

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 500

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[Originating in the Committee on Transportation and
Infrastructure; Reported on February 13, 2019]

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 and Rehabilitation Act; creating the Sewer and Water
5 Infrastructure Replacement and Rehabilitation Fund; providing for funding and
6 administration of the fund; setting forth responsibilities and authorities for the Secretary of
7 Revenue, West Virginia Investment Management Board, State Treasurer, West Virginia
8 Infrastructure and Jobs Development Council, and West Virginia Water Development
9 Authority related to the fund; directing the West Virginia Water Development Authority to
10 create a special sub account in the West Virginia Infrastructure Fund designated the
11 SWIRRA Sub Account; allowing the West Virginia Infrastructure and Jobs Development
12 Council to direct the authority to govern, administer, and account for the SWIRRA Sub
13 Account in the same manner as the West Virginia Infrastructure Fund; providing a short
14 title; defining terms; authorizing grants by the West Virginia Infrastructure and Jobs
15 Development Council; establishing eligibility requirements, limitations, guidelines, and
16 application processes concerning grants; imposing requirements on the West Virginia
17 Infrastructure and Jobs Development Council relating to the Sewer and Water
18 Infrastructure Replacement and Rehabilitation Fund and grants; requiring publication of
19 certain information; setting forth application and engineering study limitations; and
20 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; funding of Sewer and Water**

Infrastructure Replacement and Rehabilitation Fund.

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 13 percent of the total
15 appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end
16 of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or
17 exceeding 13 percent of the state's General Revenue Fund budget for the fiscal year just ended,
18 then there shall be no further deposit by the secretary under the provisions of this section of any
19 surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve
20 Fund balance is less than 13 percent of the total appropriations from the State Fund, General
21 Revenue.

22 (c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances
23 are such as to otherwise trigger the authority of the Governor to reduce appropriations under this
24 section or §11B-2-21 or §11B-2-22 of this code, then in that event the Governor may notify the
25 presiding officers of both houses of the Legislature in writing of his or her intention to convene the

26 Legislature pursuant to section 19, article VI of the Constitution of West Virginia for the purpose
27 of requesting the introduction of a supplementary appropriation bill or to request a supplementary
28 appropriation bill at the next preceding regular session of the Legislature to draw money from the
29 surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the
30 Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund
31 during any special legislative session called for the purposes set forth in this section or during the
32 next preceding regular session of the Legislature, then the Governor may proceed with a
33 reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code. Should any
34 amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by
35 the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also
36 proceed with a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code.

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

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

52 their withdrawal.

53 (f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury.
54 The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West
55 Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of §4-11A-2 of this
56 code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust
57 Fund to the Physician's Mutual Insurance Company pursuant to the provisions of §33-20F-1 *et*
58 *seq.* of this code and all interest and other return earned on the moneys in the Revenue Shortfall
59 Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be
60 expended solely for the purposes set forth in §11B-2-20(d) of this code, subject to the following
61 conditions:

62 (1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other
63 return earned thereon may be expended for any purpose unless all moneys in the Revenue
64 Shortfall Reserve Fund described in §11B-2-20(b) of this code have first been expended, except
65 that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part
66 B may be expended as provided in §11B-2-20(f)(2) of this code;

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

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

73 (g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund
74 – Part B prescribed in §11B-2-20(f) of this code, in appropriating moneys pursuant to the
75 provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue
76 Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to,
77 but not exceeding, 10 percent of the total appropriations from the State Fund, General Revenue,

78 for the fiscal year just ended.

79 (h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater
80 amount as may be certified as necessary by the Director of the Budget Office for the purposes of
81 §11B-2-20(e) of this code, shall be made available to the West Virginia Board of Treasury
82 Investments for management and investment of the moneys in accordance with the provisions of
83 §12-6C-1 *et seq.* of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be
84 made available to the West Virginia Investment Management Board for management and
85 investment of the moneys in accordance with the provisions of §12-6-1 *et seq* of this code. Any
86 balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return
87 earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain
88 in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

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

95 (i) The Sewer and Water Infrastructure Replacement and Rehabilitation Fund created in
96 §31-15D-2 of this code shall be funded as set forth in this subsection from surplus revenues, if
97 any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.
98 The Sewer and Water Infrastructure Replacement and Rehabilitation Fund shall be funded
99 continuously and on a revolving basis in accordance with this subsection. Within 60 days of the
100 end of each fiscal year, the secretary shall cause to be deposited into the Sewer and Water
101 Infrastructure Replacement and Rehabilitation Fund such amount of 25 percent of all surplus
102 revenues, in the State Fund, General Revenue, if any, determined to have accrued during the
103 fiscal year just ended.

CHAPTER 31. CORPORATIONS.

ARTICLE 15D. SEWER AND WATER INFRASTRUCTURE REPLACEMENT AND REHABILITATION ACT.

§31-15D-1. Short title; definitions.

1 (a) This article may be cited as the “Sewer and Water Infrastructure Replacement and
2 Rehabilitation Act” or “SWIRRA”.

3 (b) Unless a different meaning is clearly indicated by the context, the following words and
4 phrases as used in this article have the following meanings:

5 “Authority” means the West Virginia Water Development Authority created by §22C-1-1 et
6 seq.

7 “Board” means the West Virginia Investment Management Board created in §12-6-3 of
8 this code.

9 “Council” means the West Virginia Infrastructure and Jobs Development Council created
10 in §31-15A-3 of this code.

11 “Eligible facility” means an underground water or wastewater facility in West Virginia that
12 is owned by a governmental agency: *Provided*, That the facility was originally constructed more
13 than 30 years before a grant request is made for such facility pursuant to this article.

14 “Eligible project” means a project to replace or rehabilitate an eligible facility and shall
15 include performance of a preliminary engineering study on an eligible facility to identify sewer
16 infrastructure infiltration and inflow, water distribution or sewer collection system integrity, water
17 loss, and leak detection. An eligible project may provide exclusively for a preliminary engineering
18 study to identify sewer infrastructure infiltration and inflow, water distribution or sewer collection
19 system integrity, water loss, and leak detection.

20 “Governmental agency” means any municipality, sanitary district, public service district,
21 water association, sewer association, or regional governmental authority authorized to own and

22 operate a water or wastewater facility.

23 “Infrastructure Fund” means the West Virginia Infrastructure Fund created and established
24 in §31-15A-9 of this code, which is administered by the authority.

25 “Reserve” means the funds in the SWIRRA Fund administered solely by the board
26 pursuant to §31-15D-2(b) of this code.

27 “SWIRRA Fund” means the Sewer and Water Infrastructure Replacement and
28 Rehabilitation Fund created in §31-15D-2 of this code.

29 “Treasurer” means the West Virginia State Treasurer.

§31-15D-2. Sewer and Water Infrastructure Replacement and Rehabilitation Fund; fund
administration; SWIRRA Sub Account.

1 (a) The Sewer and Water Infrastructure Replacement and Rehabilitation Fund is hereby
2 created as a special revenue fund in the State Treasury to be invested, administered, and
3 expended only as provided in this article. The SWIRRA Fund consists of moneys received from
4 any gifts, grants, bequests or transfers from any source, including surplus revenues as set forth
5 in §11B-2-20 of this code, and all interest and other income earned from investment of moneys in
6 the SWIRRA Fund.

7 (b) The first \$100 million deposited into the SWIRRA Fund shall be invested by the board.
8 The council shall not dispense funds from the SWIRRA Fund unless it has a reserve of at least
9 \$100 million as of June 30 of each year. Such funds constitute the reserve of the SWIRRA Fund.

10 (c) Funds in the SWIRRA Fund shall be administered by the council for the purposes and
11 in the manner set forth in this article: *Provided*, That the council shall keep all funds with the board
12 that council does not plan to grant within 180 days. The council, or the authority at the discretion
13 of the council, or both, may enter into agreements with the board or the West Virginia State
14 Treasurer, or both, as the council deems appropriate, for the investment of the funds in excess of
15 the reserve.

16 (d) The authority shall create a special sub account in the Infrastructure Fund designated

17 the "SWIRRA Sub Account". Funds held in the SWIRRA Sub Account shall be used by the council
18 exclusively for the purposes and in the manner set forth in this article. Council may direct the
19 deposit of funds from the SWIRRA Fund that are in excess of the reserve into the SWIRRA Sub
20 Account: *Provided*, That the council may only direct deposits into the SWIRRA Sub Account in an
21 amount not exceeding the total amount of grants under this article that the council plans to award
22 within 60 days of such deposit request.

23 (e) The council may direct the authority to govern, administer, and account for the
24 SWIRRA Sub Account in the same manner as the Infrastructure Fund: *Provided*, That the
25 authority may not disburse any funds in the SWIRRA Sub Account unless specifically directed to
26 do so by council in accordance with the provisions of this article.

§31-15D-3. Grants; expenditures.

1 (a) The council is authorized to award, as grants, beginning on November 1 of each year,
2 not more than 50 percent of all investment earnings on the SWIRRA Fund during the previous
3 fiscal year: *Provided*, That when the SWIRRA Fund contains at least \$250 million as of June 30,
4 the council is authorized to grant, beginning on November 1 of that year, not more than 50 percent
5 of all investment earnings on the SWIRRA Fund during the previous fiscal year and all moneys
6 received from the previous fiscal year surplus revenues pursuant to §11B-2-20(i) of this code.

7 (b) The council may award not more than \$1 million to a governmental agency per grant
8 application for an eligible project each fiscal year. The council may not award a grant that exceeds
9 75 percent of the total project cost for an eligible project. A grant may not be awarded unless the
10 governmental agency has another funding source that contributes at least 25 percent of the total
11 project cost for the eligible project.

12 (c) Council may advance grant funds to a governmental agency from time to time upon
13 receipt of invoices evidencing work on the eligible project.

14 (d) Grants awarded under this section are independent of grants the council may award
15 under §31-15A-1 *et seq.* of this code. Any restrictions and limitations applicable to grants under

16 this article shall not apply to §31-15A-1 et seq. of this code, and any restrictions and limitations
17 applicable to grants under §31-15A-1 et seq. of this code shall not apply to this article. Council
18 shall not take into consideration a grant awarded under this article when determining the funding
19 level and percentage of project cost as required by §31-15A-10 of this code.

§31-15D-4. Guidelines and applications for grants; rule-making; grant review factors and considerations; publication of information.

1 (a) In order to implement and carry out the intent of this article, the council shall propose
2 rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.
3 Such rules shall provide instructions on how and when a governmental agency may apply for a
4 grant for an eligible project, set forth comprehensive and uniform guidelines for use by the council
5 in evaluating a grant request, and set forth further detail to implement and carry out the intent of
6 this article.

7 (b) The guidelines that council shall use when evaluating a grant request shall include the
8 following factors:

9 (1) The public health benefits of the eligible project;

10 (2) The economic development benefits of the eligible project;

11 (3) The degree to which the eligible project will correct deficiencies in the compliance of
12 water distribution or sewage collection or treatment facilities with state or federal laws, regulations,
13 or standards;

14 (4) The degree to which the eligible project encourages effective and efficient
15 consolidation of water or sewage treatment systems;

16 (5) The cost effectiveness of the eligible project as compared with alternatives that achieve
17 substantially the same public health or economic development benefits, including the
18 consideration of providing maximum feasible fire protection;

19 (6) The availability of alternative sources of funding which could finance all or a part of the
20 eligible project, and the need for the assistance of the council to finance the eligible project or

21 attract other sources of funding;

22 (7) The applicant's ability to operate and maintain the system if the eligible project is
23 approved;

24 (8) The degree to which the eligible project achieves other state or regional planning goals;

25 (9) The estimated date upon which the eligible project could commence if funding were
26 available and the estimated completion date of the eligible project;

27 (10) The evidence demonstrating that the grant request applies to a project that is an
28 eligible project for an eligible facility; and

29 (11) Such other considerations as the council may consider necessary or appropriate to
30 accomplish the purpose and intent of this article.

31 (c) The council shall create an application form which shall be used by all governmental
32 agencies requesting a grant pursuant to this article. The application form shall contain all
33 information required by all state infrastructure agencies that will be required to issue permits and
34 certificates for an eligible project. The application shall require the governmental agency to set
35 forth the following information:

36 (1) The evidence demonstrating that the grant request applies to a project that is an eligible
37 project for an eligible facility;

38 (2) The type and location of the eligible facility and eligible project;

39 (3) The estimated total cost of the eligible project, including, but not limited to, costs for
40 construction, permit fees, professional design services, legal and accounting services, and
41 surveying;

42 (4) The amount of grant assistance required and the specific uses of the grant funding;

43 (5) Other sources of funding available or potentially available for the eligible project;

44 (6) Information demonstrating the need for the eligible project and that a grant pursuant to
45 this article is the most economically feasible funding method to completing the eligible project;

46 and

47 (7) Such other information as the council considers necessary to enable it to determine
48 whether an eligible project should be approved or denied.

49 (d) Council shall publish on its website the following information:

50 (1) Current copies of this article and any legislative rule proposed thereunder;

51 (2) The application form for grants pursuant to this article;

52 (3) An estimate of the amount of money available for grants;

53 (4) An annual estimate of the amount invested in the SWIRRA Fund; and

54 (5) An annual summary of grants awarded, including the type and location of the eligible
55 facility, type of eligible project, and amount of grant awarded.

56 (e) The council shall review grant applications for eligible projects and prepare a list of all
57 eligible project applications.

58 (f) Grants shall be awarded equally, within five percent, among the state's congressional
59 districts within 60 days of the final application review.

60 (g) In reviewing each application for an eligible project, the council shall use the
61 engineering, financial, and technical expertise of the respective staffs of the state infrastructure
62 agencies represented on the council so as to recommend for grants those eligible projects which
63 are consistent with the purposes and intent of this article. The council may include in its findings
64 a recommendation that an application should consider technical reports on the project prepared
65 by other infrastructure agencies or by a federal agency.

§31-15D-5. Application limitations; limitation concerning engineering studies.

1 (a) Governmental agencies with eligible projects may apply for not more than one eligible
2 project in a given fiscal year if the SWIRRA Fund is less than \$250 million.

3 (b) Governmental agencies with eligible projects may apply for not more than two eligible
4 projects in a given fiscal year if the SWIRRA Fund exceeds \$250 million.

5 (c) The total grant amount awarded or contributed to an eligible project cost for a
6 preliminary engineering study shall not exceed \$150,000 per eligible facility during a fiscal year.

NOTE: The purpose of this bill is to create the Sewer and Water Infrastructure Replacement and Rehabilitation Act. The bill creates the Sewer and Water Infrastructure Replacement and Rehabilitation Fund, which is funded from surplus revenues and investments. The bill provides that the fund shall be invested by the West Virginia Investment Management Board, may be held and invested in part pursuant to an agreement with the State Treasurer, and be administered by the West Virginia Infrastructure and Jobs Development Council. The bill permits a specified amount of surplus revenue and investment income be used to replace certain aging water and sewer facilities. The bill establishes the authority of the West Virginia Infrastructure and the Jobs Development Council. The bill establishes eligibility requirements. The bill establishes guidelines and a grant application process. The bill requires rule-making and publishing of certain information.

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