

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 561**

By Senators Jeffries and Woelfel

[Originating in the Committee on Agriculture and

Natural Resources; reported on February 9, 2023]

1 A BILL to repeal §16-13C-1, §16-13C-2, §16-13C-3, §16-13C-4, §16-13C-5, and §16-13C-6 of the  
2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new  
3 article, designated §22-36-1, §22-36-2, §22-36-3, §22-36-4, §22-36-5, §22-36-6, §22-36-  
4 7, and §22-36-8 of said code; to amend and reenact §22C-1-4 and §22C-1-8 of said code;  
5 and to amend and reenact §22C-2-2 of said code, all relating to the administration of the  
6 West Virginia Drinking Water Treatment Revolving Fund; transferring administration of  
7 Drinking Water Treatment Revolving Fund article from Department of Health and Human  
8 Resources to Department of Environmental Protection; adding provisions to Drinking  
9 Water Treatment Revolving Fund article relating to state construction grants program and  
10 review of projects funded by Drinking Water Treatment Revolving Fund; directing  
11 Department of Environmental Protection to propose legislative rules for state construction  
12 grants program; modifying the Water Development Authority; and changing composition of  
13 Water Development Board.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.**

#### **§16-13C-1. Definitions.**

1 [Repealed.]

#### **§16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.**

2 [Repealed.]

#### **§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water development authority; set-aside accounts.**

3 [Repealed.]

#### **§16-13C-4. Management of funds.**

4 [Repealed.]

**§16-13C-5. Remedies to enforce payment.**

5 [Repealed.]

**§16-13C-6. Construction of article.**

6 [Repealed.]

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 36. ADMINISTRATION OF THE WEST VIRGINIA DRINKING WATER  
TREATMENT REVOLVING FUND.**

**§22-36-1. Definitions.**

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

3 (1) "Authority" means the water development authority provided for in §22C-1-4 of this  
4 code.

5 (2) "Capacity development" means the technical, managerial, and financial capability of a  
6 public water system.

7 (3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property,  
8 rights and easements, plans and specifications, and all other expenses necessary or incident to  
9 the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or  
10 part of a project.

11 (4) "Disadvantaged community" means the service area of a public water system that  
12 meets affordability criteria established after public review and comment by the state.

13 (5) "Federal Safe Drinking Water Act" means the federal statute commonly known as the  
14 "Safe Drinking Water Act", 42 U.S.C. 300f et seq., as enacted, amended, and as may be  
15 subsequently amended.

16 (6) "Fund" means the West Virginia Drinking Water Treatment Revolving Fund created in

17 this article.

18 (7) "Instrumentality" means the Department of Environmental Protection which has the  
19 primary responsibility for administering the fund and this article pursuant to requirements of the  
20 Federal Safe Drinking Water Act.

21 (8) "Local entity" means any municipality, public utility, or person, including any individual,  
22 firm, partnership, association, not-for-profit corporation, or other corporation organized and  
23 existing under the laws of the state which may construct and operate an eligible project.

24 (9) "Public water system" means that term as defined in §16-1-9a of this code.

25 (10) "Project" means a project for improving a drinking water system for the purpose of  
26 achieving or maintaining compliance with applicable state and federal drinking water regulations.

27 (11) "Set-aside accounts" means those accounts that shall be set up for activities required  
28 by the Federal Safe Drinking Water Act. The moneys for these accounts may be taken from the  
29 federal capitalization grant for these nonproject activities before the capitalization grant is  
30 deposited into the fund.

31 (12) "Small system" means a public water system serving ten thousand or fewer persons.

**§22-36-2. Designation of Department of Environmental Protection as state instrumentality;**  
**rules; small systems; disadvantaged communities.**

1 (a) The Department of Environmental Protection shall act as the instrumentality that is  
2 hereby empowered to enter into capitalization agreements with the United States Environmental  
3 Protection Agency, to accept capitalization grant awards made under the Federal Safe Drinking  
4 Water Act, and to direct the administration and management of the West Virginia Drinking Water  
5 Treatment Revolving Fund created in this article in accordance with the requirements of federal  
6 law.

7 (b) The Department of Environmental Protection shall propose rules for legislative  
8 approval in accordance with provisions of §29A-3-1 et seq. of this code for the purpose of effecting  
9 the administration of the provisions of this article. The rules shall include, but are not limited to,

10 establishing requirements for: (1) Capacity development; (2) environmental review; (3)  
11 disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5)  
12 establishment of a Drinking Water Treatment Revolving Fund program to direct the financial  
13 management of the fund to water systems and establish the interest rates and repayment terms of  
14 the loans.

15 (c) Two percent of the annual federal capitalization grants made to this state shall be  
16 utilized to provide technical assistance services for small systems to assist those systems in  
17 maintaining compliance with the Federal Safe Drinking Water Act. The Department of  
18 Environmental Protection shall enter into contracts to provide technical assistance services for  
19 small systems with such nonprofit organizations that: (1) have a membership that represents at  
20 least twenty-five percent of the small systems of this state; and (2) have at least five years'  
21 experience in providing on-site technical assistance to small systems.

22 (d) The Department of Environmental Protection shall, in accordance with the provisions of  
23 the Federal Safe Drinking Water Act, establish a program for loan subsidies to disadvantaged  
24 communities. Thirty percent of the annual federal capitalization grants made to this state shall be  
25 dedicated to the funding of projects for disadvantaged communities.

**§22-36-3. West Virginia Drinking Water Treatment Revolving Fund; duties of Department of  
Environmental Protection and Water Development Authority; set-aside accounts.**

1 (a) There is continued in the office of the State Treasurer, a permanent and perpetual  
2 special fund to be known as the "West Virginia Drinking Water Treatment Revolving Fund". The  
3 fund shall be administered and managed in accordance with the provisions of the Federal Safe  
4 Drinking Water Act by the Department of Environmental Protection. The Department of  
5 Environmental Protection may draw all or a portion of those moneys available under capitalization  
6 agreements, and with the capitalization grant awards from the United States Environmental  
7 Protection Agency under the Federal Safe Drinking Water Act, and deposit such moneys into the  
8 fund and the set-aside accounts.

9           (b) The fund, less the set-aside account moneys, shall be administered and managed by  
10 the Water Development Authority under the direction of the Department of Environmental  
11 Protection. The fund shall be comprised of moneys appropriated to the fund by the Legislature,  
12 moneys allocated to the state by the federal government expressly for the purpose of establishing  
13 and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts  
14 from loans made from the fund, all income from the investment of moneys held in the fund, and all  
15 other sums designated for deposits to the fund from any source, public or private. Moneys in the  
16 fund shall be used solely to make loans or provide other allowable financial assistance to eligible  
17 projects for public water systems, as described in the Federal Safe Drinking Water Act.

18           (c) In order to carry out the administration and management of the fund, the authority and  
19 the Department of Environmental Protection are authorized to employ officers, employees,  
20 agents, advisors and consultants, including attorneys, financial advisors, engineers, other  
21 technical advisors and public accountants, and notwithstanding any provisions of this code to the  
22 contrary, to determine their duties and compensation without the approval of any other agency or  
23 instrumentality.

24           (d) The authority shall propose legislative rules for promulgation in accordance with the  
25 provisions of §29A-3-1 et seq. of this code to govern the pledge of loans to secure bonds of the  
26 authority.

27           (e) Disbursements from the fund shall be authorized for payment by the director of the  
28 authority or the director's designee. Moneys in the fund shall not be commingled with other money  
29 of the authority. If not needed for immediate use or disbursement, moneys in the fund may be  
30 invested or reinvested by the authority in obligations or securities which are considered lawful  
31 investments for public funds under this code.

32           (f) Pursuant to the provisions of the Federal Safe Drinking Water Act, set-aside accounts  
33 shall be set up in accounts separate from the West Virginia Drinking Water Treatment Revolving  
34 Fund. These set-aside accounts shall include, but not be limited to, administration costs, source

35 water protection, operator training and certification, technical assistance to systems, local  
36 assistance, and other state activities permitted by the Federal Safe Drinking Water Act. The  
37 Department of Environmental Protection shall establish and administer the set-aside accounts as  
38 permitted by the Federal Safe Drinking Water Act. An application fee may be charged and  
39 deposited into the administrative account to defray the cost of administering the program.

**§22-36-4. Management of funds.**

1 The authority shall manage the funds received pursuant to the provisions of this article for  
2 accounting purposes. The authority shall cause an audit of its books and accounts to be made at  
3 least once each fiscal year and the costs thereof may be defrayed as administrative expenses  
4 under provisions of this article. The audit shall be conducted by a certified public accountant and  
5 provide an Auditor's opinion on the fund's financial statements, a report on the internal controls  
6 and a report prepared in compliance with the provisions of the Drinking Water Treatment  
7 Revolving Fund.

**§22-36-5. Remedies to enforce payment.**

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

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

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

13 distributed to that local entity pursuant to this article.

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

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

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

20 (C) The enforcement by the local entity of all rights and remedies conferred by statute, rule,  
21 regulation or judicial decision.

22 (b) The rights and remedies enumerated in this article are in addition to rights and  
23 remedies conferred upon the authority by law or pursuant to the loan agreement.

**§22-36-6. Construction of article.**

1 The provisions of this article shall be liberally construed to the end that its beneficial  
2 purposes may be affected. Insofar as the provisions of this article are inconsistent with the  
3 provisions of any other general, special, or local law, the provisions of this article are controlling.

**§22-36-7. State construction grants program continued; special fund.**

1 (a) The secretary of the Department of Environmental Protection shall propose rules for  
2 legislative approval in accordance with the provisions of §29A-1-1 et seq. of this code for the state  
3 construction grants program that is designed to complement and supplement the West Virginia  
4 Drinking Water Treatment Revolving Fund program established pursuant to subsection (b),  
5 section three of this article.

6 (b) The special fund designated "The West Virginia Construction Grants Fund" established  
7 in the State Treasury is continued. The special fund shall be comprised of moneys appropriated to  
8 said fund by the Legislature, assessments on existing drinking water treatment facilities, and all  
9 other sums designated for deposit to the special fund from any source, public or private: *Provided,*  
10 That such assessments shall be made and collected in accordance with fee schedules to be



11 established by legislative rules promulgated by the secretary of the Department of Environmental  
12 Protection, in accordance with §29A-1-1 et seq. of this code. Moneys in the special fund shall be  
13 used solely for the state construction grants program established under subsection (a) of this  
14 section and for the Water Pollution Control Revolving Fund Act provided for in §22C-2-1 et seq. of  
15 this code: *Provided, however,* That moneys in the special fund may be utilized to defray the costs  
16 incurred by the Department of Environmental Protection in administering the provisions of this  
17 section.

18 **§22-36-8. Environmental review of funded projects.**

1 (a) The Department of Environmental Protection shall conduct an environmental review on  
2 each project funded under this article. The secretary of the Department of Environmental  
3 Protection shall promulgate legislative rules in accordance with the provisions of §29A-3-1 et seq.  
4 of this code to implement the environmental review of funded projects: *Provided,* That the rules  
5 shall be consistent with the regulations promulgated by the United States Environmental  
6 Protection Agency pursuant to the Federal Safe Drinking Water Act, 42 U.S.C. § 300f through §  
7 300j-27, inclusive, as amended.

8 (b) The secretary of the Department of Environmental Protection is authorized to direct a  
9 local entity, or its agent, to implement all measures that, in the judgment of the secretary, are  
10 necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or  
11 to the environment that may result from a project funded under this article. The secretary is further  
12 authorized to require all projects to comply with all other appropriate federal laws and regulations  
13 that are required of the projects under the Federal Safe Drinking Water Act, 42 U.S.C. § 300f  
14 through § 300j-27, inclusive, as amended.

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

**ARTICLE 1. WATER DEVELOPMENT AUTHORITY.**

**§22C-1-4. Water Development Authority; Water Development Board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; Director of Authority; compensation.**

1 (a) The Water Development Authority is continued. The authority is a governmental  
2 instrumentality of the state and a body corporate. The exercise by the authority of the powers  
3 conferred by this article and the carrying out of its purposes and duties are essential governmental  
4 functions and for a public purpose.

5 (b) The authority is controlled, managed, and operated by a seven-member board known  
6 as the Water Development Board. The Governor or designee, the secretary of the Department of  
7 Environmental Protection or designee and the ~~Commissioner of the Bureau for Public Health~~  
8 director of the Department of Environmental Protection's Division of Water and Waste  
9 Management or designee are members ex officio of the board. Four members are appointed by  
10 the Governor, by and with the advice and consent of the Senate, for six-year terms, which are  
11 staggered in accordance with the initial appointments under prior enactment of this section. In the  
12 event of a vacancy, appointments are filled in the same manner as the original appointment for the  
13 remainder of the unexpired term. A member continues to serve until the appointment and  
14 qualification of the successor. More than two appointed board members may not at any one time  
15 belong to the same political party. Appointed board members may be reappointed to serve  
16 additional terms.

17 (c) All members of the board shall be citizens of the state. Each appointed member of the  
18 board, before entering upon his or her duties, shall comply with the requirements of ~~article one,~~  
19 ~~chapter six~~ §6-1-1 *et seq.* of this code and give bond in the sum of \$25,000 in the manner provided  
20 in ~~article two of said chapter~~ §6-2-1 et seq. of said code. The Governor may remove any board  
21 member for cause as provided in ~~article six of said chapter~~ §6-1-1 et seq. of said code.

22 (d) The Governor or designee serves as chair. The board annually elects one of its  
23 appointed members as vice chair and appoints a secretary-treasurer, who need not be a member

24 of the board. Four members of the board is a quorum and the affirmative vote of four members is  
25 necessary for any action taken by vote of the board. A vacancy in the membership of the board  
26 does not impair the rights of a quorum by such vote to exercise all the rights and perform all the  
27 duties of the board and the authority. The person appointed as secretary-treasurer, including a  
28 board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in  
29 ~~article two, chapter six~~ §6-2-1 et seq. of this code.

30 (e) The Governor or designee, the Secretary of the Department of Environmental  
31 Protection and the ~~Commissioner of the Bureau for Public Health~~ director of the Department of  
32 Environmental Protection's Division of Water and Waste Management do not receive  
33 compensation for serving as board members. Each appointed member receives an annual salary  
34 of \$12,000, payable at least twice per month. Each of the seven board members is reimbursed for  
35 all reasonable and necessary expenses actually incurred in the performance of duties as a  
36 member of the board in a manner consistent with guidelines of the Travel Management Office of  
37 the Department of Administration. All expenses incurred by the board are payable solely from  
38 funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or  
39 obligation is not incurred by the authority beyond the extent to which moneys are available from  
40 funds of the authority or from such appropriations.

41 (f) There is a director of the authority appointed by the Governor, with the advice and  
42 consent of the Senate, who serves at the Governor's will and pleasure. The director is responsible  
43 for managing and administering the daily functions of the authority and for performing other  
44 functions necessary to the effective operation of the authority. The compensation of the director is  
45 fixed annually by the board.

**§22C-1-8. Expenditure of funds for study and engineering of proposed projects.**

1 With the approval and the consent of the board, ~~either the director~~ secretary of the ~~Division~~  
2 Department of Environmental Protection ~~or the commissioner of the bureau of public health, or~~  
3 ~~both of them,~~ shall expend, out of any funds available for the purpose, such moneys as are

4 necessary for the study of any proposed water development project and may use its engineering  
5 and other forces, including consulting engineers and sanitary engineers, for the purpose of  
6 effecting such study. All such expenses incurred by the ~~director or commissioner~~ secretary prior to  
7 the issuance of water development revenue bonds or notes under this article shall be paid by the  
8 ~~director or commissioner~~ secretary and charged to the appropriate water development project and  
9 the ~~director and commissioner~~ secretary shall keep proper records and accounts, showing the  
10 amounts so charged. Upon the sale of water development revenue bonds or notes for a water  
11 development project, the funds so expended by the ~~director or commissioner~~ secretary, with the  
12 approval of the authority, in connection with such project, shall be repaid to the ~~Division~~  
13 Department of Environmental Protection ~~or bureau of public health~~ from the proceeds of such  
14 bonds or notes.

## **ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.**

### **§22C-2-2. Designation of ~~division~~ Department of Environmental Protection as state instrumentality for purposes of capitalization agreements with the United States Environmental Protection Agency.**

1 The ~~Division~~ Department of Environmental Protection shall act as the instrumentality that  
2 is empowered to enter into capitalization agreements with the United States Environmental  
3 Protection Agency, to accept capitalization grant awards made under the federal clean water act,  
4 as amended, ~~the safe drinking water act, as amended,~~ and other federal laws and to otherwise  
5 manage the fund provided for in this article in accordance with the requirements of said federal  
6 laws.

NOTE: The purpose of this bill is to relate to the administration of the West Virginia Drinking Water Treatment Revolving Fund. The bill modifies the Water Development Authority and Water Development Board. The bill removes a reference of the federal Safe Drinking Water Act from an area of code. The bill provides for the state administration of the federal Safe Drinking Water Act. Finally, the bill transfers state administration of the West Virginia Drinking Water Treatment Revolving Fund from the Department of Health and Human Resources to the Department of Environmental Protection.

Strike-throughs indicate language that would be stricken from a heading or the present law

CS for SB 561

and underscoring indicates new language that would be added.