

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 3059**

BY DELEGATES LANE, HANSHAW, BUTLER, BYRD,

ELDRIDGE AND WHITE

[Introduced March 14, 2017; Referred  
to the Committee on Government Organization then  
the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §24-2-12b, relating to providing for the voluntary valuation of water and sewer  
 3 systems for ratemaking purposes.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §24-2-12b, to read as follows:

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

**§24-2-12b. Voluntary procedure for fair market valuation of water, sewer, and storm water utilities.**

1 (a) Legislative findings. The Legislature finds and declares that water, storm water, and  
 2 sewer utilities (and not other regulated utilities) and the local governments operating water, storm  
 3 water, and sewer utilities often struggle financially to meet their regulatory health, safety, and  
 4 environmental obligations particularly in times of declining use, declining population, and  
 5 increasing operating costs and regulatory compliance. The net book values of the utility systems  
 6 owned by these water, storm water and sewer utilities, however, often does not reflect their fair  
 7 market value thus denying local governments of the ability to obtain the full value of their utilities  
 8 in a sale and compounding their financial woes. The Legislature, wanting to provide all water and  
 9 sewer utilities with a fair and transparent method to arrive at a fair market value of their utility  
 10 systems, declares that as a matter of public policy, it is necessary to protect the public interest  
 11 through enactment of this section and to establish a fair and transparent method for and otherwise  
 12 regulate the approval of water and sewer utility sales.

13 (b) Definitions. The following words and phrases when used in this section have the  
 14 meanings given to them in this section unless the context clearly indicates otherwise:

15 (1) "Acquiring utility." A water utility, sewer utility, storm water utility, or a utility combining  
 16 two or more of these services located in this state subject to the provisions of this chapter that is  
 17 acquiring a selling water and sewer utility as the result of a voluntary arm's-length transaction

18 between the buyer and seller.

19 (2) "Fair market value." The average of the two utility valuation expert appraisals  
20 conducted under subdivision (2), subsection (d) of this section.

21 (3) "Rate base addition." The dollar amount of utility rate base associated with the utility  
22 system that the acquiring utility may include in the calculation of its post-sale rate base for  
23 ratemaking purposes.

24 (4) "Selling utility." Any water utility, sewer utility, storm water utility, or utility combining  
25 two or more of these services located in this state subject to the provisions of this chapter that  
26 proposes to sell its utility system to an acquiring utility as the result of a voluntary arm's-length  
27 transaction between the buyer and seller.

28 (5) "Utility system." The water system, storm water system, sewer system, or system  
29 combining two or more of these services owned by the selling utility that the acquiring utility  
30 proposes to purchase.

31 (c) Where the acquiring utility and selling utility agree to use the process outlined in  
32 subsection (d) of this section, the "proper showing" required for the commission's consent to the  
33 sale under section twelve of this article and the commission's rules promulgated thereunder is  
34 modified as follows:

35 (1) Terms and conditions of the sale based on the fair market value of the utility system  
36 are reasonable and neither party has an undue advantage in relying on the fair market value  
37 unless the commission finds significant error in the appraisal used in arriving at the fair market  
38 value.

39 (2) It is reasonable and does not adversely affect the public in the state to increase the  
40 net book value of the utility system to a level equal to the lesser of the fair market value or the  
41 purchase price of the utility system if this rate base addition will not result in a rate increase to the  
42 acquiring utility's customers of five percent or more.

43 (3) The commission may approve the use of a distribution system improvement charge or

44 like mechanism for post-sale system improvements.

45 (4) Except as modified by subdivisions (1), (2), and (3) of this subsection, the commission's  
46 review and consent to water and sewer utility acquisitions will remain the same as required under  
47 section twelve of this article.

48 (d) Process to establish fair market value of selling utility. Upon agreement by both the  
49 acquiring utility and the selling utility, the following procedure shall be used to determine the fair  
50 market value of the utility system:

51 (1) Each of the acquiring utility and the selling utility shall select a utility valuation expert.

52 (2) Each utility valuation expert shall determine the utility system's fair market value. This  
53 fair market value shall be determined, in compliance with the Uniform Standards of Professional  
54 Appraisal Practice, by considering the cost, market and income approaches. The original source  
55 of funding for any part of the utility system is not relevant and may not be considered in  
56 determining the fair market value.

57 (3) The fair market value is the average of the two utility valuation expert appraisals  
58 conducted under subdivision (2) of this subsection.

59 (4) The acquiring utility, selling utility, or both utilities jointly shall engage the services of a  
60 West Virginia licensed engineer to conduct an assessment of the tangible assets of the utility  
61 system. The licensed professional engineer may be an employee or contractor of either utility.  
62 The assessment shall be incorporated into the appraisal under the cost approach required under  
63 subdivision (2) of this subsection.

64 (5) Each utility valuation expert shall provide the completed appraisal to the acquiring utility  
65 and selling utility within ninety days of execution of the service contract.

66 (6) The use of the process in this subsection satisfies all state or local laws or rules that  
67 otherwise would require competitive bidding.

68 (e) Utility valuation experts.--

69 (1) The utility valuation experts may not:

70 (A) Derive any material financial benefit from the sale of the utility system other than fees  
71 for services rendered; or

72 (B) Be an immediate family member of a director, officer or employee of either the  
73 acquiring utility or selling utility within a twelve-month period of the date of hire to perform an  
74 appraisal.

75 (2) Fees and expenses paid to utility valuation experts may be included in the proposed  
76 rate base addition, and may be capitalized for ratemaking purposes by the acquiring utility.  
77 However, the aggregate of these fees and expenses may not exceed the greater of \$30,000 or  
78 five percent of the fair market value of the utility system unless a higher amount is approved by  
79 the commission.

80 (f) Freedom of the parties in negotiating an agreement. Nothing in this section prohibits  
81 the parties from agreeing to and implementing the following agreements, without the need for  
82 prior approval under section twelve of this article, incident to their negotiation of a sale transaction:

83 (1) Entering into an exclusive negotiating agreement;

84 (2) Negotiating a sale price that differs from the fair market value;

85 (3) Providing for terms of the payment of transaction costs between the parties,  
86 reimbursement of those costs upon closing of a sale, or the allocation of costs in the event no  
87 sale is consummated;

88 (4) Making agreements on the acquiring water and sewer utility's completion of post-sale  
89 additions or improvements to the utility system; or

90 (5) Otherwise structuring the purchase and sale agreement.

NOTE: The purpose of this bill is to provide a procedure for the voluntary valuation of water and sewer systems for ratemaking purposes.

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