

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3096

BY DELEGATE ESPINOSA

[Passed April 8, 2017; in effect ninety days from
passage.]

1 AN ACT to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said
3 code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all
4 relating to the operation and regulation of utilities and services generally; modifying
5 procedures and requirements for the operation and regulation of certain water and sewer
6 utilities owned or operated by political subdivisions of the state; eliminating reference to
7 appeals to the Public Service Commission from actions of municipal boards that are not
8 subject to the jurisdiction of the Public Service Commission; prohibiting Public Service
9 Commission jurisdiction of Internet protocol-enabled service and voice-over Internet
10 protocol-enabled service; defining the terms “Internet protocol-enabled service” and
11 “Voice-over Internet protocol service”; limiting Public Service Commission jurisdiction of
12 certain telephone company transactions; relating to the authority of county commissions
13 to modify proposed rates for certain water and sewer utilities and providing for complaints
14 to be filed with the circuit courts pertaining to rates and charges enacted as proposed,
15 modified or rejected by the county commission; eliminating Public Service Commission
16 authority regarding stormwater utilities; providing time limits for the filing of requests for
17 investigations pertaining to political subdivisions providing separate or combined water
18 and/or sewer services and having at least four thousand five hundred customers and
19 annual combined gross revenues of \$3 million or more; clarifying the authority of the Public
20 Service Commission to resolve complaints of customers of water and sewer utilities
21 operated by a political subdivision of the state having at least four thousand five hundred
22 customers and annual combined gross revenues of \$3 million or more; clarifying the
23 jurisdiction of the Public Service Commission relating to rates for municipal water and/or
24 sewer utilities having less than four thousand five hundred customers or annual combined
25 gross revenues of less than \$3 million; revising the notice and procedure provisions for
26 construction projects for political subdivisions of this state providing separate or combined

27 water and/or sewer services and having at least four thousand five hundred customers
28 and annual combined gross revenues of \$3 million or more; and providing procedures for
29 a public service district or a customer satisfying certain requirements to file a complaint in
30 circuit court to contest the action or inaction of a county commission regarding a rate
31 proposals and construction projects that are not in the ordinary course of business.

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

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

27 For the purpose of acquiring any public service properties or lands, rights or easements
28 deemed necessary or incidental for the purposes of the district, each such district has the right of
29 eminent domain to the same extent and to be exercised in the same manner as now or hereafter
30 provided by law for such right of eminent domain by cities, incorporated towns and other municipal
31 corporations: *Provided*, That the power of eminent domain provided in this section does not
32 extend to highways, road and drainage easements, or stormwater facilities constructed, owned
33 or operated by the West Virginia division of highways without the express agreement of the
34 commissioner of highways: *Provided, however*, That such board may not acquire all or any
35 substantial part of a privately owned waterworks system unless and until authorized so to do by
36 the public service commission of West Virginia, and that this section shall not be construed to
37 authorize any district to acquire through condemnation proceedings either in whole or substantial

38 part an existing privately owned waterworks plant or system or gas facilities located in or
39 furnishing water or gas service within such district or extensions made or to be made by it in
40 territory contiguous to such existing plant or system, nor may any such board construct or extend
41 its public service properties to supply its services into areas served by or in competition with
42 existing waterworks or gas facilities or extensions made or to be made in territory contiguous to
43 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) Any other basis or classification which the board may determine to be fair and
18 reasonable, taking into consideration the location of the premises served and the nature and

19 extent of the services and facilities furnished. However, no rates, fees or charges for stormwater
20 services may be assessed against highways, road and drainage easements or stormwater
21 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 provided to the customers of the district for the
29 month immediately preceding the month in which the contemplated change is to be considered
30 at a hearing by the board. Such notice shall include a statement that a change in rates, fees and
31 charges is being considered, the time, date and location of the hearing of the board at which the
32 change will be considered and that the proposed rates, fees and charges are on file at the office
33 of the District for review during regular business hours. Such notice shall be printed on, or mailed
34 with, the monthly billing statement, or provided in a separate mailing.

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

43 (C) The public notice of the proposed action shall summarize the current rates, fees and
44 charges and the proposed changes to said rates, fees and charges; the date, time and place of;

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

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

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

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

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

72 (G) The public service district, or a customer aggrieved by the changed rates or charges
73 who presents to the circuit court a petition signed by at least 750 customers or twenty-five percent
74 of the customers served by the public service district, whichever is fewer, when dissatisfied by
75 the approval, modification, or rejection by the county commission of the proposed rates, fees and
76 charges under the provisions of this subdivision (2) may file a complaint regarding the rates, fees
77 and charges resulting from the action of, or failure to act by, the county commission in the circuit
78 court of the county in which the county commission sits: *Provided*, That any complaint or petition
79 filed hereunder shall be filed within thirty days of the county commission's final action approving,
80 modifying or rejecting such rates, fees and charges, or the expiration of the forty-five day period
81 from the receipt by the county commission, in writing, of the rates, fees and charges approved by
82 resolution of the board, without final action by the county commission to approve, modify or reject
83 such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided*,
84 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted
85 by the district upon which the county commission failed to act, shall remain in full force and effect,
86 until set aside, altered or amended by the circuit court in an order to be followed in the future.

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

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

117 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
118 municipal corporation or other public service district included within the district owns and operates
119 separately water facilities, sewer facilities or stormwater facilities and the district owns and
120 operates another kind of facility, either water or sewer, or both, as the case may be, then the
121 district and the publicly or privately owned utility, city, incorporated town or other municipal

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

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

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

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

173 shall be based upon actual water consumption or the average monthly water consumption based
174 upon the owner's, tenant's or occupant's specific customer class.

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

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

199 the district collects the delinquent account, plus reasonable costs, from its customer or other
200 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable
201 costs which were previously deferred. In addition, each public service district may exchange with
202 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property
203 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor
204 may any lien attach to real property for the reason of delinquent rates or charges for services or
205 facilities of a tenant of the real property unless the owner has contracted directly with the public
206 service district to purchase the services or facilities.

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

212 (h) A public service district which has been designated by the Environmental Protection
213 Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall
214 prepare an annual report detailing the collection and expenditure of rates, fees or charges and
215 make it available for public review at the place of business of the governing body and the
216 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 utility, provide legal, operational, engineering, financial, ratemaking and
4 accounting advice and assistance to water and/or sewer utilities that are political subdivisions of

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

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

53 (7) Customers of water and sewer utilities operated by a political subdivision of the state
54 may bring formal or informal complaints regarding the commission's exercise of the powers
55 enumerated in this section and the commission shall resolve these complaints

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 (e) The commission shall not have jurisdiction of Internet protocol-enabled service or
147 voice-over Internet protocol-enabled service. As used in this subsection:

148 (1) "Internet protocol-enabled service" means any service, capability, functionality or
149 application provided using Internet protocol, or any successor protocol, that enables an end user

150 to send or receive a communication in Internet protocol format, or any successor format,
151 regardless of whether the communication is voice, data or video.

152 (2) "Voice-over Internet protocol service" means any service that:

153 (i) Enables real-time two-way voice communications that originate or terminate from the
154 user's location using Internet protocol or a successor protocol; and

155 (ii) Uses a broadband connection from the user's location.

156 (3) The term "voice-over Internet protocol service" includes any service that permits users
157 to receive calls that originate on the public-switched telephone network and to terminate calls on
158 the public-switched telephone network.

159 (f) Notwithstanding any other provisions of this article, the commission shall not have
160 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
161 to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved
162 in the transaction are under common ownership.

§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 or annual combined gross revenues of less
8 than \$3 million dollars, only under the circumstances and limitations set forth in section four-b of
9 this article, and subject to the provisions set forth in subsection (b) of this section. And whenever
10 the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules
11 enacted or maintained by a utility regulated under the provisions of this section to be unjust,
12 unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the

13 provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs,
14 tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable,
15 insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said
16 commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to
17 be charged on any branch line thereof, independent of the rate charged on the main line of such
18 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) 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) In determining just and reasonable rates, the commission shall investigate and review
42 transactions between utilities and affiliates. The commission shall limit the total return of the utility
43 to a level which, when considered with the level of profit or return the affiliate earns on transactions
44 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 having less than four
3 thousand five hundred customers or annual combined gross revenues of less than \$3 million
4 dollars, except for municipally operated commercial solid waste facilities as defined in section
5 two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange
6 services provided by telephone cooperatives are not subject to the rate approval provisions of
7 section four or four-a of this article, but are subject to the limited rate provisions of this section.

8 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and
9 municipally operated public utilities that are political subdivisions of the state providing water,
10 sewer, electric and/or natural gas services that are subject to the provisions of this section and all
11 rates and charges for local exchange services set by telephone cooperatives shall be just,
12 reasonable, applied without unjust discrimination between or preference for any customer or class
13 of customer and based primarily on the costs of providing these services. All rates and charges
14 shall be based upon the measured or reasonably estimated cost of service and the equitable
15 sharing of those costs between customers based upon the cost of providing the service received
16 by the customer, including a reasonable plant-in-service depreciation expense. The rates and
17 charges shall be adopted by the electric, natural gas, telephone cooperative or political

18 subdivision's governing board or body and, in the case of the municipally operated public utility,
19 by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day
20 waiting period may be waived by public vote of the governing body if that body finds and declares
21 the public utility that is a political subdivision of the state to be in financial distress such that the
22 45-day waiting period would be detrimental to the ability of the utility to deliver continued and
23 compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified
24 on the monthly billing statement of the customers of the utility for the month next preceding the
25 month in which the rate change is to become effective and the utility governing body shall give its
26 customers and, in the case of a cooperative, its customers, members and stockholders, other
27 reasonable notices as will allow filing of timely objections to the proposed rate change and full
28 participation in municipal rate legislation through the provision of a public forum in which
29 customers may comment upon the proposed rate change prior to an enactment vote. The rates
30 and charges or ordinance shall be filed with the commission, together with any information
31 showing the basis of the rates and charges and other information as the commission considers
32 necessary. Any change in the rates and charges with updated information shall be filed with the
33 commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is
34 received and the electric cooperative, natural gas cooperative or telephone cooperative or
35 municipality has failed to file with the commission the rates and charges with information showing
36 the basis of rates and charges and other information as the commission considers necessary, the
37 suspension period limitation of one hundred twenty days and the one hundred-day period
38 limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e)
39 of this section, is tolled until the necessary information is filed. The electric cooperative, natural
40 gas cooperative, telephone cooperative or municipality shall set the date when any new rate or
41 charge is to go into effect.

42 (c) The commission shall review and approve or modify the rates and charges of electric
43 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural

44 gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of
45 the state and having less than four thousand five hundred customers or annual combined
46 revenues of less than \$3 million dollars upon the filing of a petition within thirty days of the adoption
47 of the ordinance or resolution changing the rates or charges by:

48 (1) Any customer aggrieved by the changed rates or charges who presents to the
49 commission a petition signed by not less than twenty-five percent of the customers served by the
50 municipally operated electric or natural gas public utility or municipally owned water and/or sewer
51 utility or twenty-five percent of the membership of the electric, natural gas or telephone
52 cooperative residing within the state;

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

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

63 (d) (1) The filing of a petition with the commission signed by not less than twenty-five
64 percent of the customers served by the municipally owned electric or natural gas public utility or
65 a municipally owned water and/or sewer utility having less than four thousand five hundred
66 customers or annual combined gross revenues of less than \$3 million dollars or twenty-five
67 percent of the membership of the electric, natural gas or telephone cooperative residing within
68 the state under subsection (c) of this section shall suspend the adoption of the rate change

69 contained in the ordinance or resolution for a period of one hundred twenty days from the date
70 the rates or charges would otherwise go into effect or until an order is issued as provided herein.

71 (2) Upon sufficient showing of discrimination by customers outside the municipal
72 boundaries or a customer or a group of customers within the municipal boundaries under a petition
73 filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the
74 adoption of the rate change contained in the ordinance for a period of one hundred twenty days
75 from the date the rates or charges would otherwise go into effect or until an order is issued as
76 provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and
77 municipal charter or state code that establishes or proposes a rate increase that results in an
78 increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid
79 and rates shall be allowed to go into effect, subject to refund, upon the date stated in that
80 ordinance. Any refund determined to be due and owing as a result of any difference between any
81 final rates approved by the commission and the rates placed into effect subject to refund shall be
82 refunded as a credit against each customer's account for a period of up to six months after entry
83 of the commission's final order. Any remaining balance which is not fully credited by credit within
84 six months after entry of the commission's final order shall be directly refunded to the customer
85 by check. In the case of rates established or proposed that increase by more than twenty-five
86 percent of the gross revenue of the municipally operated public utility, the utility may apply for,
87 and the commission may grant, a waiver of the suspension period and allow rates to be effective
88 upon enactment.

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

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

102 (g) The commission may, upon petition by an electric, natural gas or telephone
103 cooperative or municipal electric or natural gas public utility or a municipally owned water and/or
104 sewer utility having less than four thousand five hundred customers or annual combined gross
105 revenues of less than \$3 million dollars, allow an interim or emergency rate to take effect, subject
106 to refund or future modification, if it is determined that the interim or emergency rate is necessary
107 to protect the municipality from financial hardship attributable to the purchase of the utility
108 commodity sold, or the commission determines that a temporary or interim rate increase is
109 necessary for the utility to avoid financial distress. In such cases, the commission shall waive the
110 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-
111 day suspension period provided for in subsection (d) of this section.

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

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

118 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
119 commission over water and/or sewer utilities that are political subdivisions of the state and having

120 at least four thousand five hundred customers and annual gross combined revenues of \$3 million
121 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 services and having at least four thousand five hundred customers and
3 annual gross combined revenues of \$3 million dollars or more may not begin the construction of
4 any plant, equipment, property or facility for furnishing to the public any of the services
5 enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise,
6 license or permit from any municipality or other governmental agency, except ordinary extensions
7 of existing systems in the usual course of business, unless and until it shall obtain from the Public
8 Service Commission a certificate of public convenience and necessity authorizing such
9 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 utilities that are political subdivisions of the state and having at least
66 four thousand five hundred customers and combined gross revenues of \$3 million dollars or more
67 desiring to pursue construction projects that are not in the ordinary course of business shall
68 provide adequate prior public notice of the contemplated construction and proposed changes to
69 rates, fees and charges, if any, as a result of such construction to both current customers and
70 those persons who will be affected by the proposed construction as follows:

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

76 hearing on the ordinance or resolution approving the proposed construction and proposed
77 changes to rates, fees and charges, if any.

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

85 (3) The public notice of the proposed construction shall state the scope of the proposed
86 construction; a summary of the current rates, fees and charges, and proposed changes to said
87 rates, fees and charges, if any; the date, time and place of the public hearing on the ordinance or
88 resolution approving the proposed construction and proposed changes to rates, fees and charges,
89 if any; and the place or places within the political subdivision where the ordinance or resolution
90 approving the proposed construction and proposed changes to rates, fees and charges, if any,
91 may be inspected by the public. A reasonable number of copies of the ordinance or resolution
92 shall be kept at the place or places and be made available for public inspection. The notice shall
93 also advise that interested parties may appear at the public hearing before the political subdivision
94 and be heard with respect to the proposed construction and the proposed rates, fees and charges,
95 if any.

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

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

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

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

126 (8) A public service district, or a customer aggrieved by the changed rates or charges who
127 presents to the circuit court a petition signed by at least 750 or twenty-five percent of the
128 customers served by the public service district, whichever is fewer, when dissatisfied by the
129 approval, modification, or rejection by the county commission of the proposed rates, fees and
130 charges under the provisions of this subsection (l) may file a complaint regarding the rates, fees
131 and charges resulting from the action of, or failure to act by, the county commission in the circuit
132 court of the county in which the county commission sits: *Provided*, That any complaint or petition
133 filed hereunder shall be filed within thirty days of the county commission's final action approving,
134 modifying or rejecting such rates, fees and charges, or the expiration of the 45 day period from
135 the receipt by the county commission, in writing, of the rates, fees and charges approved by
136 resolution of the board, without final action by the county commission to approve, modify or reject
137 such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided*,
138 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted
139 by the district upon which the county commission failed to act, shall remain in full force and effect,
140 until set aside, altered or amended by the circuit court in an order to be followed in the future.