WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 466
(By Senators Unger, Plymale, Prezioso, Foster, Jenkins, Stollings and Hunter)

[Passed March 6, 2008; in effect ninety days from passage.]
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AN ACT to amend and reenact §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, all relating to the Water Development Authority; defining terms; providing that stormwater systems may qualify as water development projects; and authorizing the Water Development Authority to administer the Dam Safety Rehabilitation Revolving Fund Loan Program.

Be it enacted by the Legislature of West Virginia:

That §22C-1-3, §22C-1-6 and §22C-1-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to
ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-3. Definitions.

1. As used in this article, unless the context clearly requires a different meaning:

2. (1) "Authority" means the Water Development Authority provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

3. (2) "Beneficial use" means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

4. (3) "Board" means the Water Development Authority Board provided for in section four of this article, which shall manage and control the Water Development Authority.

5. (4) "Bond" or "water development revenue bond" means a revenue bond, note or other evidence of indebtedness issued by the Water Development Authority to effect the intents and purposes of this article.

6. (5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or
(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water facilities, stormwater systems or wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of water development revenue bonds to be paid into any special funds from the proceeds of such bonds; and the
financing of the placing of any such project in
operation. Any obligation or expenses incurred by any
governmental agency, with the approval of the
authority, for surveys, borings, preparation of plans and
specifications and other engineering services in
connection with the acquisition or construction of a
project are a part of the cost of such project and shall be
reimbursed out of the proceeds of loans or water
development revenue bonds as authorized by the
provisions of this article.

(7) "Establishment" means an industrial
establishment, mill, factory, tannery, paper or pulp mill,
mine, colliery, breaker or mineral processing operation,
quarry, refinery, well and each and every industry or
plant or works or activity in the operation or process of
which industrial wastes or other wastes are produced.

(8) "Governmental agency" means the state
government or any agency, department, division or unit
thereof; counties; municipalities; watershed
improvement districts; soil conservation districts;
sanitary districts; public service districts; drainage
districts; regional governmental authorities and any
other governmental agency, entity, political subdivision,
public corporation or agency having the authority to
acquire, construct or operate public water facilities,
stormwater systems or wastewater facilities; the United
States government or any agency, department, division
or unit thereof; and any agency, commission or
authority established pursuant to an interstate compact
or agreement.

(9) "Industrial wastes" means any liquid, gaseous,
solid or other waste substance or any combination
thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the State of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means: (a) The discharge, release,
escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will or is likely to: (1) contaminate or substantially contribute to the contamination of any of such waters; or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters: (i) Directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare; or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life; or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) "Project" or "water development project" means any public water facility, stormwater system or wastewater facility, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part,
from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) “Public roads” mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) “Public utility facilities” means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) “Revenue” means any money or thing of value collected by, or paid to, the Water Development Authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the Water Development Authority to governmental agencies to finance, in whole or in part, the acquisition or
construction of any water development project or
projects or other money or property which is received
and may be expended for or pledged as revenues
pursuant to this article.

(18) "Sewage" means water-carried human or animal
wastes from residences, buildings, industrial
establishments or other places, together with such
groundwater infiltration and surface waters as may be
present.

(19) "Stormwater system" means a stormwater system
in its entirety or any integral part thereof used to
collect, control or dispose of stormwater and an
associated stormwater management program. It
includes all facilities, structures and natural water
courses used for collecting and conducting stormwater
to, through and from drainage areas to the points of
final outlet, including, but not limited to, any and all of
the following: Inlets, conduits, corals, outlets, channels,
ponds, drainage ways, easements, water quality
facilities, catch basins, ditches, streams, gulches, flumes,
culverts, siphons, retention or detention basins, dams,
floodwalls, pipes, flood control systems, levies and
pumping stations. The term "stormwater system" does
not include highways, road and drainage easements or
stormwater facilities constructed, owned or operated by
the West Virginia Division of Highways.

(20) "Stormwater management program" means those
activities associated with the management, operation
and maintenance and control of stormwater and
stormwater systems and includes, but is not limited to,
public education, stormwater and surface runoff water
quality improvement, mapping, planning, flood control,
inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of the Division of Highways.

(21) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(22) "Wastewater" means any water containing sewage, industrial wastes or other wastes or contaminants derived from the prior use of such water and includes, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(23) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water
and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(24) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§22C-1-6. Powers, duties and responsibilities of authority generally.

The Water Development Authority has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

(1) Adopt and, from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary,
regional suboffices at locations properly designated or
provided.

(4) Sue and be sued in its own name and plead and be
impleaded in its own name and particularly to enforce
the obligations and covenants made under sections nine,
ten and sixteen of this article. Any actions against the
authority shall be brought in the circuit court of
Kanawha County in which the principal office of the
authority shall be located.

(5) Make loans and grants to governmental agencies
for the acquisition or construction of water development
projects by any such governmental agency and, in
accordance with the provisions of chapter twenty-nine-
a of this code, adopt rules and procedures for making
such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for operation by a governmental agency
or person, water development projects and, in
accordance with the provisions of chapter twenty-nine-
a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water
development project to one or more persons, one or
more governmental agencies or any combination
thereof.

(8) Issue water development revenue bonds and notes
and water development revenue refunding bonds of the
state, payable solely from revenues as provided in
section nine of this article unless the bonds are refunded
by refunding bonds, for the purpose of paying all or any
part of the cost of, or financing by loans to
44 governmental agencies, one or more water development
45 projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of
47 real and personal property in the exercise of its powers
48 and the performance of its duties as set forth in this
49 article.

(10) Acquire in the name of the state, by purchase or
51 otherwise, on such terms and in such manner as it
52 deems proper, or by the exercise of the right of eminent
53 domain in the manner provided in chapter fifty-four of
54 this code, such public or private lands, or parts thereof
55 or rights therein, rights-of-way, property, rights,
56 easements and interests it deems necessary for carrying
57 out the provisions of this article, but excluding the
58 acquisition by the exercise of the right of eminent
59 domain of any public water facilities, stormwater
60 systems or wastewater facilities, operated under permits
61 issued pursuant to the provisions of article eleven,
62 chapter twenty-two of this code and owned by any
63 person or governmental agency, and compensation shall
64 be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements
66 and execute all instruments necessary or incidental to
67 the performance of its duties and the execution of its
68 powers. When the cost under any such contract or
69 agreement, other than compensation for personal
70 services, involves an expenditure of more than two
71 thousand dollars, the authority shall make a written
72 contract with the lowest responsible bidder after public
73 notice published as a Class II legal advertisement in
74 compliance with the provisions of article three, chapter
fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents and other employees, who are covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the
authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the Governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water facilities, stormwater systems or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor or other things of value to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water facilities, stormwater systems or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this
140 article.

141 (17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

145 (18) Administer on behalf of the Department of Environmental Protection the Dam Safety Rehabilitation Revolving Fund Loan Program pursuant to the provisions of article fourteen of chapter twenty-two of this code. Revenues or moneys designated by this code or otherwise appropriated for use by the authority pursuant to the provisions of this article may not be used for the Dam Safety Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety Rehabilitation Revolving Fund shall be kept separate from all revenues and moneys of the authority.

156 (19) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

This section applies to any water development project or projects which are owned, in whole or in part, by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one
or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges are not subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water facilities, stormwater systems or wastewater facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other
terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water facility, stormwater system or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by
the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.
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 27th Day of , 2008.

Governor