WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
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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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(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
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 bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

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

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

15 (d) "Code" means the code of West Virginia, one
thousand nine hundred thirty-one, as amended.

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

(f) "Cost" means the cost of:

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

2. All machinery and equipment, including machinery and equipment needed to expand or enhance county or city services to the district;

3. Financing charges and interest prior to and during construction and, if deemed advisable by the district or governing body, for a limited period after completion of the construction;

4. Interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty;

5. Costs of issuance in connection with the issuance of assessment bonds;

6. The design of extensions, enlargements, additions and improvements to the facilities of any district;

7. Architectural, engineering, financial and legal services;
(8) Plans, specifications, studies, surveys and estimates of costs and revenues;

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

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

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

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

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

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

(k) "Person" means an individual, firm, partnership, corporation, voluntary association or any other type of entity.
(l) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of watersource of supply, treatment, transmission and distribution facilities, sewage treatment, collection and transmission facilities, stormwater systems, police stations, fire stations, libraries, museums, schools, other public buildings, hospitals, piers, docks, terminals, drainage systems, culverts, streets, roads, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, swimming pools, tennis courts, golf courses, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurfing, widening, lighting or otherwise improving any street, avenue, road, highway, alley or way, or the building or renewing of sidewalks and flood protection; and the terms shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

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

(a) The owners of at least sixty-one percent of the real
property, determined by acreage, located within the boundaries of the area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a community enhancement district.

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

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

(2) A detailed project description;

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

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

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

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

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

(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district, if any, that said 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 such projects are to be owned by the district;

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

(11) The benefits that can be expected from the creation of the district and the project; and
(12) A certification from each owner of real property within the proposed district who joins in the petition that he or she is granting an assessment against his or her property in such an amount as to pay for the costs of the project and granting a lien for said amount upon said property enforceable in accordance with the provision of this article.

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

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

(1) The jurisdiction of the public service commission to determine the convenience and necessity of the construction of utility facilities, to resolve disputes between utilities relating to which utility should provide service to a district or otherwise to regulate the orderly development of utility infrastructure in the state; or
9 (Enr. Com. Sub. for S. B. No. 425)

(2) The authority of the infrastructure and jobs development council as to the funding of utility facilities to the extent that loans, loan guarantees, grants or other funding assistance from a state 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.

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

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

(1) Acquire, own and hold, in its corporate name, by purchase, lease, right of eminent domain, gift or otherwise, such property, both real and personal and other interests in real estate, or any other property, whether tangible or intangible, as may be necessary or incident to the planning, financing, development, construction, acquisition, extension, improvement and completion of a project;
(2) Design, plan, finance, develop, construct, acquire, extend, improve and complete one or more projects and assess the cost of all or any portion of a project on real property located within the community enhancement district;

(3) Sue or be sued;

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

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

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

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

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

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

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

(11) Have a seal and alter the same;

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

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

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

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

(c) The powers of each community enhancement district shall be vested in and exercised by a community enhancement board which shall be composed of five members, four of whom shall be appointed by the governing body of the county or municipality in which the community enhancement district is located and one
of whom shall be the sheriff or his or her designee of the
county or the treasurer or his or her designee of the
municipality (or such other person serving in an
equivalent capacity if there is no treasurer), as the case
may be, in which the community enhancement district
is located. At least three members of the board shall be
residents of the assessment district: Provided, That
should less than three persons reside within the
boundaries of the community enhancement district,
then at least three members of the board shall be
residents of the county or municipality, as the case may
be: Provided, however, That if no persons reside within
the boundaries of the community enhancement district
then at least three members must be approved by the
owner or owners of the land. No more than three initial
members of the board may be from the same political
party.

(d) The four members appointed by the governing
body shall be appointed for overlapping terms of four
years each and thereafter until their respective
successors have been appointed and have qualified. For
the purpose of initial appointments, one member shall
be appointed for a term of four years; one member shall
be appointed for a term of three years; one member
shall be appointed for a term of two years; and one
member shall be appointed for a term of one year.
Members may be reappointed for any number of terms.
Before entering upon the performance of his or her
duties, each member shall take and subscribe to the
oath required by section five, article IV of the
constitution of this state. Vacancies shall be filled by
appointment by the governing body of the county or
municipality creating the assessment district for the
unexpired term of the member whose office shall be
vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall be entitled to no more than fifty dollars per meeting and reasonable expenses associated with their services.

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

(f) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the community enhancement district's
operation, finances and affairs for inspection and audit. The board shall meet at least semiannually.

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

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

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

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

(k) The official name of a community enhancement district created under the provisions of this article may contain the name of the county or municipality, as the case may be, in which it is located.
(l) Notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on community enhancement districts may extend within the territory of a public service district created under 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.

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

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

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

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

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

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the
(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

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

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

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

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U. S. C. 1251, et seq., as
amended, and the Federal Safe Drinking Water Act, 42
U. S. C. 300f through 300j-26, inclusive, as amended,
or other federal laws.

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

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

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

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

(3) Drainage facilities and projects;

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

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

(6) Other projects allowable under federal law.

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

(a) In order to ensure the timely payment of all sums
due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

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

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

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

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

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

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

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within bill is approved this the ______ Day of ______, 2007.

[Signature]
Governor