



Jefferson County West Virginia

Public Information

1 The Committee on Finance moves to amend the bill on page two,
2 following the enacting section, by striking out the remainder of
3 the bill and inserting in lieu thereof the following:

4 That the Code of West Virginia, 1931, as amended, be amended by
5 adding thereto a new article, designated §22-28-1, §22-28-2, §22-
6 28-3, §22-28-4, §22-28-5, §22-28-6, §22-28-7, §22-28-8 and §22-
7 28-9, all to read as follows:

8 **"ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.**

9 **§22-28-1. Legislative findings.**

10 The Legislature finds and declares that:

11 (a) There is a growing need for the extension of public water
12 and sewer services throughout the state and that the extension of
13 such services and facilities maintains the health and economic
14 vitality of the citizens of West Virginia. In addition, access
15 to such infrastructure facilities is equal essential to
16 development in all regions of the state.

17 (b) The extension of public water and sewer services promotes
18 public health and safety in that it enables businesses,
19 residences, municipalities and other entities to comply with
20 state and federal water quality standards.

21 (c) The cost of publicly owned sewer and water facilities are
22 normally born by the state, its subdivisions and the citizens of
23 West Virginia and public indebtedness incurred to construct such
24 facilities constitutes a financial burden on the state and its

1 political subdivisions, as well as residential consumers.

2 (d) The rates for public water and sewer services charged to
3 customers of all service classes have risen in recent years due
4 primarily to the cost of utility construction and the cost of
5 debt service associated with such construction.

6 (e) There are private business entities that are in need of
7 water and sewer services for various residential, commercial and
8 industrial projects throughout the state and that those entities
9 are willing to pay the cost associated with constructing needed
10 public water and sewer services and to dedicate the facility to
11 the local certificated public utility after construction of such
12 facilities.

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

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

21 **§22-28-2. Definitions.**

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

24 (a) "Certificate of appropriateness" shall refer to the document
25 evidencing approval of a project and is issued by the Secretary

1 of the Department of Environmental Protection pursuant to the
2 provisions of this article. The issuance of such a certificate
3 shall exempt the project from the provisions of section eleven of
4 article two, chapter twenty-four of this code and, in the case of
5 a public service district, from the provisions of section twenty-
6 five, article thirteen-a, chapter sixteen of this code.

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

12 (c) "Community infrastructure investment project" shall refer to
13 any newly constructed or enlarged and improved project facility
14 that may be transferred to a municipal utility or public service
15 district without cost to the municipal utility or public service
16 district pursuant to the provisions of this article.

17 (d) "Person" shall refer to any individual, partnership, firm,
18 society, association, trust, corporation or other business
19 entity.

20 (e) "Project cost" shall refer to the capital cost of proposed
21 community infrastructure investment project facilities to be
22 constructed pursuant to the provisions of this article. "Project
23 cost" shall also refer to newly constructed or enlarged and
24 improved existing project facilities. Project cost shall not
25 refer to any of the costs or expenses of ordinary operation and

1 maintenance of the project facilities once they become
2 operational.

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

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

17 (h) "Secretary" shall refer to the Secretary of the Department
18 of Environmental Protection established in section six, article
19 one, chapter twenty-two of this code.

20 **§22-28-3. Creation of community infrastructure investment**
21 **project; certificate of appropriateness; rule-**
22 **making authority.**

23 (a) There is hereby created a Community Infrastructure
24 Investment Program within the Department of Environmental
25 Protection. This Program will facilitate the construction or

1 expansion of project facilities for the promotion of economic
2 development and the protection of public health and environment
3 in the state. Any public service district or municipal utility
4 that wishes to accept a project facility constructed pursuant to
5 a community infrastructure investment agreement with a project
6 cost not to exceed ten million dollars, may apply to the
7 secretary for approval of such project. Nothing herein shall be
8 construed to require a public service district or municipal
9 utility to use this program.

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

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

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

24 **§22-28-4. Community infrastructure investment agreements; report**
25 **to Joint Committee on Government and Finance.**

1 (a) Municipal utilities and public service districts have
2 the power and authority to enter into community infrastructure
3 investment agreements with any person for the purpose of
4 constructing new project facilities, or substantially improving
5 or expanding project facilities.

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

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

13 (1) The project facilities shall be engineered and
14 constructed in accordance with the requirements for new
15 construction established by the municipal utility or public
16 service district;

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

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

24 (4) A finding that the construction of the new public
25 facility, or the substantial improvement or expansion of an

1 existing public facility, either: (i) Fosters economic growth by
2 promoting commercial, industrial or residential development; and
3 (ii) improves water quality or otherwise enables the affected
4 territory to achieve compliance with any applicable state or
5 federal health or environmental law;

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

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

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

25 (8) Proof that necessary permits, where applicable, have

1 been obtained from the Division of Health and the Department of
2 Environmental Protection;

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

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

20 (11) Any other conditions that the secretary may determine
21 to be relevant as established.

22 (d) Where the Secretary has found that the community
23 infrastructure investment agreement meets the requirements
24 contained in this article, the Secretary shall issue a
25 certificate of appropriateness to the parties as evidence of such

1 approval.

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

6 **§22-28-5. Authority of the Department of Environmental
7 Protection and Division of Health not affected.**

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

18 **§22-28-6. Time for approval.**

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

24 **§22-28-7. Fees.**

25 The Secretary shall establish by legislative rule a schedule

1 of fees reasonably calculated to pay for the costs of the
2 administration of the provisions of this article.

3 **§22-28-8. Exemption from Public Service Commission approval.**

4 All project facilities constructed or improved pursuant to
5 the provisions of this article shall be exempt from the
6 provisions of chapter twenty-four of this code until such time as
7 title to the public facility shall be transferred to the
8 municipal utility or public service district. Nothing herein
9 shall be construed to give the Public Service Commission
10 authority to regulate or intervene in the approval and
11 construction of any project or agreement provided in this
12 article. Notwithstanding any other provision of this code to the
13 contrary, the acquisition of a project facility by a municipality
14 or public service district under the provisions of this article
15 shall not require the issuance of a certificate of convenience
16 and necessity from the Public Service Commission. **§22-28-9.**

17 **Rule-making authority.**

18 The Secretary shall have the authority to propose
19 legislative rules for promulgation in accordance with the
20 provisions of section one, article three, chapter twenty-nine-a
21 of this code to effectuate the purposes of this article.
22 Notwithstanding any provision of this code to the contrary, the
23 proposed legislative rules for this article filed in the state
24 register by the first day of August, two thousand five, may be
25 filed as emergency rules."