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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2712

Mr. Speaker, Mr. Kiss and Ashley

(By Delegate _____ [By Request of the Executive] _____)



Passed _____ April 11, _____ 1997

In Effect _____ From _____ Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2712

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)
[By Request of the Executive]

[Passed April 11, 1997; in effect from passage.]

AN ACT to amend section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article thirteen-c, all relating to public water systems; definition of public water system; criminal penalties; civil and administrative penalties; violation of drinking water rules or regulations; creation of safe drinking water penalty fund; designation of division of health as instrumentality to enter into agreements for and accept grants made by the United States Environmental protection agency; creation of drinking water treatment revolving fund; legislative rules; administration and management of fund by division of health and water development authority; use of grant moneys generally; use of grant moneys for providing technical assistance services for small public water systems; use of grant moneys for disadvantaged communities; deposits of grant moneys; set-aside accounts; audit of grant moneys; remedies to enforce payment of loans from fund; and construction of article.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article one, chapter sixteen of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article thirteen-c, all to read as follows:

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; criminal, civil and administrative penalties; safe drinking water penalty fund.

1 (a) A public water system is any water supply or
2 system which regularly supplies or offers to supply water
3 for human consumption through pipes or other construct-
4 ed conveyances, if serving at least an average of twenty-
5 five individuals per day for at least sixty days per year, or
6 which has at least fifteen service connections, and shall
7 include: (1) Any collection, treatment, storage, and distri-
8 bution facilities under the control of the owner or operator
9 of such system and used primarily in connection with such
10 system; and (2) any collection or pretreatment storage
11 facilities not under such control which are used primarily
12 in connection with such system. A public water system
13 does not include a system which meets all of the following
14 conditions: (1) Which consists only of distribution and
15 storage facilities (and does not have any collection and
16 treatment facilities); (2) which obtains all of its water from,
17 but is not owned or operated by, a public water system
18 which otherwise meets the definition; (3) which does not
19 sell water to any person; and (4) which is not a carrier
20 conveying passengers in interstate commerce.

21 (b) (1) The division of health shall prescribe by leg-
22 islative rule the maximum contaminant levels to which all
23 public water systems shall conform in order to prevent
24 adverse effects on the health of individuals, and, if it
25 deems appropriate, treatment techniques that reduce the
26 contaminant or contaminants to a level which will not
27 adversely affect the health of the consumer. Such rule
28 shall contain provisions to protect and prevent contamina-
29 tion of wellheads and well fields used by public water
30 supplies so that contaminants do not reach a level which
31 would adversely affect the health of the consumer.

32 (2) It shall further prescribe by legislative rule mini-
33 mum requirements for: Sampling and testing; system
34 operation; public notification by a public water system on
35 being granted a variance or exemption or upon failure to
36 comply with specific requirements of this section and
37 regulations promulgated under this section; record keep-
38 ing; laboratory certification; as well as procedures and
39 conditions for granting variances and exemptions to pub-
40 lic water systems from state public water systems regula-
41 tions.

42 (3) In addition, the division of health shall establish
43 by legislative rule, as set out in chapter twenty-nine-a of
44 this code, requirements covering the production and distri-
45 bution of bottled drinking water and may by legislative
46 rule, as set out in chapter twenty-nine-a of this code, estab-
47 lish requirements governing the taste, odor, appearance,
48 and other consumer acceptability parameters of drinking
49 water.

50 (c) Authorized representatives of the division of
51 health shall have right of entry to any part of a public
52 water system, whether or not the system is in violation of a
53 legal requirement, for the purpose of inspection, sampling
54 or testing, and shall be furnished records or information
55 reasonably required for a complete inspection.

56 (d) (1) Any individual, partnership, association, syn-
57 dicate, company, firm, trust, corporation, government
58 corporation, institution, department, division, bureau,
59 agency, federal agency, or any entity recognized by law
60 who violates any provision of this section, or any of the
61 rules or orders issued pursuant thereto, is guilty of a mis-
62 demeanor and, upon conviction thereof, shall be fined not
63 less than twenty-five dollars nor more than two hundred
64 dollars, and each day's violation shall constitute a separate
65 offense. In addition thereto, the division of health may
66 seek injunctive relief in the circuit court of the county in
67 which all or part of the public water system is situated for
68 threatened or continuing violations.

69 (2) For a willful violation of a provision of this sec-
70 tion, or of any of the regulations or orders issued thereun-
71 der for which a penalty is not otherwise provided under

72 subdivision (3) of this subsection, an individual, partner-
73 ship, association, syndicate, company, firm, trust, corpora-
74 tion, government corporation, institution, department,
75 division, bureau, agency, federal agency, or entity recog-
76 nized by law, upon a finding thereof by the circuit court
77 of the county in which the violation occurs, shall be sub-
78 ject to a civil penalty of not more than five thousand dol-
79 lars, and each day's violation shall be grounds for a sepa-
80 rate penalty.

81 (3) The division of health shall have the authority to
82 assess administrative penalties and initiate such proceed-
83 ings as may be necessary for the enforcement of drinking
84 water regulations. The administrative penalty for a viola-
85 tion of any drinking water rule or regulation adopted by
86 the division shall be a minimum of one thousand dollars
87 per day per violation and each day's violation shall be
88 grounds for a separate penalty. In any action brought to
89 enforce drinking water rules or regulation, the administra-
90 tive penalty may not exceed an aggregate amount of five
91 thousand dollars for systems serving a population of less
92 than ten thousand persons and may not exceed twenty-five
93 thousand dollars for systems serving a population of ten
94 thousand persons or more. Payments shall be payable to
95 the division of health. All moneys collected under this
96 section shall be deposited into a restricted account known
97 as the safe drinking water penalty fund, which is hereby
98 created in the office of the state treasurer. All money
99 deposited into the fund shall be used by the division of
100 health to provide technical assistance to public water sys-
101 tems.

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

§16-13C-1. Definitions.

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

3 (1) "Authority" means the water development au-
4 thority provided for in section four, article one, chapter
5 twenty-two-c of this code.

6 (2) "Capacity development" means the technical,
7 managerial and financial capability of a public water sys-
8 tem.

9 (3) "Cost" means the cost of all labor, materials,
10 machinery, equipment, lands, property, rights and ease-
11 ments, plans and specifications and all other expenses
12 necessary or incident to the acquisition, construction, im-
13 provement, expansion, extension, repair or rehabilitation
14 of all or part of a project.

15 (4) "Disadvantaged community" means the service
16 area of a public water system that meets affordability crite-
17 ria established after public review and comment by the
18 state.

19 (5) "Federal safe drinking water act" means the
20 federal statute commonly known as the "Safe Drinking
21 Water Act", 42 U.S.C. 300f et seq., as enacted, amended,
22 and as may be subsequently amended.

23 (6) "Fund" means the West Virginia drinking water
24 treatment revolving fund created in this article.

25 (7) "Instrumentality" means the division of health
26 which shall have the primary responsibility for administer-
27 ing the fund and this article pursuant to requirements of
28 the federal safe drinking water act.

29 (8) "Local Entity" means any municipality, public
30 utility, or person, including any individual, firm, partner-
31 ship, association, not-for-profit corporation or other cor-
32 poration organized and existing under the laws of the state
33 which is empowered to construct and operate an eligible
34 project.

35 (9) "Public water system" means that term as de-
36 fined in section nine-a, article one, chapter sixteen of the
37 code.

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

42 (11) "Set-aside accounts" means those accounts that

43 may be set up for activities required by the federal safe
44 drinking water act and the moneys for these accounts may
45 be taken from the federal capitalization grant for these
46 nonproject activities before the capitalization grant is de-
47 posited into the fund.

48 (12) "Small system" means a public water system
49 serving 10,000 or fewer persons.

**§16-13C-2. Designation of division of health as state instrumen-
tality; rules; small systems; disadvantaged com-
munities.**

1 (a) The division of health shall act as the instrumen-
2 tality that is hereby empowered to enter into capitalization
3 agreements with the United States Environmental Protec-
4 tion Agency, to accept capitalization grant awards made
5 under the federal safe drinking water act, and to direct the
6 administration and management of the drinking water
7 treatment revolving fund created in this article in accor-
8 dance with the requirements of federal law.

9 (b) The division of health shall propose rules for
10 legislative approval in accordance with provisions of arti-
11 cle three, chapter twenty-nine-a of the code for the pur-
12 pose of effecting the administration of the provisions of
13 this article. The rules shall include, but are not limited to,
14 establishing requirements for: (1) Capacity development;
15 (2) environmental review; (3) disadvantaged community
16 designation; (4) receipt and disbursement of fund mon-
17 eys; and (5) establishment of a drinking water treatment
18 revolving fund program to direct the financial manage-
19 ment of the fund to water systems and establish the interest
20 rates and repayment terms of the loans.

21 (c) Two percent of the annual federal capitalization
22 grants made to this state shall be utilized to provide techni-
23 cal assistance services for small systems to assist those
24 systems in maintaining compliance with the federal safe
25 drinking water act. The division of health shall enter into
26 contracts to provide technical assistance services for small
27 systems with such nonprofit organizations that: (1) Have a
28 membership that represent at least twenty-five percent of
29 the small systems of this state; and (2) have at least five

30 years experience in providing on-site technical assistance
31 to small systems.

32 (d) The division of health shall, in accordance with
33 the provisions of the federal safe drinking water act, estab-
34 lish a program for loan subsidies to disadvantaged com-
35 munities. Thirty percent of the annual federal capitaliza-
36 tion grants made to this state shall be dedicated to the
37 funding of projects for disadvantaged communities.

**§16-13C-3. Drinking water treatment revolving fund; duties of
division of health and water resources authori-
ty; set-aside accounts.**

1 (a) There is hereby created in the office of the state
2 treasurer a special fund to be known as the “West Virginia
3 drinking water treatment revolving fund”. The fund shall
4 be administered and managed in accordance with the
5 provisions of the federal safe drinking water act.

6 (b) The fund shall be administered and managed by
7 the water development authority under the direction of the
8 division of health. The fund shall be comprised of mon-
9 eys appropriated to the fund by the Legislature, moneys
10 allocated to the state by the federal government expressly
11 for the purpose of establishing and maintaining a drinking
12 water treatment revolving fund, all receipts from loans
13 made from the fund, all income from the investment of
14 moneys held in the fund, and all other sums designated
15 for deposits to the fund from any source, public or pri-
16 vate. Moneys in the fund shall be used solely to make
17 loans or provide other allowable financial assistance to
18 eligible projects for public water systems, as described in
19 the federal safe drinking water act.

20 (c) In order to carry out the administration and man-
21 agement of the fund, the authority is authorized to employ
22 officers, employees, agents, advisors and consultants, in-
23 cluding attorneys, financial advisors, engineers, other tech-
24 nical advisors and public accountants, and notwithstanding
25 any provisions of this code to the contrary, to determine
26 their duties and compensation without the approval of any
27 other agency or instrumentality.

28 (d) The authority shall propose rules for legislative
29 approval in accordance with the provisions of article three
30 chapter twenty-nine-a of this code to govern the pledge of
31 loans to secure bonds of the authority.

32 (e) All moneys belonging to the fund shall be kept in
33 appropriate depositories and secured in conformance with
34 the provisions of this code. Disbursements from the fund
35 shall be authorized for payment by the director of the
36 authority or the director's designee. Any depository or
37 officer of the depository to which moneys of the fund are
38 paid shall act as trustee of the moneys and shall hold and
39 apply them solely for the purposes for which the moneys
40 are provided under this article. Moneys in the fund shall
41 not be commingled with other money of the authority.
42 Notwithstanding any provision of this code to the con-
43 trary, amounts in the fund shall be deposited by the au-
44 thority in one or more banking institutions: *Provided,*
45 That any moneys so deposited shall be deposited in a
46 banking institution located in this state. The banking
47 institution shall be selected by the authority by competi-
48 tive bid. If not needed for immediate use or disburse-
49 ment, moneys in the fund may be invested or reinvested
50 by the authority in obligations or securities which are
51 considered lawful investments for public funds under this
52 code.

53 (f) Pursuant to the provisions of the federal safe
54 drinking water act, set-aside accounts may be set up in
55 accounts separate from the drinking water treatment re-
56 volving fund. These set-aside accounts shall include, but
57 not be limited to, administration costs, source water protec-
58 tion, operator training and certification, technical assis-
59 tance to systems, local assistance, and other state activities
60 permitted by the federal safe drinking water act. The
61 division of health shall direct the authority to establish and
62 administer the set-aside accounts as permitted by the fed-
63 eral safe drinking water act. An application fee may be
64 charged and deposited into the administrative account to
65 defray the cost of administering the program.

§16-13C-4. Management of funds.

1 The authority shall manage the funds received pursu-

2 ant to the provisions of this article for accounting purpos-
3 es. The authority shall cause an audit of its books and
4 accounts to be made at least once each fiscal year and the
5 cost thereof may be defrayed as administrative expense
6 under provisions of this article. The audit shall be con-
7 ducted by a certified public accountant and provide an
8 auditor's opinion on the fund financial statements, a re-
9 port on the internal controls and a report prepared in
10 compliance with the provisions of the drinking water treat-
11 ment revolving fund.

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

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

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

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

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

27 (A) The adjustment of service charges as required to

28 repay the loan or otherwise satisfy the terms of the loan
29 agreement;

30 (B) The enforcement and collection of service charg-
31 es; and

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

35 (b) The rights and remedies enumerated in this arti-
36 cle are in addition to rights and remedies conferred upon
37 the authority by law or pursuant to the loan agreement.

§16-13C-6. Construction of article.

1 , The provisions of this article shall be liberally con-
2 strued to the end that its beneficial purposes may be ef-
3 fected. Insofar as the provisions of this article are incon-
4 sistent with the provisions of any other general, special or
5 local law, the provisions of this article are controlling.

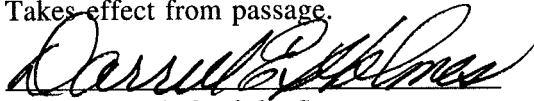
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

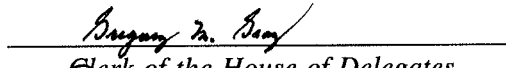

Chairman Senate Committee


Chairman House Committee

Originating in the House.

Takes effect from passage.

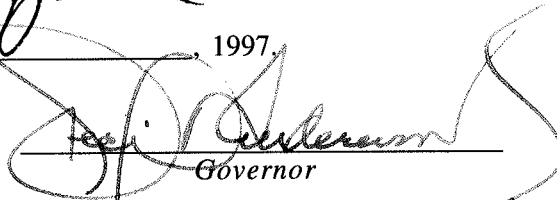

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 7th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/29/97

Time 3:00 pm