

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 3096**

BY DELEGATE ESPINOSA

[Originating in the Committee on Political  
Subdivisions]



1 A BILL to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact  
2 §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said code; to  
3 amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to  
4 operation and regulation of certain water and sewer utilities owned or operated by political  
5 subdivisions of the state by deleting reference to appeals to the Public Service  
6 Commission from actions of municipal boards that are not subject to the jurisdiction of the  
7 Public Service Commission; relating to the authority of county commissions to modify  
8 proposed rates for certain water and sewer utilities and providing for complaints to be filed  
9 with the circuit courts pertaining to rates and charges enacted as proposed or as modified  
10 or rejected by the county commission and requiring the circuit court to act within 120 days  
11 of receipt of the complaint; eliminating the Public Service Commission's authority  
12 regarding stormwater utilities; providing time limits for the filing of requests for investigation  
13 pertaining to political subdivisions of this state providing separate or combined water  
14 and/or sewer services and having at least four thousand five hundred customers and  
15 annual combined gross revenues of \$3 million or more and specifying that the Commission  
16 must resolve such investigation requests within 120 days; clarifying the authority of the  
17 Public Service Commission to resolve complaints of customers of water and sewer utilities  
18 operated by a political subdivision of the state having at least four thousand five hundred  
19 customers and annual combined gross revenues of \$3 million or more; clarifying the  
20 jurisdiction of the Public Service Commission relating to rates for municipal water and/or  
21 sewer utilities having less than four thousand five hundred customers or annual combined  
22 gross revenues of less than \$3 million; and revising the notice and procedure provisions  
23 for construction projects for political subdivisions of this state providing separate or  
24 combined water and/or sewer services and having at least four thousand five hundred  
25 customers and annual combined gross revenues of \$3 million or more.

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

1           That §8-16-19 of the Code of West Virginia, 1931, as amended, be repealed; that §16-  
2 13A-8 and §16-13A-9 of said code be amended and reenacted; that §24-1-1b of said code be  
3 amended and reenacted; that §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code be amended  
4 and reenacted, all to read as follows:

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

### **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

#### **§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.**

1           The board may acquire any publicly or privately owned public service properties located  
2 within the boundaries of the district regardless of whether or not all or any part of such properties  
3 are located within the corporate limits of any city, incorporated town or other municipal corporation  
4 included within the district and may purchase and acquire all rights and franchises and any and  
5 all property within or outside the district necessary or incidental to the purpose of the district.

6           The board may construct any public service properties within or outside the district  
7 necessary or incidental to its purposes and each such district may acquire, construct, maintain  
8 and operate any such public service properties within the corporate limits of any city, incorporated  
9 town or other municipal corporation included within the district or in any unincorporated territory  
10 within ten miles of the territorial boundaries of the district: *Provided*, That if any incorporated city,  
11 town or other municipal corporation included within the district owns and operates either water  
12 facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may  
13 not acquire, construct, establish, improve or extend any public service properties of the same kind  
14 within such city, incorporated towns or other municipal corporations or the adjacent  
15 unincorporated territory served by such cities, incorporated towns or other municipal corporations,  
16 except upon ~~the approval of the public service commission~~, the consent of such cities,  
17 incorporated towns or other municipal corporations and in conformity and compliance with the

18 rights of the holders of any revenue bonds or obligations theretofore issued by such cities,  
19 incorporated towns or other municipal corporations then outstanding and in accordance with the  
20 ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds  
21 or obligations.

22 Whenever such district has constructed, acquired or established water facilities, sewer  
23 facilities, a stormwater system, stormwater management program or gas facilities for water,  
24 sewer, stormwater or gas services within any city, incorporated town or other municipal  
25 corporation included within a district, then such city, incorporated town or other municipal  
26 corporation may not thereafter construct, acquire or establish any facilities of the same kind within  
27 such city, incorporated town or other municipal corporation without the consent of such district.

28 For the purpose of acquiring any public service properties or lands, rights or easements  
29 deemed necessary or incidental for the purposes of the district, each such district has the right of  
30 eminent domain to the same extent and to be exercised in the same manner as now or hereafter  
31 provided by law for such right of eminent domain by cities, incorporated towns and other municipal  
32 corporations: *Provided*, That the power of eminent domain provided in this section does not  
33 extend to highways, road and drainage easements, or stormwater facilities constructed, owned  
34 or operated by the West Virginia division of highways without the express agreement of the  
35 commissioner of highways: *Provided, however*, That such board may not acquire all or any  
36 substantial part of a privately owned waterworks system unless and until authorized so to do by  
37 the public service commission of West Virginia, and that this section shall not be construed to  
38 authorize any district to acquire through condemnation proceedings either in whole or substantial  
39 part an existing privately owned waterworks plant or system or gas facilities located in or  
40 furnishing water or gas service within such district or extensions made or to be made by it in  
41 territory contiguous to such existing plant or system, nor may any such board construct or extend  
42 its public service properties to supply its services into areas served by or in competition with

43 existing waterworks or gas facilities or extensions made or to be made in territory contiguous to  
44 such existing plant or system by the owner thereof.

**§16-13A-9. Rules; service rates and charges; discontinuance of service; required water  
and sewer connections; lien for delinquent fees.**

1 (a) (1) The board may make, enact and enforce all needful rules in connection with the  
2 acquisition, construction, improvement, extension, management, maintenance, operation, care,  
3 protection and the use of any public service properties owned or controlled by the district. The  
4 board shall establish, in accordance with this article, rates, fees and charges for the services and  
5 facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any  
6 other law or laws, to pay the cost of maintenance, operation and depreciation of the public service  
7 properties and principal of and interest on all bonds issued, other obligations incurred under the  
8 provisions of this article and all reserve or other payments provided for in the proceedings which  
9 authorized the issuance of any bonds under this article. The schedule of the rates, fees and  
10 charges may be based upon:

11 (A) The consumption of water or gas on premises connected with the facilities, taking into  
12 consideration domestic, commercial, industrial and public use of water and gas;

13 (B) The number and kind of fixtures connected with the facilities located on the various  
14 premises;

15 (C) The number of persons served by the facilities;

16 (D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

17 (E) ~~May be determined on~~ Any other basis or classification which the board may determine  
18 to be fair and reasonable, taking into consideration the location of the premises served and the  
19 nature and extent of the services and facilities furnished. However, no rates, fees or charges for  
20 stormwater services may be assessed against highways, road and drainage easements or  
21 stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

22           (2) The board of a public service district with at least four thousand five hundred customers  
23 and annual combined gross revenue of \$3 million or more from its separate or combined water  
24 and sewer services may make, enact and enforce all needful rules in connection with the  
25 enactment or amendment of rates, fees and charges of the district. At a minimum, these rules  
26 shall provide for:

27           (A) Adequate prior public notice of the contemplated rates, fees and charges by causing  
28 a notice of intent to effect such a change to be ~~specified on the monthly billing statement of~~  
29 provided to the customers of the district for the month ~~next~~ immediately preceding the month in  
30 which the contemplated change is to be ~~before~~ considered at a hearing by the board ~~on first~~  
31 ~~reading.~~ Such notice shall include a statement that a change in rates, fees and charges is being  
32 considered, the time, date and location of the hearing of the board at which the change will be  
33 considered and that the proposed rates, fees and charges are on file at the office of the District  
34 for review during regular business hours. Such notice shall be printed on, or mailed with, the  
35 monthly billing statement, or provided in a separate mailing.

36           (B) Adequate prior public notice of the contemplated rates, fees and charges by causing  
37 to be published, after the first reading and approval of a resolution of the board considering such  
38 revised rates, fees and charges but not less than one week prior to the public hearing of the board  
39 on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with  
40 the provisions of article three, chapter fifty-nine of the code. The publication area for publication  
41 shall be all territory served by the district. If the district provides service in more than one county,  
42 publication shall be made in a newspaper of general circulation in each county that the district  
43 provides service.

44           (C) The public notice of the proposed action shall ~~state~~ summarize the current rates, fees  
45 and charges and the proposed changes to said rates, fees and charges; the date, time and place  
46 of ~~both a public hearing on the proposal and the proposed final vote on adoption;~~ the public  
47 hearing on the resolution approving such revised rates, fees and charges and the place or places

48 within the district where the proposed resolution approving the revised rates, fees and charges  
49 may be inspected by the public. A reasonable number of copies of the ~~proposal~~ proposed  
50 resolution shall be kept at the place or places and be made available for public inspection. The  
51 notice shall also advise that interested parties may appear at the public hearing before the board  
52 and be heard with respect to the proposed revised rates, fees and charges.

53 (D) The ~~proposed~~ resolution proposing the revised rates, fees and charges shall be read  
54 at two meetings of the board with at least two weeks intervening between each meeting. The  
55 public hearing may be conducted ~~with or following~~ by the board prior to, or at, the meeting at  
56 which the resolution is considered for adoption on the second reading.

57 (E) Rates, fees and charges approved by an ~~affirmative vote~~ resolution of the board shall  
58 be forwarded in writing to the county commission ~~appointing the approving board~~ with the  
59 authority to appoint the members of the board. The county commission shall publish notice of the  
60 proposed revised rates, fees and charges by a Class 1 legal advertisement in compliance with  
61 the provisions of article three, chapter fifty-nine of the code. Within forty-five days of receipt of the  
62 proposed rates, fees and charges, the county commission shall take action to approve, modify,  
63 or reject the proposed rates, fees and charges, in its sole discretion. ~~After~~ If, after forty-five days,  
64 the county commission has not taken final action to approve, modify or reject the proposed rates,  
65 fees and charges, as presented to the county commission, shall be effective with no further action  
66 by the board or county commission. In any event, this 45-day period shall be mandatory unless  
67 extended by the official action of both the board proposing the rates, fees and charges, and the  
68 appointing county commission.

69 (F) Enactment of the proposed or modified rates, fees and charges shall follow an  
70 affirmative vote by the county commission and shall be effective no sooner than forty-five days  
71 following action. The 45-day waiting period may be waived by public vote of the county  
72 commission only if the commission finds and declares the district to be in financial distress such



73 that the 45-day waiting period would be detrimental to the ability of the district to deliver continued  
74 and compliant public services.

75 (G) The public service district, or any of its customers, if dissatisfied by the approval,  
76 modification, or rejection by the county commission of the proposed rates, fees and charges under  
77 the provisions of this subsection (2) may file a complaint regarding the rates, fees and charges  
78 resulting from the action of, or failure to act by, the county commission in the circuit court of the  
79 county in which the county commission sits: *Provided*, That any complaint filed hereunder shall  
80 be filed within 30 days of the county commission's final action approving, modifying or rejecting  
81 such rates, fees and charges, or the expiration of the 45 day period from the receipt by the county  
82 commission, in writing, of the rates, fees and charges approved by resolution of the board, without  
83 final action by the county commission to approve, modify or reject such rates, fees and charges:  
84 *Provided, however*, That the rates, fees and charges so fixed by the county commission, or those  
85 adopted by the district upon which the county commission failed to act, shall remain in full force  
86 and effect, until set aside, altered or amended by the circuit court in an order to be followed in the  
87 future.

88 (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all  
89 furnished to any premises, the schedule of charges may be billed as a single amount for the  
90 aggregate of the charges. The board shall require all users of services and facilities furnished by  
91 the district to designate on every application for service whether the applicant is a tenant or an  
92 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name  
93 and address of the owner or owners of the premises to be served by the district. Notwithstanding  
94 the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all  
95 new applicants for service shall deposit the greater of a sum equal to two twelfths of the average  
96 annual usage of the applicant's specific customer class or \$50, with the district to secure the  
97 payment of service rates, fees and charges in the event they become delinquent as provided in  
98 this section. If a district provides both water and sewer service, all new applicants for service shall

99 deposit the greater of a sum equal to two twelfths of the average annual usage for water service  
100 or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater  
101 service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited  
102 to pay service rates, fees and charges which were delinquent at the time of disconnection or  
103 termination of service, no reconnection or reinstatement of service may be made by the district  
104 until another deposit equal to the greater of a sum equal to two twelfths of the average usage for  
105 the applicant's specific customer class or \$50 has been remitted to the district. After twelve  
106 months of prompt payment history, the district shall return the deposit to the customer or credit  
107 the customer's account at a rate as the Public Service Commission may prescribe: *Provided, That*  
108 where the customer is a tenant, the district is not required to return the deposit until the time the  
109 tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for  
110 services or facilities furnished remain unpaid for a period of twenty days after the same become  
111 due and payable, the user of the services and facilities provided is delinquent and the user is  
112 liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules  
113 promulgated by the Public Service Commission, shut off and discontinue water or gas services to  
114 all delinquent users of either water or gas facilities, or both, ten days after the water or gas  
115 services become delinquent: *Provided, however, That* nothing contained within the rules of the  
116 Public Service Commission shall be deemed to require any agents or employees of the board to  
117 accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

118 (b) In the event that any publicly or privately owned utility, city, incorporated town, other  
119 municipal corporation or other public service district included within the district owns and operates  
120 separately water facilities, sewer facilities or stormwater facilities and the district owns and  
121 operates another kind of facility, either water or sewer, or both, as the case may be, then the  
122 district and the publicly or privately owned utility, city, incorporated town or other municipal  
123 corporation or other public service district shall covenant and contract with each other to shut off  
124 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service

125 fees and charges: *Provided*, That any contracts entered into by a public service district pursuant  
126 to this section shall be submitted to the Public Service Commission for approval. Any public  
127 service district which provides water and sewer service, water and stormwater service or water,  
128 sewer and stormwater service has the right to terminate water service for delinquency in payment  
129 of water, sewer or stormwater bills. Where one public service district is providing sewer service  
130 and another public service district or a municipality included within the boundaries of the sewer  
131 or stormwater district is providing water service and the district providing sewer or stormwater  
132 service experiences a delinquency in payment, the district or the municipality included within the  
133 boundaries of the sewer or stormwater district that is providing water service, upon the request of  
134 the district providing sewer or stormwater service to the delinquent account, shall terminate its  
135 water service to the customer having the delinquent sewer or stormwater account: *Provided*,  
136 *however*, That any termination of water service must comply with all rules and orders of the Public  
137 Service Commission: *Provided further*, That nothing contained within the rules of the Public  
138 Service Commission shall be deemed to require any agents or employees of the public service  
139 districts to accept payment at the customer's premises in lieu of discontinuing service for a  
140 delinquent bill.

141 (c) Any district furnishing sewer facilities within the district may require or may, by petition  
142 to the circuit court of the county in which the property is located, compel or may require the  
143 Division of Health to compel all owners, tenants or occupants of any houses, dwellings and  
144 buildings located near any sewer facilities where sewage will flow by gravity or be transported by  
145 other methods approved by the Division of Health, including, but not limited to, vacuum and  
146 pressure systems, approved under the provisions of section nine, article one, chapter sixteen of  
147 this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use  
148 the sewer facilities and to cease the use of all other means for the collection, treatment and  
149 disposal of sewage and waste matters from the houses, dwellings and buildings where there is  
150 gravity flow or transportation by any other methods approved by the Division of Health, including,

151 but not limited to, vacuum and pressure systems, approved under the provisions of section nine,  
152 article one of this chapter and the houses, dwellings and buildings can be adequately served by  
153 the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities  
154 provided for in this subsection is necessary and essential for the health and welfare of the  
155 inhabitants and residents of the districts and of the state. If the public service district requires the  
156 property owner to connect with the sewer facilities even when sewage from dwellings may not  
157 flow to the main line by gravity and the property owner incurs costs for any changes in the existing  
158 dwellings' exterior plumbing in order to connect to the main sewer line, the public service district  
159 board shall authorize the district to pay all reasonable costs for the changes in the exterior  
160 plumbing, including, but not limited to, installation, operation, maintenance and purchase of a  
161 pump or any other method approved by the Division of Health. Maintenance and operation costs  
162 for the extra installation should be reflected in the users charge for approval of the Public Service  
163 Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to  
164 be held not later than thirty days after service of petition to the appropriate owners, tenants or  
165 occupants.

166 (d) Whenever any district has made available sewer facilities to any owner, tenant or  
167 occupant of any house, dwelling or building located near the sewer facility and the engineer for  
168 the district has certified that the sewer facilities are available to and are adequate to serve the  
169 owner, tenant or occupant and sewage will flow by gravity or be transported by other methods  
170 approved by the Division of Health from the house, dwelling or building into the sewer facilities,  
171 the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for  
172 services established under this article only after thirty days' notice of the availability of the facilities  
173 has been received by the owner, tenant or occupant. Rates and charges for sewage services  
174 shall be based upon actual water consumption or the average monthly water consumption based  
175 upon the owner's, tenant's or occupant's specific customer class.

176 (e) The owner, tenant or occupant of any real property may be determined and declared  
177 to be served by a stormwater system only after each of the following conditions is met: (1) The  
178 district has been designated by the Environmental Protection Agency as an entity to serve a West  
179 Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the  
180 district's authority has been properly expanded to operate and maintain a stormwater system; (3)  
181 the district has made available a stormwater system where stormwater from the real property  
182 affects or drains into the stormwater system; and (4) the real property is located in the Municipal  
183 Separate Storm Sewer System's designated service area. It is further hereby found, determined  
184 and declared that the mandatory use of the stormwater system is necessary and essential for the  
185 health and welfare of the inhabitants and residents of the district and of the state. The district may  
186 charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater  
187 services established under this article only after thirty days' notice of the availability of the  
188 stormwater system has been received by the owner. An entity providing stormwater service shall  
189 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,  
190 that portion of the fee to be assessed to the tenant.

191 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer  
192 facilities, gas facilities or stormwater systems or stormwater management programs are liens on  
193 the premises served of equal dignity, rank and priority with the lien on the premises of state,  
194 county, school and municipal taxes. Nothing contained within the rules of the Public Service  
195 Commission shall be deemed to require any agents or employees of the public service districts  
196 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.  
197 In addition to the other remedies provided in this section, public service districts are granted a  
198 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an  
199 action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If  
200 the district collects the delinquent account, plus reasonable costs, from its customer or other  
201 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable

202 costs which were previously deferred. In addition, each public service district may exchange with  
203 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property  
204 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor  
205 may any lien attach to real property for the reason of delinquent rates or charges for services or  
206 facilities of a tenant of the real property unless the owner has contracted directly with the public  
207 service district to purchase the services or facilities.

208 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined  
209 in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own  
210 sewage disposal system pursuant to a permit issued by the Department of Environmental  
211 Protection, as prescribed by section eleven of said article, is exempt from the provisions of this  
212 section.

213 (h) A public service district which has been designated by the Environmental Protection  
214 Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall  
215 prepare an annual report detailing the collection and expenditure of rates, fees or charges and  
216 make it available for public review at the place of business of the governing body and the  
217 stormwater utility main office.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§24-1-1b. Supplemental rule for reorganization.**

1 The Public Service Commission shall, by general order, create a division within its staff  
2 which shall, upon written request of the governing body of a political subdivision that operates a  
3 water and/or sewer ~~and/or stormwater~~ utility, provide legal, operational, engineering, financial,  
4 ratemaking and accounting advice and assistance to water and/or sewer ~~and/or stormwater~~  
5 utilities that are political subdivisions of the state and may perform or participate in the studies  
6 required under section one-b, article thirteen-a, chapter sixteen of this code.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

1           (a) The jurisdiction of the commission shall extend to all public utilities in this state and  
2 shall include any utility engaged in any of the following public services:  
3           Common carriage of passengers or goods, whether by air, railroad, street railroad, motor  
4 or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water  
5 or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and  
6 all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor  
7 car services; transmission of messages by telephone, telegraph or radio; generation and  
8 transmission of electrical energy by hydroelectric or other utilities for service to the public, whether  
9 directly or through a distributing utility; supplying water, gas or electricity by municipalities or  
10 others; sewer systems servicing twenty-five or more persons or firms other than the owner of the  
11 sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide  
12 sewer service by an innovative, alternative method, as defined by the federal Environmental  
13 Protection Agency, the innovative, alternative method is a public utility function and subject to the  
14 jurisdiction of the Public Service Commission regardless of the number of customers served by  
15 the innovative, alternative method; any public service district created under the provisions of  
16 article thirteen-a, chapter sixteen of this code, except that the Public Service Commission will  
17 have no jurisdiction over the provision of stormwater services by a public service district; toll  
18 bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*,  
19 That natural gas producers who provide natural gas service to not more than twenty-five  
20 residential customers are exempt from the jurisdiction of the commission with regard to the  
21 provisions of such residential service: *Provided further*, That upon request of any of the customers  
22 of such natural gas producers, the commission may, upon good cause being shown, exercise  
23 such authority as the commission may deem appropriate over the operation, rates and charges  
24 of such producer and for such length of time as the commission may consider to be proper.

25 (b) The jurisdiction of the commission over political subdivisions of this state providing  
26 separate or combined water and/or sewer services and having at least four thousand five hundred  
27 customers and annual combined gross revenues of \$3 million or more that are political  
28 subdivisions of the state is limited to:

29 (1) General supervision of public utilities, as granted and described in section five of this  
30 article;

31 (2) Regulation of measurements, practices, acts or services, as granted and described in  
32 section seven of this article;

33 (3) Regulation of a system of accounts to be kept by a public utility that is a political  
34 subdivision of the state, as granted and described in section eight of this article;

35 (4) Submission of information to the commission regarding rates, tolls, charges or  
36 practices, as granted and described in section nine of this article;

37 (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness  
38 in any proceeding before or conducted by the commission, as granted and described in section  
39 ten of this article; and

40 ~~(6) Investigation and resolution of disputes involving political subdivisions of the state~~  
41 ~~regarding inter-utility agreements, rates, fees and charges, service areas and contested utility~~  
42 ~~combinations. Investigation and resolution of disputes between a political subdivision of the state~~  
43 ~~providing wholesale water and/or wastewater treatment or other services, whether by contract or~~  
44 ~~through a tariff, and its customer or customers, including, but not limited to, rates, fees and~~  
45 ~~charges, service areas and contested utility combinations. Provided, that any request for an~~  
46 ~~investigation related to such a dispute that is based on the act or omission of the political~~  
47 ~~subdivision shall be filed within 30 days of the act or omission of the political subdivision and the~~  
48 ~~commission shall resolve said dispute within 120 days of filing. The one hundred-twenty day~~  
49 ~~period for resolution of the dispute may be tolled by the Commission until the necessary~~  
50 ~~information showing the basis of the rates, fees and charges or other information as the~~



51 commission considers necessary is filed. Provided further, the disputed rates, fees and charges  
52 so fixed by the political subdivision providing separate or combined water and/or sewer services  
53 shall remain in full force and effect until set aside, altered or amended by the commission in an  
54 order to be followed in the future.

55 (7) Customers of water and sewer utilities operated by a political subdivision of the state  
56 ~~and customers of stormwater utilities operated by a public service district~~ may bring formal or  
57 informal complaints regarding the commission's exercise of the powers enumerated in this section  
58 and the commission shall resolve these complaints.

59 (8) In the event that a political subdivision has a deficiency in either its bond revenue or  
60 bond reserve accounts, or is otherwise in breach of a bond covenant, any ~~the~~ bond holder may  
61 petition the Public Service Commission for such redress as will bring the accounts to current  
62 status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to  
63 fully resolve the alleged deficiency or breach.

64 (c) The commission may, upon application, waive its jurisdiction and allow a utility  
65 operating in an adjoining state to provide service in West Virginia when:

66 (1) An area of West Virginia cannot be practicably and economically served by a utility  
67 licensed to operate within the State of West Virginia;

68 (2) Said area can be provided with utility service by a utility which operates in a state  
69 adjoining West Virginia;

70 (3) The utility operating in the adjoining state is regulated by a regulatory agency or  
71 commission of the adjoining state; and

72 (4) The number of customers to be served is not substantial. The rates the out-of-state  
73 utility charges West Virginia customers shall be the same as the rate the utility is duly authorized  
74 to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke  
75 its waiver of jurisdiction for good cause.

76 (d) Any other provisions of this chapter to the contrary notwithstanding:

77           (1) An owner or operator of an electric generating facility located or to be located in this  
78 state that has been designated as an exempt wholesale generator under applicable federal law,  
79 or will be so designated prior to commercial operation of the facility, and for which such facility  
80 the owner or operator holds a certificate of public convenience and necessity issued by the  
81 commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j),  
82 section eleven-c of this article as if the certificate of public convenience and necessity for such  
83 facility were a siting certificate issued under said section and shall not otherwise be subject to the  
84 jurisdiction of the commission or to the provisions of this chapter with respect to such facility  
85 except for the making or constructing of a material modification thereof as provided in subdivision  
86 (5) of this subsection.

87           (2) Any person, corporation or other entity that intends to construct or construct and  
88 operate an electric generating facility to be located in this state that has been designated as an  
89 exempt wholesale generator under applicable federal law, or will be so designated prior to  
90 commercial operation of the facility, and for which facility the owner or operator does not hold a  
91 certificate of public convenience and necessity issued by the commission on or before July 1,  
92 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from  
93 the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate  
94 of public convenience and necessity pursuant to the provisions of section eleven of this article.  
95 An owner or operator of an electric generating facility as is described in this subdivision for which  
96 a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),  
97 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction  
98 of the commission or to the provisions of this chapter with respect to such facility except for the  
99 making or constructing of a material modification thereof as provided in subdivision (5) of this  
100 subsection.

101           (3) An owner or operator of an electric generating facility located in this state that had not  
102 been designated as an exempt wholesale generator under applicable federal law prior to

103 commercial operation of the facility that generates electric energy solely for sale at retail outside  
104 this state or solely for sale at wholesale in accordance with any applicable federal law that  
105 preempts state law or solely for both such sales at retail and such sales at wholesale and that  
106 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall  
107 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect  
108 to such facility, regardless of whether such facility subsequent to its construction has been or will  
109 be designated as an exempt wholesale generator under applicable federal law: *Provided*, That  
110 such owner or operator shall be subject to subdivision (5) of this subsection if a material  
111 modification of such facility is made or constructed.

112 (4) Any person, corporation or other entity that intends to construct or construct and  
113 operate an electric generating facility to be located in this state that has not been or will not be  
114 designated as an exempt wholesale generator under applicable federal law prior to commercial  
115 operation of the facility that will generate electric energy solely for sale at retail outside this state  
116 or solely for sale at wholesale in accordance with any applicable federal law that preempts state  
117 law or solely for both such sales at retail and such sales at wholesale and that had not been  
118 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,  
119 prior to commencement of construction of the facility, obtain a siting certificate from the  
120 commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of  
121 public convenience and necessity pursuant to the provisions of section eleven of this article. An  
122 owner or operator of an electric generating facility as is described in this subdivision for which a  
123 siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),  
124 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction  
125 of the commission or to the provisions of this chapter with respect to such facility except for the  
126 making or constructing of a material modification thereof as provided in subdivision (5) of this  
127 subsection.

128 (5) An owner or operator of an electric generating facility described in this subsection shall,  
129 before making or constructing a material modification of the facility that is not within the terms of  
130 any certificate of public convenience and necessity or siting certificate previously issued for the  
131 facility or an earlier material modification thereof, obtain a siting certificate for the modification  
132 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a  
133 certificate of public convenience and necessity for the modification pursuant to the provisions of  
134 section eleven of this article and, except for the provisions of section eleven-c of this article, shall  
135 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter  
136 with respect to such modification.

137 (6) The commission shall consider an application for a certificate of public convenience  
138 and necessity filed pursuant to section eleven of this article to construct an electric generating  
139 facility described in this subsection or to make or construct a material modification of such electric  
140 generating facility as an application for a siting certificate pursuant to section eleven-c of this  
141 article if the application for the certificate of public convenience and necessity was filed with the  
142 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as  
143 of that date.

144 (7) The limitations on the jurisdiction of the commission over, and on the applicability of  
145 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed  
146 by and described in this subsection shall not be deemed to affect or limit the commission's  
147 jurisdiction over contracts or arrangements between the owner or operator of such facility and any  
148 affiliated public utility subject to the provisions of this chapter.

**§24-2-3. General power of commission with respect to rates.**

1 (a) The commission shall have power to enforce, originate, establish, change and  
2 promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or  
3 sewer utilities that are political subdivisions of this state providing a separate or combined services  
4 and having at least four thousand five hundred customers and annual combined gross revenues

5 of \$3 million or more: *Provided*, That the commission may exercise such rate authority over  
6 municipally owned electric or natural gas utilities or a municipally owned water and/or sewer utility  
7 having less than four thousand five hundred customers ~~and or \$3 million dollars~~ annual combined  
8 gross revenues of less than \$3 million dollars, only under the circumstances and limitations set  
9 forth in section four-b of this article, and subject to the provisions set forth in subsection (b) of this  
10 section. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs,  
11 joint rates or schedules enacted or maintained by a utility regulated under the provisions of this  
12 section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation  
13 of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint  
14 rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust,  
15 unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of  
16 law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable  
17 and just rate to be charged on any branch line thereof, independent of the rate charged on the  
18 main line of such railroad.

19 (b) Any complaint filed with the commission by a resale or wholesale customer of a  
20 municipally owned water and/or sewer utility having less than four thousand five hundred  
21 customers or annual combined gross revenue of less than \$3 million dollars concerning rates,  
22 fees or charges applicable to such resale or wholesale customer, shall be filed within thirty days  
23 of the enactment by the governing body of the political subdivision of an ordinance changing rates,  
24 fees or charges for such service. The commission shall resolve said complaint within 120 days of  
25 filing. The one hundred-twenty day period for resolution of the complaint may be tolled by the  
26 commission until the necessary information showing the basis of the rates, fees, charges and  
27 other information as the commission considers necessary is filed. Provided, the rates, fees and  
28 charges so fixed by the political subdivision providing separate or combined water and/or sewer  
29 services shall remain in full force and effect until set aside, altered or amended by the commission  
30 in an order to be followed in the future. Provided further, That the commission shall have no

31 authority to order refunds for amounts collected during the pendency of the complaint proceeding  
32 unless the rates, fees, or charges so enacted by the governing body were enacted subject to  
33 refund under the provisions of subsections (d)(2) or (g) of section four-b of this article.

34 ~~(c)(b)~~ In determining just and reasonable rates, the commission may audit and investigate  
35 management practices and policies, or have performed an audit and investigation of such  
36 practices and policies, in order to determine whether the utility is operating with efficiency and is  
37 utilizing sound management practices. The commission shall adopt rules and regulations setting  
38 forth the scope, frequency and application of such audits and investigations to the various utilities  
39 subject to its jurisdiction. The commission may include the cost of conducting the management  
40 audit in the cost of service of the utility.

41 ~~(d)(e)~~ In determining just and reasonable rates, the commission shall investigate and  
42 review transactions between utilities and affiliates. The commission shall limit the total return of  
43 the utility to a level which, when considered with the level of profit or return the affiliate earns on  
44 transactions with the utility, is just and reasonable.

**§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local  
exchange services of telephone cooperatives and municipally operated public  
utilities.**

1 (a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal  
2 water and/or sewer utilities that are political subdivisions of the state ~~with at least~~ having less than  
3 four thousand five hundred customers ~~and or~~ or annual combined gross revenues of less than \$3  
4 million dollars, except for municipally operated commercial solid waste facilities as defined in  
5 section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local  
6 exchange services provided by telephone cooperatives are not subject to the rate approval  
7 provisions of section four or four-a of this article, but are subject to the limited rate provisions of  
8 this section.

9 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and  
10 municipally operated public utilities that are political subdivisions of the state providing water,  
11 sewer, electric ~~and~~ and/or natural gas services that are subject to the provisions of this section  
12 and all rates and charges for local exchange services set by telephone cooperatives shall be just,  
13 reasonable, applied without unjust discrimination between or preference for any customer or class  
14 of customer and based primarily on the costs of providing these services. All rates and charges  
15 shall be based upon the measured or reasonably estimated cost of service and the equitable  
16 sharing of those costs between customers based upon the cost of providing the service received  
17 by the customer, including a reasonable plant-in-service depreciation expense. The rates and  
18 charges shall be adopted by the electric, natural gas, telephone cooperative or political  
19 subdivision's governing board or body and, in the case of the municipally operated public utility,  
20 by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day  
21 waiting period may be waived by public vote of the governing body if that body finds and declares  
22 the public utility that is a political subdivision of the state to be in financial distress such that the  
23 45-day waiting period would be detrimental to the ability of the utility to deliver continued and  
24 compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified  
25 on the monthly billing statement of the customers of the utility for the month next preceding the  
26 month in which the rate change is to become effective and the utility governing body shall give its  
27 customers and, in the case of a cooperative, its customers, members and stockholders, other  
28 reasonable notices as will allow filing of timely objections to the proposed rate change and full  
29 participation in municipal rate legislation through the provision of a public forum in which  
30 customers may comment upon the proposed rate change prior to an enactment vote. The rates  
31 and charges or ordinance shall be filed with the commission, together with any information  
32 showing the basis of the rates and charges and other information as the commission considers  
33 necessary. Any change in the rates and charges with updated information shall be filed with the  
34 commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is

35 received and the electric cooperative, natural gas cooperative or telephone cooperative or  
36 municipality has failed to file with the commission the rates and charges with information showing  
37 the basis of rates and charges and other information as the commission considers necessary, the  
38 suspension period limitation of one hundred twenty days and the one hundred-day period  
39 limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e)  
40 of this section, is tolled until the necessary information is filed. The electric cooperative, natural  
41 gas cooperative, telephone cooperative or municipality shall set the date when any new rate or  
42 charge is to go into effect.

43 (c) The commission shall review and approve or modify the rates and charges of electric  
44 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural  
45 gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of  
46 the state and having less than four thousand five hundred customers and ~~\$3 million dollars of~~  
47 ~~annual combined gross revenues and~~ or annual combined revenues of less than \$3 million dollars  
48 upon the filing of a petition within thirty days of the adoption of the ordinance or resolution  
49 changing the rates or charges by:

50 (1) Any customer aggrieved by the changed rates or charges who presents to the  
51 commission a petition signed by not less than twenty-five percent of the customers served by the  
52 municipally operated electric or natural gas public utility or municipally owned water and/or sewer  
53 utility ~~having less than four thousand five hundred customers and \$3 million dollars annual~~  
54 ~~combined gross revenues~~ or twenty-five percent of the membership of the electric, natural gas or  
55 telephone cooperative residing within the state;

56 (2) Any customer who is served by a municipally owned electric or natural gas public  
57 utility and who resides outside the corporate limits and who is affected by the change in the rates  
58 or charges and who presents to the commission a petition alleging discrimination between  
59 customers within and without the municipal boundaries. The petition shall be accompanied by  
60 evidence of discrimination; or



61 (3) Any customer or group of customers of the municipally owned electric or natural gas  
62 public utility who is affected by the change in rates who reside within the municipal boundaries  
63 and who present a petition to the commission alleging discrimination between a customer or group  
64 of customers and other customers of the municipal utility. The petition shall be accompanied by  
65 evidence of discrimination.

66 (d) (1) The filing of a petition with the commission signed by not less than twenty-five  
67 percent of the customers served by the municipally owned electric or natural gas public utility or  
68 a municipally owned water and/or sewer utility having less than four thousand five hundred  
69 customers or ~~\$3 million dollars annual combined gross revenues~~ annual combined gross  
70 revenues of less than \$3 million dollars or twenty-five percent of the membership of the electric,  
71 natural gas or telephone cooperative residing within the state under subsection (c) of this section  
72 shall suspend the adoption of the rate change contained in the ordinance or resolution for a period  
73 of one hundred twenty days from the date the rates or charges would otherwise go into effect or  
74 until an order is issued as provided herein.

75 (2) Upon sufficient showing of discrimination by customers outside the municipal  
76 boundaries or a customer or a group of customers within the municipal boundaries under a petition  
77 filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the  
78 adoption of the rate change contained in the ordinance for a period of one hundred twenty days  
79 from the date the rates or charges would otherwise go into effect or until an order is issued as  
80 provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and  
81 municipal charter or state code that establishes or proposes a rate increase that results in an  
82 increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid  
83 and rates shall be allowed to go into effect, subject to refund, upon the date stated in that  
84 ordinance. Any refund determined to be due and owing as a result of any difference between any  
85 final rates approved by the commission and the rates placed into effect subject to refund shall be  
86 refunded as a credit against each customer's account for a period of up to six months after entry

87 of the commission's final order. Any remaining balance which is not fully credited by credit within  
88 six months after entry of the commission's final order shall be directly refunded to the customer  
89 by check. In the case of rates established or proposed that increase by more than twenty-five  
90 percent of the gross revenue of the municipally operated public utility, the utility may apply for,  
91 and the commission may grant, a waiver of the suspension period and allow rates to be effective  
92 upon enactment.

93 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the  
94 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and  
95 shall, within one hundred days from the date the rates or charges would otherwise go into effect,  
96 unless otherwise tolled as provided in subsection (b) of this section, issue an order approving,  
97 disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural  
98 gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

99 (f) Upon receipt of a petition for review of the rates under the provisions of subsection (c)  
100 of this section, the commission may exercise the power granted to it under the provisions of  
101 section three of this article, consistent with the applicable rate provisions of section twenty, article  
102 ten, chapter eight of this code, section four, article nineteen of said chapter and section sixteen,  
103 article thirteen, chapter sixteen of this code. The commission may determine the method by which  
104 the rates are reviewed and may grant and conduct a de novo hearing on the matter if the  
105 customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

106 (g) The commission may, upon petition by an electric, natural gas or telephone  
107 cooperative or municipal electric or natural gas public utility or a municipally owned water and/or  
108 sewer utility having less than four thousand five hundred customers ~~and \$3 million dollars~~ or  
109 annual combined gross revenues of less than \$3 million dollars, allow an interim or emergency  
110 rate to take effect, subject to refund or future modification, if it is determined that the interim or  
111 emergency rate is necessary to protect the municipality from financial hardship attributable to the  
112 purchase of the utility commodity sold, or the commission determines that a temporary or interim

113 rate increase is necessary for the utility to avoid financial distress. In such cases, the commission  
114 shall waive the 45-day waiting period provided for in subsection (b) of this section and the one  
115 hundred twenty-day suspension period provided for in subsection (d) of this section.

116 (h) The commission shall, upon written request of the governing body of a political  
117 subdivision, provide technical assistance to the governing body in its deliberations regarding a  
118 proposed rate increase.

119 (i) Notwithstanding any other provision, the commission has no authority or responsibility  
120 with regard to the regulation of rates, income, services or contracts by municipally operated public  
121 utilities for services which are transmitted and sold outside of the State of West Virginia.

122 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the  
123 commission over water and/or sewer utilities that are political subdivisions of the state and having  
124 at least four thousand five hundred customers and annual gross combined revenues of \$3 million  
125 or more shall be limited to those powers enumerated in subsection (b), section one of this article.

**§24-2-11. Requirements for certificate of public convenience and necessity.**

1 (a) A public utility, person or corporation other than a political subdivision of the state  
2 providing water or, sewer ~~and/or stormwater~~ services and having at least four thousand five  
3 hundred customers and annual gross combined revenues of \$3 million dollars or more may not  
4 begin the construction of any plant, equipment, property or facility for furnishing to the public any  
5 of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any  
6 franchise, license or permit from any municipality or other governmental agency, except ordinary  
7 extensions of existing systems in the usual course of business, unless and until it shall obtain  
8 from the Public Service Commission a certificate of public convenience and necessity authorizing  
9 such construction franchise, license or permit.

10 (b) Upon the filing of any application for the certificate, and after hearing, the commission  
11 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of  
12 convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no

13 substantial protest is received within thirty days after the notice is given, may waive formal hearing  
14 on the application. Notice shall be given by publication which shall state that a formal hearing may  
15 be waived in the absence of substantial protest, made within thirty days, to the application. The  
16 notice shall be published as a Class I legal advertisement in compliance with the provisions of  
17 article three, chapter fifty-nine of this code. The publication area shall be the proposed area of  
18 operation.

19 (c) Any public utility, person or corporation subject to the provisions of this section other  
20 than a political subdivision of the state providing water and/or sewer services having at least four  
21 thousand five hundred customers and combined annual gross revenue of \$3 million dollars or  
22 more shall give the commission at least thirty days' notice of the filing of any application for a  
23 certificate of public convenience and necessity under this section: *Provided*, That the commission  
24 may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice  
25 requirement for projects approved by the Infrastructure and Jobs Development Council.

26 (d) The commission shall render its final decision on any application filed under the  
27 provisions of this section or section eleven-a of this article within two hundred seventy days of the  
28 filing of the application and within ninety days after final submission of any such application for  
29 decision following a hearing: *Provided*, That if the application is for authority to construct a water  
30 and sewer project and the projected total cost is less than \$10 million, the commission shall render  
31 its final decision within two hundred twenty-five days of the filing of the application.

32 (e) The commission shall render its final decision on any application filed under the  
33 provisions of this section that has received the approval of the Infrastructure and Jobs  
34 Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one  
35 hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received  
36 within thirty days after the notice is provided pursuant to subsection (b) of this section, the  
37 commission shall render its final decision within two hundred seventy days or two hundred twenty-

38 five days of the filing of the application, whichever is applicable as determined in subsection (d)  
39 of this section.

40 (f) If the projected total cost of a project which is the subject of an application filed pursuant  
41 to this section or section eleven-a of this article is greater than \$50 million, the commission shall  
42 render its final decision on any such application filed under the provisions of this section or section  
43 eleven-a of this article within four hundred days of the filing of the application and within ninety  
44 days after final submission of any such application for decision after a hearing.

45 (g) If a decision is not rendered within the time frames established in this section, the  
46 commission shall issue a certificate of convenience and necessity as applied for in the application.

47 (h) The commission shall prescribe rules as it may deem proper for the enforcement of  
48 the provisions of this section; and, in establishing that public convenience and necessity do exist,  
49 the burden of proof shall be upon the applicant.

50 (i) Pursuant to the requirements of this section, the commission may issue a certificate of  
51 public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution  
52 company for the transportation in intrastate commerce of natural gas used by any person for one  
53 or more uses, as defined by rule, by the commission in the case of:

54 (1) Natural gas sold by a producer, pipeline or other seller to the person; or

55 (2) Natural gas produced by the person.

56 (j) A public utility, including a public service district, which has received a certificate of  
57 public convenience and necessity after July 8, 2005, from the commission and has been approved  
58 by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled  
59 to, reopen the proceeding if the cost of the project changes but the change does not affect the  
60 rates established for the project.

61 (k) Any public utility, person or corporation proposing any electric power project that  
62 requires a certificate under this section is not required to obtain such certificate before applying

63 for or obtaining any franchise, license or permit from any municipality or other governmental  
64 agency.

65 (l) ~~Water, or sewer and/or stormwater~~ utilities that are political subdivisions of the state  
66 and having at least four thousand five hundred customers and combined gross revenues of \$3  
67 million dollars or more desiring to pursue construction projects that are not in the ordinary course  
68 of business shall provide ~~notice~~ adequate prior public notice of the contemplated construction and  
69 proposed changes to rates, fees and charges, if any, as a result of such construction to both  
70 current customers and those ~~citizens~~ persons who will be affected by the proposed construction  
71 as follows:

72 (1) Adequate prior public notice of the contemplated construction by causing a notice of  
73 intent to pursue a project that is not in the ordinary course of business to be specified on the  
74 monthly billing statement of the customers of the utility for the month ~~next~~ immediately preceding  
75 the month in which ~~the contemplated~~ an ordinance or resolution approving the proposed  
76 construction and proposed changes to rates, fees and charges, if any, is to be before the  
77 governing body ~~on first reading~~ for the public hearing on the ordinance or resolution approving  
78 the proposed construction and proposed changes to rates, fees and charges, if any.

79 (2) Adequate prior public notice of the contemplated construction by causing to be  
80 published as a Class I legal advertisement of the proposed ~~action~~ public hearing on the ordinance  
81 or resolution approving the proposed construction and proposed changes to rates, fees and  
82 charges, if any, in compliance with the provisions of article three, chapter fifty-nine of the code.  
83 The publication area for publication shall be all territory served by the ~~district~~ political subdivision.  
84 If the political subdivision provides service in more than one county, publication shall be made in  
85 a newspaper of general circulation in each county that the political subdivision provides service.

86 (3) The public notice of the proposed construction shall state the scope of the proposed  
87 construction; a summary of the current rates, fees and charges, ~~the~~ and proposed changes to  
88 said rates, fees and charges, if any; the date, time and place of ~~both a~~ the public hearing on the

89 ~~proposal and the proposed final vote on adoption~~ ordinance or resolution approving the proposed  
90 construction and proposed changes to rates, fees and charges, if any; and the place or places  
91 within the political subdivision where the ordinance or resolution approving the proposed  
92 construction and the proposed changes to rates, fees and charges, if any, may be inspected by  
93 the public. A reasonable number of copies of the ~~proposal~~ ordinance or resolution shall be kept  
94 at the place or places and be made available for public inspection. The notice shall also advise  
95 that interested parties may appear at the public hearing before the political subdivision and be  
96 heard with respect to the proposed construction and the proposed rates, fees and charges, if any.

97 (4) The ordinance or resolution on the proposed construction and the proposed rates, fees  
98 and charges shall be read at two meetings of the governing body with at least two weeks  
99 intervening between each meeting. The public hearing may be conducted ~~with or following the~~  
100 prior to, or at, the meeting of the governing body at which the ordinance or resolution approving  
101 the proposed construction is considered on second reading.

102 (5) Enactment or adoption of the ordinance or resolution approving the proposed  
103 construction and the proposed rates, fees and charges shall follow an affirmative vote of the  
104 governing body and the approved rates shall be effective go into effect no sooner than forty-five  
105 days following the action of the governing body. If the political subdivision proposes rates that will  
106 go into effect prior ~~than to~~ the completion of construction of the proposed project, the 45-day  
107 waiting period may be waived by public vote of the governing body only if the political subdivision  
108 finds and declares the political subdivision to be in financial distress such that the 45-day waiting  
109 period would be detrimental to the ability of the political subdivision to deliver continued and  
110 compliant public services: *Provided, That, if the political subdivision is a public service district,* in  
111 no event shall the rate become effective prior to the date that the county commission has entered  
112 an order approving or modifying the action of the public service district board.

113 (6) Rates, fees and charges approved by an affirmative vote of the public service district  
114 board shall be forwarded in writing to the county commission ~~appointing the approving board~~ with

115 the authority to appoint the members of the public service board of the public service district. The  
116 county commission shall, within forty-five days of receipt of the proposed rates, fees and charges,  
117 take action to approve, modify, or reject the proposed rates, fees and charges, in its sole  
118 discretion. ~~If, after~~ After forty-five days, and absent action by the county commission, the proposed  
119 ~~rates, fees and charges~~ the county commission has not taken final action to approve, modify, or  
120 reject the proposed rates, fees and charges, the proposed rates, fees and charges, as presented  
121 to the County Commission, shall be effective with no further action by the board or county  
122 commission. In any event this 45-day period may be extended by official action of both the board  
123 proposing the rates, fees and charges and the appointing county commission.

124 (7) The county commission shall provide notice to the public by a Class I legal  
125 advertisement of the proposed action, in compliance with the provisions of article three, chapter  
126 fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees  
127 and charges no later than one week prior to the meeting date.