

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 500

FISCAL
NOTE

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CLEMENTS, CLINE, FACEMIRE, HAMILTON, HARDESTY,
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[Introduced February 1, 2019; Referred
to the Committee on Transportation and Infrastructure; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new article, designated §31-15D-1, §31-15D-2, §31-
3 15D-3, §31-15D-4, and §31-15D-5, all relating to creating the Sewer and Water
4 Infrastructure Replacement Act; creating the Sewer and Water Infrastructure
5 Replacement Fund; providing that the fund shall be administered by the West Virginia
6 Investment Management Board; permitting a certain amount of excess revenue be used
7 to replace aging water and sewer facilities owned and operated by public service districts
8 and municipalities; establishing the authority of the West Virginia Infrastructure and Jobs
9 Development Council; establishing eligibility; establishing guidelines and an application
10 process; establishing a reserve; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the Governor may reduce appropriations
2 according to any of the methods set forth in §11B-2-21 and §11B-2-22 of this code. The Governor
3 may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature
4 from the Revenue Shortfall Reserve Fund established in this section.

5 (b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The
6 Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in
7 accordance with this subsection up to an aggregate amount not to exceed 13 percent of the total
8 appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue
9 Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if
10 any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

11 Within 60 days of the end of each fiscal year, the secretary shall cause to be deposited
12 into the Revenue Shortfall Reserve Fund such amount of the first 50 percent of all surplus
13 revenues, if any, determined to have accrued during the fiscal year just ended. ~~as may be~~
14 ~~necessary to bring the balance of the Revenue Shortfall Reserve Fund to thirteen percent of the~~
15 ~~total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the~~
16 ~~end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or~~
17 ~~exceeding thirteen percent of the state's General Revenue Fund budget for the fiscal year just~~
18 ~~ended, then there shall be no further deposit by the secretary under the provisions of this section~~
19 ~~of any surplus revenues as set forth in this subsection until that time the Revenue Shortfall~~
20 ~~Reserve Fund balance is less than thirteen percent of the total appropriations from the State Fund,~~
21 ~~General Revenue~~

22 (c) In the event the Revenue Shortfall Reserve Fund is funded at an amount equal to or
23 exceeding 17 percent of the state's General Revenue Fund budget for the fiscal year just ended,
24 those excess funds shall be deposited in the Sewer and Water Infrastructure Replacement Fund
25 hereby created. That fund shall be administered by the West Virginia Investment Management
26 Board created by §12-6-1 et seq. of this code. Moneys in that fund may be disbursed by Jobs
27 Development Council created by §31-15A-3 of this code for the purposes and in the manner set
28 forth in §31-15D-1 et. seq. of this code.

29 ~~(e)~~ (d) Not earlier than November 1 of each calendar year, if the state's fiscal
30 circumstances are such as to otherwise trigger the authority of the Governor to reduce
31 appropriations under this section or §11B-2-21 or §11B-2-22 of this code, then in that event the
32 Governor may notify the presiding officers of both houses of the Legislature in writing of his or her
33 intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of
34 West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill
35 or to request a supplementary appropriation bill at the next preceding regular session of the
36 Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any

37 anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from
38 the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes
39 set forth in this section or during the next preceding regular session of the Legislature, then the
40 Governor may proceed with a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22
41 of this code. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an
42 appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then
43 the Governor may also proceed with a reduction of appropriations pursuant to §11B-2-21 and
44 §11B-2-22 of this code of this article.

45 ~~(d)~~ (e) Upon the creation of the fund, the Legislature is authorized and may make an
46 appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency
47 revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined
48 solely by the Legislature.

49 ~~(e)~~ (f) Prior to October 31 in any fiscal year in which revenues are inadequate to make
50 timely payments of the state's obligations, the Governor may, by executive order, after first
51 notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the
52 Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this
53 subsection and subject to all other conditions, requirements and limitations set forth in this section,
54 the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of
55 April. The amount of funds borrowed under this subsection shall not exceed one and one-half
56 percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed,
57 or the amount the Governor determines is necessary to make timely payment of the state's
58 obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid,
59 without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within 90
60 days of their withdrawal.

61 ~~(f)~~ (g) The Revenue Shortfall Reserve Fund – Part B is continued within the State
62 Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from

63 the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of §4-11A-
64 2 of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical
65 Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of §33-20F-
66 1 *et seq.* of this code and all interest and other return earned on the moneys in the Revenue
67 Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may
68 be expended solely for the purposes set forth in subsection ~~(d)~~ (e) of this section, subject to the
69 following conditions:

70 (1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other
71 return earned thereon may be expended for any purpose unless all moneys in the Revenue
72 Shortfall Reserve Fund described in subsection (b) of this section have first been expended,
73 except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund
74 – Part B may be expended as provided in subdivision (2) of this subsection;

75 (2) Notwithstanding any other provision of this section to the contrary, the Legislature may
76 appropriate any interest and other return earned thereon that may accrue on the moneys in the
77 Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes
78 set forth in §4-11A-3 of this code; and

79 (3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made
80 only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

81 ~~(g)~~ (h) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve
82 Fund – Part B prescribed in subsection ~~(f)~~ (g) of this section, in appropriating moneys pursuant to
83 the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue
84 Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to,
85 but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue,
86 for the fiscal year just ended.

87 ~~(h)~~ ~~(1)~~ (i)(1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such
88 greater amount as may be certified as necessary by the Director of the Budget Office for the

89 purposes of subsection ~~(e)~~ (f) of this section, shall be made available to the West Virginia Board
 90 of Treasury Investments for management and investment of the moneys in accordance with the
 91 provisions of §12-6C-1 *et seq.* of this code. All other moneys in the Revenue Shortfall Reserve
 92 Fund shall be made available to the West Virginia Investment Management Board for
 93 management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq*
 94 of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and
 95 other return earned thereon at the end of any fiscal year, does not revert to the General Fund but
 96 shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

97 (2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made
 98 available to the West Virginia Investment Management Board for management and investment of
 99 the moneys in accordance with the provisions of §12-6-1 *et seq* of this code. Any balance of the
 100 Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned
 101 thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the
 102 Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.

CHAPTER 31. CORPORATIONS.

ARTICLE 15D. SEWER AND WATER INFRASTRUCTURE REPLACEMENT ACT.

§31-15D-1. Sewer and Water Infrastructure Replacement Act; fund; reserve.

1 In addition to its other duties and responsibilities of the West Virginia Infrastructure and
 2 the Jobs Development Council created by §31-15A-3 of this code, it shall also be responsible for
 3 the disbursement of funds from the Sewer and Water Infrastructure Replacement Fund created
 4 by §11B-2-20(c) of this code consistent with the provisions forth in this article. The fund shall
 5 maintain a reserve of at least \$100 million.

§31-15D-2. Eligibility.

1 The water and sewer facilities owned and operated by public service districts and
 2 municipalities are eligible to receive moneys from the Sewer and Water Infrastructure

3 Replacement Fund to replace those facilities that were originally constructed more than 50 years
4 before the request for funds was made.

§31-15D-3. Grants; expenditures.

1 (a) The West Virginia Infrastructure and the Jobs Development Council is authorized to
2 distribute, as grants, not more than 50 percent of the revenue received in the previous year
3 combined from both direct distribution to the fund from the excess revenue and previous year
4 investment returns. Applicants for grants in aid of water or sewer infrastructure replacement
5 projects may apply annually for not more than not more than 75 percent of the total project cost
6 to an amount of grant from the fund not to exceed \$1 million, with the applicant contributed not
7 less than 25 percent of the total project cost.

8 (b) Once the fund has achieved \$250 million in reserve, the West Virginia Infrastructure
9 and the Jobs Development Council is authorized to grant all moneys received from the previous
10 year excess revenue and not more than 50 percent of the investment distribution from the year
11 before.

§31-15D-4. Guidelines and application for funding assistance; review; rule-making.

1 (a) To implement and carry out the intent of this article, the West Virginia Infrastructure
2 and the Jobs Development Council shall promulgate legislative rules in accordance with §29A-3-
3 1 et seq. of this code to develop comprehensive, uniform guidelines for use by the council in
4 evaluating a request by an applicant for funding assistance to replace an eligible facility.

5 (b) The guidelines shall include the following factors: (1) The public health benefits of the
6 project; (2) the economic development benefits of the project; (3) the degree to which the project
7 will correct deficiencies in the compliance of water supply or sewage treatment facilities with state
8 or federal laws, regulations or standards; (4) the degree to which the project encourages effective
9 and efficient consolidation of water or sewage treatment systems; (5) the cost effectiveness of
10 the project as compared with alternatives which achieve substantially the same public health or
11 economic development benefits, including the consideration of providing maximum feasible fire

12 protection; (6) the availability of alternative sources of funding which could finance all or a part of
13 the project, and the need for the assistance of the council to finance the project or attract other
14 sources of funding; (7) the applicant's ability to operate and maintain the system if the project is
15 approved; (8) the degree to which the project achieves other state or regional planning goals; (9)
16 the estimated date upon which the project could commence if funding were available and the
17 estimated completion date of the project; and (10) such other considerations as the council may
18 consider necessary or appropriate to accomplish the purpose and intent of this article.

19 (c) The West Virginia Infrastructure and the Jobs Development Council shall create an
20 application form which shall be used by all project applicants requesting funding assistance
21 pursuant to this article. The application form shall contain all information required by all state
22 infrastructure agencies that will be required to issue permits and/or certificates regarding the
23 project. The application shall require the applicant to set forth the type and location of the
24 replacement project; the estimated total cost of the project, including, but not limited to,
25 construction, public agency permit fees, professional design services, legal and accounting
26 services and surveying; the amount of funding assistance required and the specific uses of the
27 funding; other sources of funding available or potentially available for the infrastructure project or
28 project; information demonstrating the need for the project and that the proposed funding of the
29 project is the most economically feasible and viable alternative to completing the project; and
30 such other information as the council considers necessary to enable it to determine whether a
31 project should be approved or denied.

32 (d) The West Virginia Infrastructure and the Jobs Development Council shall, within 180
33 days of receipt of each completed application submitted to it, review the application and make a
34 written decision as to the project financing.

35 (e) In reviewing each application, the council shall use the engineering, financial and
36 technical expertise of the respective staffs of the state infrastructure agencies represented on the
37 council so as to recommend for funding those projects which are consistent with the purposes

38 and intent of this article. The council may include in its findings a recommendation that an
39 application should consider technical reports on the project prepared by other infrastructure
40 agencies or by a federal agency.

§31-15D-5. Additional considerations.

1 (a) Grants shall be distributed equally, within five percent, between the state's
2 congressional districts.

3 (b) Applicants may apply for not more than one project in a given fiscal year if the amount
4 invested in the Sewer and Water Infrastructure Replacement Fund exceeds \$250 million.

5 (c) No more than two projects may be funded in a fiscal year for an applicant.

6 (d) A project may provide exclusively for preliminary engineering studies to identify sewer
7 infrastructure infiltration and inflow, water distribution or sewer collection system integrity, water
8 loss and leak detection. The total grant amount contributed to the project cost for preliminary
9 engineering studies shall not exceed \$150,000.

NOTE: The purpose of this bill is to create the Sewer and Water Infrastructure Replacement Act. The bill creates the Sewer and Water Infrastructure Replacement Fund. The bill provides that the fund shall be administered by the West Virginia Investment Management Board. The bill permits a certain amount of excess revenue be used to replace aging water and sewer facilities owned and operated by public service districts and municipalities. The bill establishes the authority of the West Virginia Infrastructure and the Jobs Development Council. The bill establishes eligibility. The bill establishes guidelines and an application process. The bill establishes a reserve. The bill requires rule-making.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.