or relief projects,
90 or the grading, regrading, paving, repaving, surfacing,
91 resurfacing, curbing, recurbing, widening, lighting or
92 otherwise improving any street, avenue, road, highway,
93 alley or way, or the building or renewing of sidewalks
94 and flood protection; and the terms shall mean and
95 include any project as a whole, and all integral parts
96 thereof, including all necessary, appropriate, useful,
97 convenient or incidental appurtenances and equipment
98 in connection with any one or more of the above.

**§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real

2 property, determined by acreage, located within the
3 boundaries of the area described in the petition, by
4 metes and bounds or otherwise in a manner sufficient to
5 describe the area, may petition a governing body to
6 create or expand a community enhancement district.

7 (b) The petition for the creation or expansion of a
8 community enhancement district shall include, where
9 applicable, the following:

10 (1) The proposed name and proposed boundaries of
11 such district and a list of the names and addresses of all
12 owners of real property within the proposed district;

13 (2) A detailed project description;

14 (3) A map showing the proposed project, including all
15 proposed improvements;

16 (4) A list of estimated project costs and the
17 preliminary plans and specifications for such
18 improvements, if available;

19 (5) A list of nonproject costs and how they will be
20 financed;

21 (6) A consultant study outlining the projected
22 assessments, setting forth the methodology for
23 determining the assessments and the methodology for
24 allocating portions of an initial assessment against a
25 parcel expected to be subdivided in the future to the
26 various lots into which the parcel will be subdivided
27 and demonstrating that such assessments will
28 adequately cover any debt service on bonds issued to
29 finance the project and ongoing administrative costs;

30 (7) A development schedule;

31 (8) A list of recommended members for the board;

32 (9) If the project includes water, wastewater or sewer
33 improvements, written evidence from the utility or
34 utilities that will provide service to the district, if any,
35 that said utility or utilities:

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

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

46 (C) If built in conformance with said plans and
47 specifications, will accept the improvements following
48 their completion, unless such projects are to be owned
49 by the district;

50 (10) If the project includes improvements other than
51 as set forth in subdivision (9) of this subsection that will
52 be transferred to another governmental agency, written
53 evidence that such agency will accept such transfer,
54 unless such projects are to be owned by the district;

55 (11) The benefits that can be expected from the
56 creation of the district and the project; and

57 (12) A certification from each owner of real property
58 within the proposed district who joins in the petition
59 that he or she is granting an assessment against his or
60 her property in such an amount as to pay for the costs
61 of the project and granting a lien for said amount upon
62 said property enforceable in accordance with the
63 provision of this article.

64 (c) After reviewing the petition presented pursuant to
65 this section, the governing body may by order or
66 ordinance determine the necessity and economic
67 feasibility of creating a community enhancement
68 district and developing, constructing, acquiring,
69 improving or extending a project therein. If the
70 governing body determines that the creation of a
71 community enhancement district and construction of
72 the project is necessary and economically feasible, it
73 shall set a date for the public meeting required under
74 section five of this article and shall cause the petition to
75 be filed with the clerk of the county commission or the
76 clerk or recorder of the municipality, as the case may
77 be, and be made available for inspection by interested
78 persons before the meeting.

79 (d) Notwithstanding any other provision of this article
80 to the contrary, nothing in this article shall modify:

81 (1) The jurisdiction of the public service commission
82 to determine the convenience and necessity of the
83 construction of utility facilities, to resolve disputes
84 between utilities relating to which utility should
85 provide service to a district or otherwise to regulate the
86 orderly development of utility infrastructure in the
87 state; or

88 (2) The authority of the infrastructure and jobs
89 development council as to the funding of utility
90 facilities to the extent that loans, loan guarantees,
91 grants or other funding assistance from a state
92 infrastructure agency are involved.

**§16-13E-6. Creation of community enhancement district;
community enhancement district to be a
public corporation and political subdivision;
powers thereof; community enhancement
boards.**

1 (a) Each community enhancement district shall be
2 created by adoption or enactment of an order or
3 ordinance.

4 (b) From and after the date of the adoption or
5 enactment of the order or ordinance creating a
6 community enhancement district, it shall thereafter be
7 a public corporation and political subdivision of this
8 state, but without any power to levy or collect ad
9 valorem taxes. Each community enhancement district
10 is hereby empowered and authorized, in addition to any
11 other rights, powers and authorities conferred upon it
12 in this article or elsewhere in this code, to:

13 (1) Acquire, own and hold, in its corporate name, by
14 purchase, lease, right of eminent domain, gift or
15 otherwise, such property, both real and personal and
16 other interests in real estate, or any other property,
17 whether tangible or intangible, as may be necessary or
18 incident to the planning, financing, development,
19 construction, acquisition, extension, improvement and
20 completion of a project;

21 (2) Design, plan, finance, develop, construct, acquire,
22 extend, improve and complete one or more projects and
23 assess the cost of all or any portion of a project on real
24 property located within the community enhancement
25 district;

26 (3) Sue or be sued;

27 (4) Establish a bank account or accounts in its name;

28 (5) Enter into agreements or other transactions with
29 any person or governmental agency necessary or
30 incident to the development, planning, construction,
31 acquisition or improvement of a project or for the
32 operation, maintenance or disposition of a project or for
33 any other services required by a project;

34 (6) Annually, on or before the seventh day of June,
35 certify to the sheriff of the county in which the property
36 is located the assessments granted against all property
37 in the district for inclusion in the tax ticket;

38 (7) Expend funds to acquire, or construct part of a
39 project on property located outside of a community
40 enhancement district, and for any work undertaken
41 thereon, as may be necessary or incident to the
42 completion of a project;

43 (8) Enter into agreements with one or more counties,
44 municipalities, public service districts or community
45 enhancement districts to plan, develop, construct,
46 acquire or improve a project jointly;

47 (9) Accept appropriations, gifts, grants, bequests and
48 devises and use or dispose of the same to carry out its

49 corporate purpose;

50 (10) Make and execute contracts, releases,
51 assignments, compromises and other instruments
52 necessary or convenient for the exercise of its powers, or
53 to carry out its corporate purpose;

54 (11) Have a seal and alter the same;

55 (12) Raise funds by the issuance and sale of
56 assessment bonds;

57 (13) Obtain options to acquire real property, or any
58 interest therein, by purchase, lease or otherwise, which
59 is found by the board to be suitable as a site, or part of
60 a site, for the construction of a project;

61 (14) Pledge funds generated by assessments in a
62 district or proceeds from the sale of assessment bonds to
63 payment of debt service on tax increment financing
64 obligations issued under article eleven-b, chapter seven
65 of this code for the period of time determined by the
66 community enhancement board; and

67 (15) Take any and all other actions consistent with the
68 purpose of this article and not in violation of the
69 constitution of this state as may be necessary or
70 incident to the construction and completion of a project.

71 (c) The powers of each community enhancement
72 district shall be vested in and exercised by a community
73 enhancement board which shall be composed of five
74 members, four of whom shall be appointed by the
75 governing body of the county or municipality in which
76 the community enhancement district is located and one

77 of whom shall be the sheriff or his or her designee of the
78 county or the treasurer or his or her designee of the
79 municipality (or such other person serving in an
80 equivalent capacity if there is no treasurer), as the case
81 may be, in which the community enhancement district
82 is located. At least three members of the board shall be
83 residents of the assessment district: *Provided*, That
84 should less than three persons reside within the
85 boundaries of the community enhancement district,
86 then at least three members of the board shall be
87 residents of the county or municipality, as the case may
88 be: *Provided, however*, That if no persons reside within
89 the boundaries of the community enhancement district
90 then at least three members must be approved by the
91 owner or owners of the land. No more than three initial
92 members of the board may be from the same political
93 party.

94 (d) The four members appointed by the governing
95 body shall be appointed for overlapping terms of four
96 years each and thereafter until their respective
97 successors have been appointed and have qualified. For
98 the purpose of initial appointments, one member shall
99 be appointed for a term of four years; one member shall
100 be appointed for a term of three years; one member
101 shall be appointed for a term of two years; and one
102 member shall be appointed for a term of one year.
103 Members may be reappointed for any number of terms.
104 Before entering upon the performance of his or her
105 duties, each member shall take and subscribe to the
106 oath required by section five, article IV of the
107 constitution of this state. Vacancies shall be filled by
108 appointment by the governing body of the county or
109 municipality creating the assessment district for the
110 unexpired term of the member whose office shall be

111 vacant and such appointment shall be made within
112 thirty days of the occurrence of such vacancy. Any such
113 member may be removed by the governing body which
114 appointed such member in case of incompetency,
115 neglect of duty, gross immorality or malfeasance in
116 office. Members shall be entitled to no more than fifty
117 dollars per meeting and reasonable expenses associated
118 with their services.

119 (e) The board shall organize within thirty days
120 following the first appointments and annually
121 thereafter at its first meeting after the first day of
122 January of each year by selecting one of its members to
123 serve as chairman, one to serve as treasurer and one to
124 serve as secretary. The secretary, or his or her designee,
125 shall keep a record of all proceedings of the board
126 which shall be available for inspection as other public
127 records and the treasurer or his or her designee shall
128 maintain records of all financial matters relating to the
129 community enhancement district, which shall also be
130 available for inspection as other public records.
131 Duplicate records shall be filed with the clerk or
132 recorder, as the case may be, of the county or
133 municipality which created the community
134 enhancement district and shall include the minutes of
135 all board meetings. The secretary and treasurer shall
136 perform such other duties pertaining to the affairs of
137 the community enhancement district as shall be
138 prescribed by the board.

139 (f) The members of the board, and the chairman,
140 secretary and treasurer thereof, shall make available to
141 the governing body responsible for appointing the
142 board, at all times, all of its books and records
143 pertaining to the community enhancement district's

144 operation, finances and affairs for inspection and audit.
145 The board shall meet at least semiannually.

146 (g) A majority of the members of the board constitutes
147 a quorum and meetings shall be held at the call of the
148 chairman.

149 (h) Staff, office facilities and costs of operation of the
150 board may be provided by the county or municipality
151 which created the community enhancement district or
152 by contract and said costs of operations shall be funded
153 from assessments collected within the district.

154 (i) The chairman shall preside at all meetings of the
155 board and shall vote as any other members of the board,
156 but if he or she should be absent from any meeting the
157 remaining members may select a temporary chairman,
158 and if the member selected as chairman resigns as such
159 or ceases for any reason to be a member of the board,
160 the board shall select one of its members as chairman to
161 serve until the next annual organizational meeting.

162 (j) The board shall, by resolution, determine its own
163 rules of procedure, fix the time and place of its meetings
164 and the manner in which special meetings may be
165 called. The members of the board shall not be
166 personally liable or responsible for any obligations of
167 the assessment district or the board but are answerable
168 only for willful misconduct in the performance of their
169 duties.

170 (k) The official name of a community enhancement
171 district created under the provisions of this article may
172 contain the name of the county or municipality, as the
173 case may be, in which it is located.

174 (l) Notwithstanding any provision in this code to the
175 contrary, the power and authority hereby conferred on
176 community enhancement districts may extend within
177 the territory of a public service district created under
178 section two, article thirteen-a of this chapter.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

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

3 (a) "Authority" means the water development
4 authority provided for in section four, article one of this
5 chapter.

6 (b) "Cost" as applied to any project financed under
7 the provisions of this article means the total of all costs
8 incurred by a local entity that are reasonable and
9 necessary for carrying out all works and undertakings
10 necessary or incident to the accomplishment of any
11 project including:

12 (1) Developmental, planning and feasibility studies,
13 surveys, plans and specifications;

14 (2) Architectural, engineering, financial, legal or other
15 special services;

16 (3) Acquisition of land and any buildings and
17 improvements on the land or buildings, including the

18 discharge of any obligations of the sellers of the land,
19 buildings or improvements;

20 (4) Site preparation and development, including
21 demolition or removal of existing structures,
22 construction and reconstruction, labor, materials,
23 machinery and equipment;

24 (5) The reasonable costs of financing incurred by the
25 local entity in the course of the development of the
26 project, carrying charges incurred before placing the
27 project in service, interest on funds borrowed to finance
28 the project to a date subsequent to the estimated date
29 the project is to be placed in service, necessary expenses
30 incurred in connection with placing the project in
31 service and the funding of accounts and reserves which
32 the authority may require; and

33 (6) Other items that the Department of Environmental
34 Protection determines to be reasonable and necessary.

35 (c) "Fund" means the State Water Pollution Control
36 Revolving Fund provided for in this article as it may be
37 expanded or modified, from time to time, pursuant to
38 the Clean Water Act, 33 U. S. C. 1251, *et seq.*, as
39 amended, the Federal Safe Drinking Water Act 42 U. S.
40 C. 300f through 300j-26, inclusive, as amended, or by
41 the executive order of the Governor issued to comply
42 with federal laws relating to the acts.

43 (d) "Instrumentality" means the Department of
44 Environmental Protection or the agency designated by
45 an order of the Governor as having the primary
46 responsibility for administering the fund pursuant to
47 the Clean Water Act, 33 U. S. C. 1251, *et seq.*, as

48 amended, and the Federal Safe Drinking Water Act, 42
49 U. S. C. 300f through 300j-26, inclusive, as amended,
50 or other federal laws.

51 (e) "Local entity" means any county, city, town,
52 municipal corporation, authority, district, public service
53 district, commission, banking institution, political
54 subdivision, regional governmental authority, state
55 government agency, interstate agency or not-for-profit
56 association or corporation in West Virginia.

57 (f) "Project" means any water or wastewater
58 treatment facility located or to be located in or outside
59 this state by a local entity and includes:

60 (1) Sewage and wastewater collection, treatment and
61 disposal facilities;

62 (2) Public water transportation, treatment and
63 distribution facilities;

64 (3) Drainage facilities and projects;

65 (4) Administrative, maintenance, storage and
66 laboratory facilities related to the facilities delineated
67 in subdivisions (1), (2) and (3) of this subsection;

68 (5) Interests in land related to the facilities delineated
69 in subdivisions (1), (2), (3) and (4) of this subsection; and

70 (6) Other projects allowable under federal law.

§22C-2-5. Collection of money due to the fund.

1 (a) In order to ensure the timely payment of all sums

2 due and owing to the fund under a revolving fund loan
3 agreement between the state and a local entity, and
4 notwithstanding any provisions of this code to the
5 contrary, the authority has and may, at its option,
6 exercise the following rights and remedies in the event
7 of any default by a local entity under a loan agreement:

8 (1) The authority may directly impose, in its own name
9 and for its own benefit, service charges upon all users of
10 a project funded by a loan distributed to a local entity
11 pursuant to this article and may proceed directly to
12 enforce and collect the service charges, together with all
13 necessary costs of the enforcement and collection.

14 (2) The authority may exercise, in its own name or in
15 the name of and as the agent for a particular local
16 entity, all of the rights, powers and remedies of the local
17 entity with respect to the project or which may be
18 conferred upon the local entity by statute, rule,
19 regulation or judicial decision, including all rights and
20 remedies with respect to users of the project funded by
21 the loan distributed to that local entity pursuant to this
22 article.

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

28 (A) The adjustment of service charges as required to
29 repay the loan or otherwise satisfy the terms of the loan
30 agreement;

31 (B) The enforcement and collection of service charges;

32 and

33 (b) The enforcement by the local entity of all rights
34 and remedies conferred by statute, rule, regulation or
35 judicial decision. The rights and remedies enumerated
36 in this section are in addition to rights and remedies
37 conferred upon the authority by law or pursuant to the
38 loan agreement.

39 (c) For loans made for projects defined in subdivision
40 (6), subsection (f), section one of this article, at the
41 direction of the Department of Environmental
42 Protection, the authority shall take a security or other
43 interest in real or personal property with the right to
44 foreclose upon a default to secure loans made from the
45 fund.

Enr. Com. Sub. for S. B. No. 425] 20

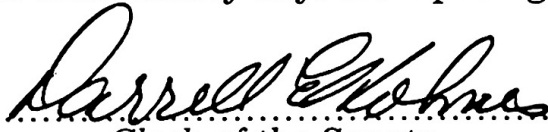
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

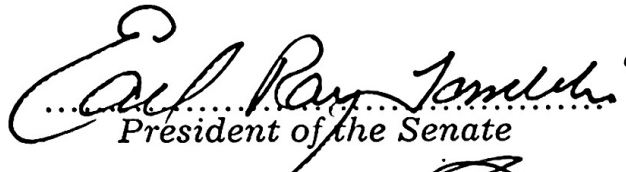

.....
Chairman House Committee


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 4th Day of April, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:25 pm