

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 739

SENATORS SWOPE, CLEMENTS, MAYNARD, AND CLINE,

original sponsors

[Originating in the Committee on Government

Organization; reported on February 20, 2020]

1 A BILL to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend
3 and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to
4 amend and reenact §16-13A-9 of said code; to amend and reenact §24-2-1, §24-2-4a,
5 and §24-2-11 of said code; to amend said code by adding thereto a new article, designated
6 §24-2H-1, §24-2H-2, §24-2H-3, §24-2H-4, §24-2H-5, §24-2H-6, §24-2H-7, §24-2H-8, and
7 §24-2H-9; and to amend and reenact §31-15A-9 of said code, all relating to authorizing
8 the Public Service Commission to protect the consumers of distressed and failing water
9 and wastewater utilities by ordering various corrective measures up to and including
10 acquisition of a failing utility by a capable water or wastewater utility; clarifying Public
11 Service Commission jurisdiction over water and sewer utilities owned by political
12 subdivisions; establishing uniformity in the class of publications required by municipalities
13 and public service districts for the revision in rates; providing a time period for the filing of
14 and resolution of complaints filed at the Public Service Commission regarding actions of
15 public service districts and municipalities; cleaning up language regarding reference to
16 other sections of the code regarding notice requirements for municipal utilities; regarding
17 time period pertaining to the filing of appeals and the resolution of appeals for rate and
18 construction projects decided by county commissions; adding language to allow the
19 commission to order the acquisition of failing water and wastewater utilities; and allowing
20 water and/or wastewater utilities access to public funds at below market-rates and grants
21 to repair, replace, and improve acquired failing utilities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL

OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality owns a gas system, an electric system, a waterworks
2 system, a sewer system, or other public utility and a majority of not less than 60 percent of the
3 members of the governing body thereof ~~shall deem~~ determines it for the best interest of ~~such~~ the
4 municipality that ~~such~~ the utility be sold or leased, the governing body may so sell or lease ~~such~~
5 the gas system, electric system, waterworks system, sewer system, or other public utility upon
6 such terms and conditions as ~~said~~ the governing body in its discretion considers in the best
7 interest of the municipality: *Provided*, That ~~such~~ the sale or lease may be made only upon: (1)
8 The publication of notice of a hearing before the governing body of the municipality, as a Class I
9 legal advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code, in a
10 newspaper published and of general circulation in the municipality, ~~such~~ the publication to be
11 made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the
12 approval by the Public Service Commission of West Virginia. The governing body, upon the
13 approval of the sale or lease by a majority of its members of not less than 60 percent of the
14 members of the governing body, shall have full power and authority to proceed to execute or
15 effect ~~such~~ the sale or lease in accordance with the terms and conditions prescribed in the
16 ordinance approved as aforesaid, and shall have power to do any and all things necessary or
17 incident thereto: *Provided, however*, That if at any time after ~~such~~ the approval and before the
18 execution of the authority under the ordinance, any person should present to the governing body
19 an offer to buy ~~such~~ the public utility at a price which exceeds by at least five percent the sale
20 price which shall have been so approved and authorized or to lease the same upon terms which
21 the governing body, in its discretion, shall consider more advantageous to the municipality than
22 the terms of the lease which shall have been previously approved as aforesaid, the governing
23 body shall have the power to accept ~~such~~ the subsequent offer, and to make ~~such~~ the sale or
24 ~~such~~ the lease to the person making the offer, upon approval of the offer by a majority of not less

25 than 60 percent of the members of the governing body; but, if a sale shall have been approved
26 by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease
27 shall have been approved by the governing body, and the subsequent proposition shall be for a
28 sale, the governing body shall have the authority to accept the same upon approval of the offer
29 by a majority of not less than 60 percent of the members of the governing body. The person
30 making ~~such~~ the proposition shall furnish bond, with security to be approved by the governing
31 body, in a penalty of not less than 25 percent of ~~such~~ the proposed bid, conditioned to carry ~~such~~
32 the proposition into execution, if the same shall be approved by the governing body. In any case
33 where any such public utility shall be sold or leased by the governing body as hereinabove
34 provided, no part of the moneys derived from ~~such~~ the sale or lease ~~shall~~ may be applied to the
35 payment of current expenses of the municipality, but the proceeds of ~~such~~ the sale or lease shall
36 be applied in payment and discharge of any indebtedness created in respect to ~~such~~ the public
37 utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the
38 power and authority to expend all such moneys when received for the purchase or construction
39 of firefighting equipment and buildings for housing ~~such~~ the equipment, a municipal building, or
40 city hall, and the necessary land upon which to locate the same for capital investments in public
41 works projects, vehicles and equipment, and law-enforcement vehicles and equipment, for the
42 demolition of dilapidated and abandoned buildings, or for the construction of paved streets,
43 avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like
44 permanent improvements for fulfilling municipal pension and other post-employment benefit
45 obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the
46 payment of ~~such~~ the indebtedness, the surplus shall be used as aforesaid.

47 The requirements of this section shall not apply to the sale or lease of any part of the
48 properties of any such public utility determined by the governing body to be unnecessary for the
49 efficient rendering of the service of ~~such~~ the utility.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART VI. IMPOSITION OF RATES, FEES OR CHARGES.

§8-16-18. Rates, fees or charges for services rendered by works.

1 The governing body shall have plenary power and authority and it shall be its duty, by
2 ordinance, to establish and maintain just and equitable rates, fees, or charges for the use and
3 services rendered, or the improvement or protection of property, not to include highways, road
4 and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the
5 West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person
6 using the same, receiving the services thereof, or owning the property improved or protected
7 thereby, and may readjust rates, fees, or charges from time to time.

8 When two or more municipalities take joint action under the provisions of this article, the
9 rates, fees, or charges shall be established by each participating municipality, with the
10 concurrence of the other participating municipality or municipalities as to the amount of the rates,
11 fees, or charges, and ~~such~~ the rates, fees, or charges may be the same with respect to each
12 municipality, or they may be different.

13 Rates, fees, or charges heretofore or hereafter established and maintained for the
14 improvement or protection of property, not to include highways, road and drainage easements,
15 and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of
16 Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by
17 the person owning the property improved or protected thereby, shall be collectible and
18 enforceable from the time provided in any such ordinance, any provision of this or any other law
19 to the contrary notwithstanding, if, at such time, ~~such~~ the works, though not yet fully completed,
20 are nearing completion and the governing body is reasonably assured that the works will be
21 completed and placed in operation without unreasonable delay.

22 All rates, fees, or charges shall be sufficient in each year for the payment of the proper
23 and reasonable expenses of repair (including replacements), maintenance and operation of the
24 works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues

25 collected pursuant to the provisions of this section are considered the revenues of the works. No
26 such rates, fees, or charges ~~shall~~ may be established until after a public hearing at which all the
27 users of the works and owners of the property served, or to be served thereby, and others
28 interested, shall have an opportunity to be heard concerning the proposed rates, fees, or charges.

29 After introduction of the proposed ordinance fixing the rates, fees, or charges and before
30 the same is finally adopted, notice of ~~such~~ the hearing, setting forth the proposed schedule of
31 ~~such~~ the rates, fees, or charges, shall be given by publishing the same as a ~~Class I~~ Class I legal
32 advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code, and the
33 publication area for the publication shall be ~~such~~ the municipality or each such municipality, as
34 the case may be. ~~Said~~ The notice shall be published at least five days before the date fixed in
35 ~~such~~ the notice for the hearing, which hearing may be adjourned from time to time. No other or
36 further notice to parties in interest ~~shall~~ may be required.

37 After ~~such~~ the hearing the ordinance establishing rates, fees, or charges, either as
38 originally proposed or introduced, or as modified and amended, shall be adopted and put into
39 effect. A copy of the schedule of ~~such~~ the rates, fees, and charges so established shall be kept
40 on file in the office of the board having charge of ~~such~~ the works, and also in the office of the
41 governing body or bodies, and shall be open to inspection by all parties in interest.

42 The rates, fees, or charges so established for any class of users or property served shall
43 be extended to cover any additional class of users or property thereafter served which fall within
44 the same class, without the necessity of any hearing or notice. Any change or adjustment of rates,
45 fees, or charges may be made in the same manner as ~~such~~ the rates, fees, or charges were
46 originally established as provided in this section. The aggregate of the rates, fees, or charges
47 shall always be sufficient for the expenses of repair (including replacements), maintenance, and
48 operation, and for the sinking fund payments.

49 If any rate, fee, or charge so established ~~shall not be~~ is not paid within 30 days after the
50 same is due, the amount thereof, together with a penalty of 10 percent and reasonable attorney's

51 fees, may be recovered by the board in a civil action in the name of the municipality or
52 municipalities, and in the case of rates, fees, or charges due for services rendered, ~~such~~ the rates,
53 fees, or charges, if not paid when due, may, if the governing body so provide in the ordinance
54 provided for under §8-16-7 of this code, constitute a lien upon the premises served by ~~such~~ the
55 works, which lien may be foreclosed against ~~such~~ the lot, parcel of land or building so served, in
56 accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any
57 person receiving any such service to pay for the same when due, the board may discontinue ~~such~~
58 the service without notice.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER
SYSTEMS.**

**§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on
bonds; rates for services; exemption from taxation.**

1 Whenever a municipality or county commission ~~shall~~, under the provisions of this article,
2 ~~determine~~ decides to acquire, by purchase or otherwise, construct, establish, extend or equip a
3 waterworks system or an electric power system, or to construct any additions, betterments, or
4 improvements to any waterworks or electric power system, it shall cause an estimate to be made
5 of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds
6 under the provisions of this article, which ordinance or order shall set forth a brief description of
7 the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest,
8 the time and place of payment and other details in connection with the issuance of the bonds.
9 The bonds shall be in such form and shall be negotiated and sold in ~~such~~ the manner and upon
10 such terms as the governing body of ~~such~~ the municipality or county commission may, by
11 ordinance or order, specify. All the bonds and the interest thereon shall be exempt from all taxation
12 by this state, or any county, municipality or county commission, political subdivision or agency
13 thereof. Notwithstanding any other provision of this code to the contrary, the real and personal

14 property which a municipality or county has acquired and constructed according to the provisions
15 of this article, and any leasehold interest therein held by other persons, shall be ~~deemed~~
16 considered public property and shall be exempt from taxation by the state, or any county,
17 municipality or other levying body, so long as the same is owned by the municipality or county:
18 *Provided*, That with respect to electric power systems, this exemption for real and personal
19 property shall be applicable only for the real and personal property: (1) Physically situate within
20 the municipal or county boundaries of the municipality or county which acquired or constructed
21 the electric power system and there was in place prior to the effective date of the amendments to
22 this section made in the year 1992 an agreement between the municipality and the county
23 commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement
24 of the county school board, county commission, and any municipal authority within whose
25 jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything
26 contained in this statute to the contrary, this exemption shall be applicable to any leasehold or
27 similar interest held by persons other than a municipality or county only if acquired or constructed
28 with the written agreement of the county school board, county commission and any municipal
29 authority within whose jurisdiction the electric power system is or is to be physically situate:
30 *Provided, however*, That payments made to any county commission, county school board or
31 municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments
32 resulted from ad valorem property taxation. The bonds shall bear interest at a rate per annum set
33 by the municipality or county commission, payable at such times, and shall be payable as to
34 principal at such times, not exceeding 50 years from their date, and at such place or places, within
35 or without the state, as shall be prescribed in the ordinance or order providing for their issuance.
36 Unless the governing body of the municipality or county commission shall otherwise determine,
37 the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the
38 property so to be acquired, constructed, established, extended or equipped, fix minimum rates or
39 charges for water or electricity to be collected prior to the payment of all of said bonds and shall

40 pledge the revenues derived from the waterworks or electric power system for the purpose of
41 paying the bonds and interest thereon, which pledge shall definitely fix and determine the amount
42 of revenues which shall be necessary to be set apart and applied to the payment of the principal
43 of and interest upon the bonds and the proportion of the balance of the revenues, which are to be
44 set aside as a proper and adequate depreciation account, and the remainder shall be set aside
45 for the reasonable and proper maintenance and operation thereof. The rates or charges to be
46 charged for the services from the waterworks or electric power system shall be sufficient at all
47 times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the
48 principal thereof as and when the same become due, and reasonable reserves therefor, and to
49 provide for the repair, maintenance and operation of the waterworks or electric power system,
50 and to provide an adequate depreciation fund, and to make any other payments which shall be
51 required or provided for in the ordinance or order authorizing the issuance of said bonds:
52 Provided, That the notice given by the municipality or county commission for a change in rates
53 or charges to be charged for the services from the waterworks or electric power system shall be
54 provided by Class I legal advertisement in a newspaper of general circulation in its service territory
55 not less than one week prior to the public hearing of the governing body of the municipality or the
56 county commission required for the approval of the change in rates or charges.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
2 shall have plenary power and authority to make, enact, and enforce all necessary rules for the

3 repair, maintenance, operation, and management of the combined system of the municipality and
4 for the use thereof. The governing body of a municipality also has the plenary power and authority
5 to make, enact, and enforce all necessary rules and ordinances for the care and protection of any
6 such system for the health, comfort and convenience of the public, to provide a clean water
7 supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if
8 applicable, properly collecting and controlling the stormwater as is reasonably possible to do:
9 *Provided*, That no municipality may make, enact, or enforce any rule, regulation, or ordinance
10 regulating any highways, road or drainage easements, or storm water facilities constructed,
11 owned or operated by the West Virginia Division of Highways.

12 (2) A municipality has the plenary power and authority to charge the users for the use and
13 service of a combined system and to establish required deposits, rates, fees, or charges for ~~such~~
14 that purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer
15 services respectively and, if applicable, the stormwater services, or combined rates, fees or for
16 the combined water and sewer services, and, if applicable, the storm water services. ~~Such~~ The
17 deposits, rates, fees, or charges, whether separate or combined, shall be sufficient at all times to
18 pay the cost of repair, maintenance, and operation of the combined system, provide an adequate
19 reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue
20 bonds issued under this article. Deposits, rates, fees, or charges shall be established, revised,
21 and maintained by ordinance and become payable as the governing body may determine by
22 ordinance. The rates, fees, or charges shall be changed, from time to time, as necessary,
23 consistent with the provisions of this article: Provided, That the notice given by the municipality
24 for a change in rates or charges to be charged for the services from the waterworks or electric
25 power system, shall be provided by Class I legal advertisement in a newspaper of general
26 circulation in its service territory not less than one week prior to the public hearing of the governing
27 body of the municipality required for the approval of the change in rates or charges.

28 (3) All new applicants for service shall indicate to the municipality or governing body

29 whether they are an owner or tenant with respect to the service location. An entity providing
30 stormwater service shall provide a tenant a report of the stormwater fee charged for the entire
31 property and, if appropriate, that portion of the fee to be assessed to the tenant.

32 (4) The municipality or governing body, but only one of them, may collect from all new
33 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
34 applicant's specific customer class, whichever is greater, to secure the payment of water and
35 sewage service rates, fees, and charges ~~in the event~~ if they become delinquent as provided in
36 this section. In any case where a deposit is forfeited to pay service rates, fees, and charges which
37 were delinquent and the user's service is disconnected or terminated, service may not be
38 reconnected or reinstated by the municipality or governing body until another deposit equal to
39 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
40 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
41 prompt payment history, the municipality or governing body shall return the deposit to the
42 customer or credit the customer's account with interest at a rate to be set by the Public Service
43 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body
44 is not required to return the deposit until the time the tenant discontinues service with the
45 municipality governing body. Whenever any rates, fees, rentals, or charges for services or
46 facilities furnished remain unpaid for a period of 20 days after they become due, the user of the
47 services and facilities provided is delinquent and the user is liable at law until all rates, fees, and
48 charges are fully paid. The municipality or governing body may terminate water services to a
49 delinquent user of either water or sewage facilities, or both, 10 days after the water or sewage
50 services become delinquent regardless of whether the governing body utilizes the security deposit
51 to satisfy any delinquent payments: *Provided, however*, That any termination of water service
52 must comply with all rules and orders of the Public Service Commission: *Provided further*, That
53 nothing contained within the rules of the Public Service Commission ~~shall be deemed to require~~
54 any may require agents or employees of the municipality or governing body to accept payment at

55 the customer's premises in lieu of discontinuing service for a delinquent bill.

56 (b) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid
57 for a period of 20 days after they become due, the user of the services and facilities provided shall
58 be delinquent and the municipality or governing body may apply any deposit against any
59 delinquent fee. The user is liable until such time as all rates, fees, and charges are fully paid.

60 (c) All rates, fees, or charges for water service, sewer service and, if applicable,
61 stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be
62 liens of equal dignity, rank, and priority with the lien on ~~such~~ the premises of state, county, school,
63 and municipal taxes for the amount thereof upon the real property served. The municipality has
64 the plenary power and authority to enforce ~~such~~ the lien in a civil action to recover the money due
65 for services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That
66 an owner of real property may not be held liable for the delinquent rates, fees, or charges for
67 services or facilities of a tenant, nor shall any lien attach to real property for the reason of
68 delinquent rates, fees, or charges for services or facilities of a tenant of the real property, unless
69 the owner has contracted directly with the municipality to purchase ~~such~~ the services or facilities.

70 (d) Municipalities are hereby granted a deferral of filing fees or other fees and costs
71 incidental to filing an action in magistrate court for collection of the delinquent rates and charges.
72 If the municipality collects the delinquent account, plus fees and costs, from its customer or other
73 responsible party, the municipality shall pay to the magistrate court the filing fees or other fees
74 and costs which were previously deferred.

75 (e) No municipality may foreclose upon the premises served by it for delinquent rates,
76 fees, or charges for which a lien is authorized by this section except through a civil action in the
77 circuit court of the county wherein the municipality lies. In every such action, the court shall be
78 required to make a finding based upon the evidence and facts presented that the municipality has
79 exhausted all other remedies for collection of debts with respect to ~~such~~ the delinquencies prior
80 to bringing the action. In no event shall foreclosure procedures be instituted by any municipality

81 or on its behalf unless the delinquency has been in existence or continued for a period of two
82 years from the date of the first delinquency for which foreclosure is being sought.

83 (f) Notwithstanding any other provision contained in this article, a municipality which has
84 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
85 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, ~~has the authority to~~
86 may enact ordinances or regulations which allow for the issuance of orders, the right to enter
87 properties and the right to impose reasonable fines and penalties regarding correction of
88 violations of municipal stormwater ordinances or regulations within the municipal watershed
89 served by the municipal stormwater system, as long as ~~such~~ the rules, regulations, fines, or acts
90 are not contrary to any rules or orders of the Public Service Commission.

91 (g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served
92 in person to the alleged violator or by certified mail, return receipt requested. The notice shall
93 state the nature of the violation, the potential penalty, the action required to correct the violation
94 and the time limit for making the correction. Should a person, after receipt of proper notice, fail to
95 correct violation of the municipal stormwater ordinance or regulation, the municipality may correct
96 or have the corrections of the violation made and bring the party into compliance with the
97 applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting
98 the violation from the person by instituting a civil action, as long as ~~such~~ the actions are not
99 contrary to any rules or orders of the Public Service Commission.

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

1 A governing body has the power and duty, by ordinance, to establish and maintain just
2 and equitable rates, fees, or charges for the use of and the service rendered by:

3 (a) Sewerage works, to be paid by the owner of each ~~and every~~ lot, parcel of real estate
4 or building that is connected with and uses ~~such~~ the works by or through any part of the sewerage
5 system of the municipality or that in any way uses or is served by ~~such~~ the works; and

6 (b) Stormwater works, to be paid by the owner of each ~~and every~~ lot, parcel of real estate
7 or building that in any way uses or is served by ~~such~~ the stormwater works or whose property is
8 improved or protected by the stormwater works or any user of such stormwater works.

9 (c) The governing body may change and readjust ~~such~~ the rates, fees, or charges from
10 time to time. However, no rates, fees, or charges for stormwater services may be assessed
11 against highways, road and drainage easements or stormwater facilities constructed, owned or
12 operated by the West Virginia Division of Highways.

13 (d) All new applicants for service shall indicate to the governing body whether they are an
14 owner or tenant with respect to the service location. An entity providing stormwater service shall
15 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
16 that portion of the fee to be assessed to the tenant.

17 (e) The governing body may collect from all new applicants for service a deposit of \$50 or
18 two twelfths of the average annual usage of the applicant's specific customer class, whichever is
19 greater, to secure the payment of service rates, fees, and charges in the event they become
20 delinquent as provided in this section. In any case where a deposit is forfeited to pay service
21 rates, fees, and charges which were delinquent at the time of disconnection or termination of
22 service, service may not be reconnected or reinstated by the governing body until another deposit

23 equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific
24 customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt
25 payment history, the governing body shall return the deposit to the customer or credit the
26 customer's account with interest at a rate as the Public Service Commission may prescribe:
27 *Provided*, That where the customer is a tenant, the governing body is not required to return the
28 deposit until the time the tenant discontinues service with the governing body. Whenever any
29 rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20
30 days after they become due, the user of the services and facilities provided is delinquent. The
31 user is liable until all rates, fees, and charges are fully paid. The governing body may, under
32 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water
33 services to a delinquent user of sewer facilities 10 days after the sewer services become
34 delinquent regardless of whether the governing body utilizes the security deposit to satisfy any
35 delinquent payments: *Provided, however*, That nothing contained within the rules of the Public
36 Service Commission ~~shall be deemed to require any~~ may require agents or employees of the
37 governing body to accept payment at the customer's premises in lieu of discontinuing service for
38 a delinquent bill.

39 (f) ~~Such~~ The rates, fees, or charges shall be sufficient in each year for the payment of the
40 proper and reasonable expense of operation, repair, replacements and maintenance of the works
41 and for the payment of the sums herein required to be paid into the sinking fund. Revenues
42 collected pursuant to this section shall be considered the revenues of the works.

43 (g) No such rates, fees, or charges shall may be established until after a public hearing,
44 at which all the users of the works and owners of property served or to be served thereby and
45 others interested shall have an opportunity to be heard concerning the proposed rates, fees, or
46 charges.

47 (h) After introduction of the ordinance fixing ~~such~~ the rates, fees, or charges, and before
48 the same is finally enacted, notice of ~~such~~ the hearing, setting forth the proposed schedule of

49 rates, fees, or charges, shall be given by publication as a ~~Class II~~ Class I legal advertisement
50 in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code and the publication area for ~~such~~
51 the publication shall be the municipality. The first publication shall be made at least ~~ten~~ five days
52 before the date fixed in the notice for the hearing.

53 (i) After the hearing, which may be adjourned, from time to time, the ordinance establishing
54 rates, fees, or charges, either as originally introduced or as modified and amended, shall be
55 passed and put into effect. A copy of the schedule of the rates, fees, and charges shall be kept
56 on file in the office of the board having charge of the operation of ~~such~~ the works, and also in the
57 office of the clerk of the municipality, and shall be open to inspection by all parties interested. The
58 rates, fees, or charges established for any class of users or property served shall be extended to
59 cover any additional premises thereafter served which fall within the same class, without the
60 necessity of any hearing or notice.

61 (j) Any change or readjustment of ~~such~~ the rates, fees, or charges may be made in the
62 same manner as the rates, fees, or charges were originally established as hereinbefore provided:
63 *Provided*, That if a change or readjustment be made substantially pro rata, as to all classes of
64 service, no hearing or notice shall be required. The aggregate of the rates, fees, or charges shall
65 always be sufficient for the expense of operation, repair, and maintenance and for the sinking
66 fund payments.

67 (k) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the
68 premises served by ~~such~~ the works. If any service rate, fee, or charge is not paid within 20 days
69 after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable
70 attorney's fee, may be recovered by the board in a civil action in the name of the municipality. The
71 lien may be foreclosed against ~~such~~ the lot, parcel of land or building in accordance with the laws
72 relating thereto. Where both water and sewer services are furnished by any municipality to any
73 premises, the schedule of charges may be billed as a single amount or individually itemized and
74 billed for the aggregate thereof.

75 (l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall
76 remain unpaid for a period of 20 days after they become due, the property and the owner thereof,
77 as well as the user of the services and facilities shall be delinquent until such time as all rates,
78 fees, and charges are fully paid. When any payment for rates, rentals, fees or charges becomes
79 delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

80 (m) The board collecting the rates, fees, or charges shall be obligated under reasonable
81 rules to shut off and discontinue both water and sewer services to all delinquent users of water,
82 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any
83 delinquent user of any such facilities until all delinquent rates, fees, or charges for water, sewer,
84 and stormwater facilities, including reasonable interest and penalty charges, have been paid in
85 full, as long as ~~such~~ the actions are not contrary to any rules or orders of the Public Service
86 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission
87 ~~shall be deemed~~ may be considered to require any agents or employees of the municipality or
88 governing body to accept payment at the customer's premises in lieu of discontinuing service for
89 a delinquent bill.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§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 §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C)
17 of this code; or

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

23 (2) The board of a public service district with at least 4,500 customers and annual
24 combined gross revenue of \$3 million ~~or more from its separate or combined water and sewer~~
25 ~~services~~ providing water or sewer service separately or in combination may make, enact, and
26 enforce all needful rules in connection with the enactment or amendment of rates, fees, and
27 charges of the district. At a minimum, these rules shall provide for:

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

35 or mailed with, the 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 the revised rates, fees, and charges but not less than one week prior to the public hearing of the
39 board on ~~such~~ the resolution, as a Class I legal advertisement, of the proposed action, in
40 compliance with the provisions of §59-3-1 *et seq.* of this 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 summarize the current rates, fees, and
45 charges and the proposed changes to said rates, fees, and charges; the date, time, and place of
46 the public hearing on the resolution approving ~~such~~ the revised rates, fees, and charges and the
47 place or places within the district where the proposed resolution approving the revised rates, fees,
48 and charges may be inspected by the public. A reasonable number of copies of the proposed
49 resolution shall be kept at the place or places and be made available for public inspection. The
50 notice shall also advise that interested parties may appear at the public hearing before the board
51 and be heard with respect to the proposed revised rates, fees, and charges.

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

56 (E) Rates, fees, and charges approved by resolution of the board shall be forwarded in
57 writing to the county commission with the authority to appoint the members of the board. The
58 county commission shall publish notice of the proposed revised rates, fees, and charges by a
59 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.
60 Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall

61 take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole
62 discretion. If, after 45 days, the county commission has not taken final action to approve, modify,
63 or reject the proposed rates, fees, and charges, as presented to the county commission, shall be
64 effective with no further action by the board or county commission. In any event, this 45-day period
65 shall be mandatory unless extended by the official action of both the board proposing the rates,
66 fees, and charges, and the appointing county commission.

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

73 (G) The public service district, or a customer aggrieved by the changed rates or charges
74 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the
75 customers served by the public service district, whichever is fewer, when dissatisfied by the
76 approval, modification, or rejection by the county commission of the proposed rates, fees, and
77 charges under the provisions of this subdivision may file a complaint regarding the rates, fees,
78 and charges resulting from the action of, or failure to act by, the county commission in the circuit
79 court of the county in which the county commission sits: *Provided*, That any complaint or petition
80 filed hereunder shall be filed within 30 days of the county commission's final action approving,
81 modifying, or rejecting ~~such~~ the rates, fees, and charges, or the expiration of the 45-day period
82 from the receipt by the county commission, in writing, of the rates, fees, and charges approved
83 by resolution of the board, without final action by the county commission to approve, modify, or
84 reject ~~such~~ the rates, fees, and charges, and the circuit court shall resolve ~~said~~ the complaint:
85 *Provided, however*, That the rates, fees, and charges so fixed by the county commission, or those
86 adopted by the district upon which the county commission failed to act, shall remain in full force

87 and effect, until set aside, altered, or amended by the circuit court in an order to be followed in
88 the future.

89 (3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all
90 furnished to any premises, the schedule of charges may be billed as a single amount for the
91 aggregate of the charges. The board shall require all users of services and facilities furnished by
92 the district to designate on every application for service whether the applicant is a tenant or an
93 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name
94 and address of the owner or owners of the premises to be served by the district. Notwithstanding
95 the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit
96 the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
97 customer class or \$50 with the district to secure the payment of service rates, fees, and charges
98 in the event they become delinquent as provided in this section. If a district provides both water
99 and sewer service, all new applicants for service shall deposit the greater of a sum equal to two
100 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to
101 two twelfths of the average annual usage for wastewater service of the applicant's specific
102 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees, and
103 charges which were delinquent at the time of disconnection or termination of service, no
104 reconnection or reinstatement of service may be made by the district until another deposit equal
105 to the greater of a sum equal to two twelfths of the average usage for the applicant's specific
106 customer class or \$50 has been remitted to the district. After 12 months of prompt payment
107 history, the district shall return the deposit to the customer or credit the customer's account at a
108 rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a
109 tenant, the district is not required to return the deposit until the time the tenant discontinues service
110 with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished
111 remain unpaid for a period of 20 days after the same become due and payable, the user of the
112 services and facilities provided is delinquent and the user is liable at law until all rates, fees, and

113 charges are fully paid. The board may, under reasonable rules promulgated by the Public Service
114 Commission, shut off and discontinue water or gas services to all delinquent users of either water
115 or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided,*
116 *however,* That nothing contained within the rules of the Public Service Commission ~~shall be~~
117 ~~deemed~~ may be considered to require any agents or employees of the board to accept payment
118 at the customer's premises in lieu of discontinuing service for a delinquent bill.

119 (b) ~~In the event that~~ If any publicly or privately owned utility, city, incorporated town, other
120 municipal corporation or other public service district included within the district owns and operates
121 separate water facilities, sewer facilities, or stormwater facilities, and the district owns and
122 operates another kind of facility, either water or sewer, or both, as the case may be, then the
123 district and the publicly or privately owned utility, city, incorporated town or other municipal
124 corporation or other public service district shall covenant and contract with each other to shut off
125 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
126 fees and charges: *Provided,* That any contracts entered into by a public service district pursuant
127 to this section shall be submitted to the Public Service Commission for approval. Any public
128 service district which provides water and sewer service, water and stormwater service or water,
129 sewer, and stormwater service has the right to terminate water service for delinquency in payment
130 of water, sewer, or stormwater bills. Where one public service district is providing sewer service
131 and another public service district or a municipality included within the boundaries of the sewer
132 or stormwater district is providing water service and the district providing sewer or stormwater
133 service experiences a delinquency in payment, the district or the municipality included within the
134 boundaries of the sewer or stormwater district that is providing water service, upon the request of
135 the district providing sewer or stormwater service to the delinquent account, shall terminate its
136 water service to the customer having the delinquent sewer or stormwater account: *Provided,*
137 *however,* That any termination of water service must comply with all rules and orders of the Public
138 Service Commission: *Provided further,* That nothing contained within the rules of the Public

139 Service Commission shall be deemed to require any agents or employees of the public service
140 districts to accept payment at the customer's premises in lieu of discontinuing service for a
141 delinquent bill.

142 (c) Any district furnishing sewer facilities within the district may require or may, by petition
143 to the circuit court of the county in which the property is located, compel or may require the Bureau
144 for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and
145 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
146 other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
147 and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
148 dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to
149 cease the use of all other means for the collection, treatment, and disposal of sewage and waste
150 matters from the houses, dwellings, and buildings where there is gravity flow or transportation by
151 any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
152 and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,
153 dwellings, and buildings can be adequately served by the sewer facilities of the district and it is
154 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary
155 and essential for the health and welfare of the inhabitants and residents of the districts and of the
156 state. If the public service district requires the property owner to connect with the sewer facilities
157 even when sewage from dwellings may not flow to the main line by gravity and the property owner
158 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the
159 main sewer line, the public service district board shall authorize the district to pay all reasonable
160 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,
161 maintenance, and purchase of a pump or any other method approved by the Bureau for Public
162 Health. Maintenance and operation costs for the extra installation should be reflected in the users
163 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
164 of the petition by summary hearing to be held not later than 30 days after service of petition to the

165 appropriate owners, tenants, or 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 Bureau for Public Health from the house, dwelling, or building into the sewer
171 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
172 charges for services established under this article only after 30 days' notice of the availability of
173 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
174 services shall be based upon actual water consumption or the average monthly water
175 consumption based 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 30 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~~ may require any agents or employees of the public service
196 districts to accept payment at the customer's premises in lieu of discontinuing service for a
197 delinquent bill. In addition to the other remedies provided in this section, public service districts
198 are granted a deferral of filing fees or other fees and costs incidental to the bringing and
199 maintenance of an action in magistrate court for the collection of delinquent water, sewer,
200 stormwater, or gas bills. If the district collects the delinquent account, plus reasonable costs, from
201 its customer or other responsible party, the district shall pay to the magistrate the normal filing fee
202 and reasonable costs which were previously deferred. In addition, each public service district may
203 exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner
204 of real property may not be held liable for the delinquent rates or charges for services or facilities
205 of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges
206 for services or facilities of a tenant of the real property unless the owner has contracted directly
207 with the public service district to purchase the services or facilities.

208 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined
209 in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to
210 a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of
211 this code, is exempt from the provisions of this 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~~

217 (+) (h) Notwithstanding any code provision to the contrary, a public service district may
218 accept payment for all fees and charges due, in the form of a payment by a credit or check card
219 transaction or a direct withdrawal from a bank account. The public service district may set a fee
220 to be added to each transaction equal to the charge paid by the public service district for use of
221 the credit or check card or direct withdrawal by the payor. The amount of ~~such~~ the fee shall be
222 disclosed to the payor prior to the transaction and no other fees for the use of a credit or check
223 card or direct withdrawal may be imposed upon the payor and the whole of ~~such~~ the charge or
224 convenience fee shall be borne by the payor: *Provided*, That, to the extent a public service district
225 desires to accept payments in the forms described in this subsection and does not have access
226 to the equipment or receive the services necessary to do so, the public service district shall first
227 obtain three bids for services and equipment necessary to affect the forms of transactions
228 described in this subsection and use the lowest qualified bid received. Acceptance of a credit or
229 check card or direct withdrawal as a form of payment shall comport with the rules and
230 requirements set forth by the credit or check card provider or banking institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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,
5 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its
6 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping
7 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation
8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,

9 whether directly or through a distributing utility; supplying water, gas, or electricity by
10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the
11 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision
12 intends to provide sewer service by an innovative, alternative method, as defined by the federal
13 Environmental Protection Agency, the innovative, alternative method is a public utility function
14 and subject to the jurisdiction of the Public Service Commission regardless of the number of
15 customers served by the innovative, alternative method; any public service district created under
16 the provisions of §16-13A-1, *et seq.* 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 25 residential
20 customers are exempt from the jurisdiction of the commission with regard to the provisions of
21 ~~such~~ the residential service: *Provided further*, That upon request of any of the customers of ~~such~~
22 the natural gas producers, the commission may, upon good cause being shown, exercise such
23 authority as the commission may deem appropriate over the operation, rates, and charges of ~~such~~
24 the 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 4,500 customers and
27 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
28 is limited to:

29 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

30 (2) Regulation of measurements, practices, acts, or services, as granted and described in
31 §24-2-7 of this code;

32 (3) Regulation of a system of accounts to be kept by a public utility that is a political
33 subdivision of the state, as granted and described in §24-2-8 of this code;

34 (4) Submission of information to the commission regarding rates, tolls, charges, or

35 practices, as granted and described in §24-2-9 of this code;

36 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
37 in any proceeding before or conducted by the commission, as granted and described in §24-2-10
38 of this code; and

39 (6) Investigation and resolution of disputes between a political subdivision of the state
40 providing wholesale water and/or wastewater treatment or other services, whether by contract or
41 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
42 charges, service areas and contested utility combinations: *Provided*, That any request for an
43 investigation related to such a dispute that is based on the act or omission of the political
44 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
45 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
46 of the dispute may be tolled by the commission until the necessary information showing the basis
47 of the rates, fees, and charges or other information as the commission considers necessary is
48 filed: *Provided, however*, That the disputed rates, fees, and charges so fixed by the political
49 subdivision providing separate or combined water and/or sewer services shall remain in full force
50 and effect until set aside, altered or, amended by the commission in an order to be followed in the
51 future.

52 (7) Customers of water and sewer utilities operated by a political subdivision of the state
53 may bring formal or informal complaints regarding the commission's exercise of the powers
54 enumerated in this section and the commission shall resolve these complaints: *Provided, That*
55 any formal complaint filed under this section that is based on the act or omission of the political
56 subdivision shall be filed within 30 days of the act or omission complained of, and the commission
57 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
58 dispute may be tolled by the commission until the necessary information showing the basis of the
59 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the
60 commission finds any regulations, measurements, practices, acts, or service to be unjust,

61 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
62 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
63 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
64 measurement, regulations, acts, practices, or services, to be furnished, imposed, observed, and
65 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
66 inadequate, or otherwise in violation of this chapter, and shall make such other order respecting
67 the same as shall be just and reasonable: *Provided further*, That if the matter complained of
68 would affect rates, fees, and charges so fixed by the political subdivision providing separate or
69 combined water and/or sewer services, the rates, fees, or charges shall remain in full force and
70 effect until set aside, altered, or amended by the commission in an order to be followed in the
71 future.

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

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

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

81 (2) ~~Said~~ The area can be provided with utility service by a utility which operates in a state
82 adjoining West Virginia;

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

85 (4) The number of customers to be served is not substantial. The rates the out-of-state
86 utility charges West Virginia customers shall be the same as the rate the utility is duly authorized

87 to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke
88 its waiver of jurisdiction for good cause.

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

90 (1) An owner or operator of an electric generating facility located or to be located in this
91 state that has been designated as an exempt wholesale generator under applicable federal law,
92 or will be so designated prior to commercial operation of the facility, and for which such facility
93 the owner or operator holds a certificate of public convenience and necessity issued by the
94 commission on or before July 1, 2003, ~~shall be~~ is subject to §24-2-11c(e) through §24-2-11c(j) of
95 this code as if the certificate of public convenience and necessity for ~~such~~ the facility were a siting
96 certificate issued under §24-2-11c of this code and ~~shall~~ is not otherwise ~~be~~ subject to the
97 jurisdiction of the commission or to the provisions of this chapter with respect to ~~such~~ the facility
98 except for the making or constructing of a material modification thereof as provided in §24-2-
99 1(d)(5) of this code.

100 (2) Any person, corporation, or other entity that intends to construct or construct and
101 operate an electric generating facility to be located in this state that has been designated as an
102 exempt wholesale generator under applicable federal law, or will be so designated prior to
103 commercial operation of the facility, and for which facility the owner or operator does not hold a
104 certificate of public convenience and necessity issued by the commission on or before July 1,
105 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
106 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
107 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
108 operator of an electric generating facility as is described in this subdivision for which a siting
109 certificate has been issued by the commission ~~shall be~~ is subject to §24-2-11c(e) through §24-2-
110 11c(j) of this code and ~~shall~~ is not otherwise ~~be~~ subject to the jurisdiction of the commission or to
111 the provisions of this chapter with respect to ~~such~~ the facility except for the making or constructing
112 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

113 (3) An owner or operator of an electric generating facility located in this state that had not
114 been designated as an exempt wholesale generator under applicable federal law prior to
115 commercial operation of the facility that generates electric energy solely for sale at retail outside
116 this state or solely for sale at wholesale in accordance with any applicable federal law that
117 preempts state law or solely for both ~~such~~ sales at retail and ~~such~~ sales at wholesale and that
118 had been constructed and had engaged in commercial operation on or before July 1, 2003, ~~shall~~
119 is not ~~be~~ subject to the jurisdiction of the commission or to the provisions of this chapter with
120 respect to ~~such~~ the facility, regardless of whether ~~such~~ the facility subsequent to its construction
121 has been or will be designated as an exempt wholesale generator under applicable federal law:
122 *Provided, That ~~such~~ the owner or operator shall be is subject to §24-2-1(d)(5) of this code if a*
123 material modification of ~~such~~ the facility is made or constructed.

124 (4) Any person, corporation, or other entity that intends to construct or construct and
125 operate an electric generating facility to be located in this state that has not been or will not be
126 designated as an exempt wholesale generator under applicable federal law prior to commercial
127 operation of the facility that will generate electric energy solely for sale at retail outside this state
128 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
129 law or solely for both ~~such~~ sales at retail and ~~such~~ sales at wholesale and that had not been
130 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
131 prior to commencement of construction of the facility, obtain a siting certificate from the
132 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
133 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
134 operator of an electric generating facility as is described in this subdivision for which a siting
135 certificate has been issued by the commission ~~shall be~~ is subject to §24-2-11c(e) through §24-2-
136 11c(j) of this code and ~~shall~~ is not otherwise ~~be~~ subject to the jurisdiction of the commission or to
137 the provisions of this chapter with respect to ~~such~~ the facility except for the making or constructing
138 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

139 (5) An owner or operator of an electric generating facility described in this subsection shall,
140 before making or constructing a material modification of the facility that is not within the terms of
141 any certificate of public convenience and necessity or siting certificate previously issued for the
142 facility or an earlier material modification thereof, obtain a siting certificate for the modification
143 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
144 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
145 this code and, except for the provisions of §24-2-11c of this code, ~~shall~~ is not otherwise be subject
146 to the jurisdiction of the commission or to the provisions of this chapter with respect to ~~such~~ the
147 modification.

148 (6) The commission shall consider an application for a certificate of public convenience
149 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
150 described in this subsection or to make or construct a material modification of ~~such~~ the electric
151 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
152 application for the certificate of public convenience and necessity was filed with the commission
153 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

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

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

161 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
162 application provided using Internet protocol, or any successor protocol, that enables an end user
163 to send or receive a communication in Internet protocol format, or any successor format,
164 regardless of whether the communication is voice, data, or video.

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

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

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

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

172 (f) Notwithstanding any other provisions of this article, the commission ~~shall have~~ has
173 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
174 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
175 ownership.

176 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
177 systems are most fairly and effectively regulated by the local governing body. Therefore,
178 notwithstanding any other provisions of this article, the commission ~~shall have~~ has jurisdiction
179 over the setting or adjustment of rates, fees, and charges of municipal power systems. Further,
180 the jurisdiction of the Public Service Commission over municipal power systems is limited to that
181 granted specifically in this code.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 (a) After June 30, 1981, no public utility subject to this chapter, except for water and/or
2 sewer utilities that are political subdivisions of the state providing separate or combined services
3 and having at least 4,500 customers and annual gross revenue of \$3 million or more from its
4 separate or combined services, shall change, suspend, or annul any rate, joint rate, charge,
5 rental, or classification except after 30 days' notice to the commission and the public, which notice
6 shall plainly state the changes proposed to be made in the schedule then in force and the time
7 when the changed rates or charges shall go into effect; but the commission may enter an order
8 suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by

9 printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and
10 kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good
11 cause shown, allow changes upon less time than the notice herein specified, or may modify the
12 requirements of this section in respect to publishing, posting and filing of tariffs, either by particular
13 instructions or by general order.

14 (b) Whenever there ~~shall be~~ is filed with the commission any schedule stating a change in
15 the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge
16 or joint classification or any new individual or joint regulation or practice affecting any rate or
17 charge, the commission may, either upon complaint or upon its own initiative without complaint,
18 enter upon a hearing concerning the propriety of ~~such~~ the rate, charge, classification, regulation,
19 or practice; and, if the commission so orders, it may proceed without answer or other form of
20 pleading by the interested parties, but upon reasonable notice, and, pending ~~such~~ the hearing
21 and the decisions thereon, the commission, upon filing with ~~such~~ the schedule and delivering to
22 the public utility affected thereby a statement in writing of its reasons for ~~such~~ the suspension,
23 may suspend the operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge,
24 classification, regulation or practice, but not for a longer period than 270 days beyond the time
25 when ~~such~~ the rate, charge, classification, regulation, or practice would otherwise go into effect;
26 and after full hearing, whether completed before or after the rate, charge, classification, regulation,
27 or practice goes into effect, the commission may make ~~such~~ the order in reference to ~~such~~ the
28 rate, charge, classification, regulation, or practice as would be proper in a proceeding initiated
29 after the rate, charge, classification, regulation, or practice had become effective: *Provided*, That
30 in the case of a public utility having 2,500 customers or less and which is not a political subdivision
31 and which is not principally owned by any other public utility corporation or public utility holding
32 corporation, the commission may suspend the operation of ~~such~~ the schedule and defer the use
33 of ~~such~~ the rate, charge, classification, regulation or practice, but not for a longer period than 120
34 days beyond the time when ~~such~~ the rate, charge, classification, regulation, or practice would

35 otherwise go into effect; and in the case of a public utility having more than 2,500 customers, but
36 not more than 5,000 customers, and which is not a political subdivision and which is not principally
37 owned by any other public utility corporation or public utility holding corporation, the commission
38 may suspend the operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge,
39 classification, regulation, or practice, but not for a longer period than 150 days beyond the time
40 when ~~such~~ the rate, charge, classification, regulation, or practice would otherwise go into effect;
41 and in the case of a public utility having more than 5,000 customers, but not more than 7,500
42 customers, and which is not a political subdivision and which is not principally owned by any other
43 public utility corporation or public utility holding corporation, the commission may suspend the
44 operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge, classification,
45 regulation or practice, but not for a longer period than 180 days beyond the time when ~~such~~ the
46 rate, charge, classification, regulation, or practice would otherwise go into effect; and after full
47 hearing, whether completed before or after the rate, charge, classification, regulation, or practice
48 goes into effect, the commission may make ~~such~~ the order in reference to ~~such~~ the rate, charge,
49 classification, regulation, or practice as would be proper in a proceeding initiated after the rate,
50 charge, classification, regulation, or practice had become effective: *Provided, however,* That, in
51 the case of rates established or proposed that increase by less than 25 percent of the gross
52 revenue of the regulated public service district, there shall be no suspension period in the case of
53 rates established by a public service district pursuant to §16-13A-9 of this code and the proposed
54 rates of public service districts shall go into effect upon the date of filing with the commission,
55 subject to refund modification at the conclusion of the commission proceeding. In the case of rates
56 established or proposed that increase by more than 25 percent of the gross revenue of the public
57 service district, the district may apply for, and the commission may grant, a waiver of the
58 suspension period and allow rates to be effective upon the date of filing with the commission.
59 Notwithstanding the provisions of subsection (e) of this section, the public service district shall

60 provide notice by Class I legal advertisement in a newspaper of general circulation in its service
61 territory of the percentage increase in rates at least 14 days prior to the effective date of the
62 increased rates. Any refund determined to be ~~determined to be~~ due and owing as a result of any
63 difference between any final rates approved by the commission and the rates placed into effect
64 subject to refund shall be refunded by the public service district as a credit against each
65 customer's account for a period of up to six months after entry of the commission's final order.
66 Any remaining balance which is not fully credited by credit within six months after entry of the
67 commission's final order shall be directly refunded to the customer by check: *Provided further,*
68 That if any such hearing and decision thereon is not concluded within the periods of suspension,
69 as above stated, ~~such~~ the rate, charge, classification, regulation, or practice shall go into effect at
70 the end of ~~such~~ the period not subject to refund: *And provided further,* That if any such rate,
71 charge, classification, regulation, or practice goes into effect because of the failure of the
72 commission to reach a decision, the same shall not preclude the commission from rendering a
73 decision with respect thereto which would disapprove, reduce, or modify any such proposed rate,
74 charge, classification, regulation, or practice, in whole or in part, but any such disapproval,
75 reduction or modification shall not be deemed to require a refund to the customers of ~~such~~ the
76 utility as to any rate, charge, classification, regulation, or practice so disapproved, reduced or
77 modified. The fact of any rate, charge, classification, regulation, or practice going into effect by
78 reason of the commission's failure to act thereon ~~shall~~ does not affect the commission's power
79 and authority to subsequently act with respect to any such application or change in any rate,
80 charge, classification, regulation, or practice. Any rate, charge, classification, regulation, or
81 practice which shall be approved, disapproved, modified, or changed, in whole or in part, by
82 decision of the commission shall remain in effect as so approved, disapproved, modified or
83 changed during the period or pendency of any subsequent hearing thereon or appeal therefrom.
84 Orders of the commission affecting rates, charges, classifications, regulations, or practices which
85 have gone into effect automatically at the end of the of the suspension period are prospective in

86 effect.

87 (c) At any hearing involving a rate sought to be increased or involving the change of any
88 rate, charge, classification, regulation, or practice, the burden of proof to show the justness and
89 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
90 charge, classification, regulation, or practice shall be upon the public utility making application for
91 ~~such~~ the change. The commission shall, whenever practicable and within budgetary constraints,
92 conduct one or more public hearings within the area served by the public utility making application
93 for ~~such~~ the increase or change, for the purpose of obtaining comments and evidence on the
94 matter from local ratepayers.

95 (d) Each public utility subject to the provisions of this section shall be required to establish,
96 in a written report which shall be incorporated into each general rate case application, that it has
97 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
98 management, rate design, and conservation as reported by the commission under §24-1-1(c) of
99 this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain
100 as to each concept considered the reasons for adoption or rejection of each. When in any case
101 pending before the commission all evidence shall have been taken and the hearing completed,
102 the commission shall render a decision in ~~such~~ the case. The failure of the commission to render
103 a decision with respect to any such proposed change in any such rate, charge, classification,
104 regulation, or practice within the various time periods specified in this section after the application
105 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

106 (e) Other than as provided in subsection (b) of this section relating to public service
107 districts, where more than 20 members of the public are affected by a proposed change in rates,
108 it shall be a sufficient notice to the public within the meaning of this section if ~~such~~ the notice is
109 published as a Class II legal advertisement in compliance with ~~the provisions of §59-3-1 et seq.~~
110 of this code and the publication area for ~~such~~ the publication shall be the community where the
111 majority of the resident members of the public affected by ~~such~~ the change reside or, in case of

112 nonresidents, have their principal place of business within this state.

113 (f) The commission may order rates into effect subject to refund, plus interest in the
114 discretion of the commission, in cases in which the commission determines that a temporary or
115 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
116 upon which these rates are based are subject to modification by the commission or another
117 regulatory commission and to refund to the public utility. In ~~such~~ that case the commission may
118 require ~~such~~ the public utility to enter into a bond in an amount deemed by the commission to be
119 reasonable and conditioned upon the refund to the persons or parties entitled thereto of the
120 amount of the excess if ~~such~~ the rates so put into effect are subsequently determined to be higher
121 than those finally fixed for ~~such~~ the utility.

122 (g) No utility regulated under the provisions of this section may make application for a
123 general rate increase while another general rate application is pending before the commission
124 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
125 provisions of this subsection shall not be construed so as to prohibit any such rate application
126 from being made while a previous application which has been finally acted upon by the
127 commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§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 4,500 customers and annual gross
3 combined revenues of \$3 million ~~dollars~~ or more may not begin the construction of any plant,
4 equipment, property or facility for furnishing to the public any of the services enumerated in section
5 one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any
6 municipality or other governmental agency, except ordinary extensions of existing systems in the
7 usual course of business, unless and until it shall obtain from the Public Service Commission a
8 certificate of public convenience and necessity authorizing ~~such~~ the construction franchise,
9 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 30 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 30 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 59 of this code. The publication area shall be the proposed area of operation.

18 (c) Any public utility, person or corporation subject to the provisions of this section other
19 than a political subdivision of the state providing water and/or sewer services having at least 4,500
20 customers and combined annual gross revenue of \$3 million ~~dollars~~ or more shall give the
21 commission at least 30 days' notice of the filing of any application for a certificate of public
22 convenience and necessity under this section: *Provided*, That the commission may modify or
23 waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects
24 approved by the Infrastructure and Jobs Development Council.

25 (d) The commission shall render its final decision on any application filed under the
26 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application
27 and within 90 days after final submission of any such application for decision following a hearing:
28 *Provided*, That if the application is for authority to construct a water and sewer project and the
29 projected total cost is less than \$10 million, the commission shall render its final decision within
30 225 days of the filing of the application.

31 (e) The commission shall render its final decision on any application filed under the
32 provisions of this section that has received the approval of the Infrastructure and Jobs
33 Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the
34 application: *Provided*, That if a substantial protest is received within 30 days after the notice is
35 provided pursuant to subsection (b) of this section, the commission shall render its final decision

36 within 270 days or 225 days of the filing of the application, whichever is applicable as determined
37 in subsection (d) of this section.

38 (f) If the projected total cost of a project which is the subject of an application filed pursuant
39 to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render
40 its final decision on any such application filed under the provisions of this section or §24-2-11a of
41 this code within 400 days of the filing of the application and within 90 days after final submission
42 of any such application for decision after a hearing.

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

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

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

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

53 (2) Natural gas produced by the person.

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

59 (k) Any public utility, person, or corporation proposing any electric power project that
60 requires a certificate under this section is not required to obtain ~~such~~ the certificate before applying
61 for or obtaining any franchise, license, or permit from any municipality or other governmental

62 agency.

63 (l) Water or sewer utilities that are political subdivisions of the state and having at least
64 4,500 customers and combined gross revenues of \$3 million ~~dollars~~ or more desiring to pursue
65 construction projects that are not in the ordinary course of business shall provide adequate prior
66 public notice of the contemplated construction and proposed changes to rates, fees, and charges,
67 if any, as a result of ~~such~~ the construction to both current customers and those persons who will
68 be affected by the proposed construction as follows:

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

76 (2) Adequate prior public notice of the contemplated construction by causing to be
77 published as a Class I legal advertisement of the proposed public hearing on the ordinance or
78 resolution approving the proposed construction and proposed changes to rates, fees, and
79 charges, if any, in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code. The publication
80 area for publication shall be all territory served by the political subdivision. If the political
81 subdivision provides service in more than one county, publication shall be made in a newspaper
82 of general circulation in each county that the political subdivision provides service.

83 (3) The public notice of the proposed construction shall state the scope of the proposed
84 construction; a summary of the current rates, fees, and charges, and proposed changes to said
85 rates, fees, and charges, if any; the date, time and place of the public hearing on the ordinance
86 or resolution approving the proposed construction and proposed changes to rates, fees, and
87 charges, if any; and the place or places within the political subdivision where the ordinance or

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

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

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

110 (6) Rates, fees and charges approved by an affirmative vote of the public service district
111 board shall be forwarded in writing to the county commission with the authority to appoint the
112 members of the public service board of the public service district. The county commission shall,
113 within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify,

114 or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county
115 commission has not taken final action to approve, modify, or reject the proposed rates, fees, and
116 charges, the proposed rates, fees, and charges, as presented to the county commission, shall be
117 effective with no further action by the board or county commission. In any event this 45-day period
118 may be extended by official action of both the board proposing the rates, fees, and charges and
119 the appointing county commission.

120 (7) The county commission shall provide notice to the public by a Class I legal
121 advertisement of the proposed action, in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this
122 code, of the meeting where it shall consider the proposed increases in rates, fees, and charges
123 no later than one week prior to the meeting date.

124 (8) A public service district, or a customer aggrieved by the changed rates or charges who
125 presents to the circuit court a petition signed by ~~at least 750 or~~ 25 percent of the customers served
126 by the public service district, ~~whichever is fewer,~~ when dissatisfied by the approval, modification,
127 or rejection by the county commission of the proposed rates, fees, and charges under the
128 provisions of this subsection may file a complaint regarding the rates, fees, and charges resulting
129 from the action of, or failure to act by, the county commission in the circuit court of the county in
130 which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall
131 be filed within 30 days of the county commission's final action approving, modifying or rejecting
132 ~~such the~~ rates, fees, and charges, or the expiration of the 45-day period from the receipt by the
133 county commission, in writing, of the rates, fees, and charges approved by resolution of the board,
134 without final action by the county commission to approve, modify or reject ~~such the~~ rates, fees,
135 and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates,
136 fees, and charges so fixed by the county commission, or those adopted by the district upon which
137 the county commission failed to act, shall remain in full force and effect, until set aside, altered,
138 or amended by the circuit court in an order to be followed in the future.

ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND

**INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND
WASTEWATER UTILITIES.**

§24-2H-1. Short title.

1 This article shall be known and cited as the Distressed and Failing Utilities Improvement
2 Act.

§24-2H-2. Legislative findings.

1 (a) The provision of safe drinking water and the collection and treatment of wastewater
2 has resulted in a drastic reduction in the incidence of disease, increase in life expectancy, and
3 other major public health advancements.

4 (b) Development of water and wastewater infrastructure has advanced economic
5 development through increased production and productivity within West Virginia's economic
6 sectors and commercial expansion geographically throughout the state.

7 (c) A number of water and wastewater utilities face substantial capital investment needs
8 to maintain and replace aging infrastructure with limited financial resources.

9 (d) For some water and wastewater utilities, adequately addressing infrastructure needs
10 may adversely affect their ability to maintain reasonable rates and ability to borrow funds to
11 address such needs.

12 (e) Many water and wastewater utilities have experienced a loss of customers resulting
13 from decline in populations served which has created an additional rate burden on the remaining
14 population.

15 (f) Failure to timely address infrastructure needs has resulted in the inability of water and
16 wastewater utilities to adequately serve customers and maintain regulatory compliance, thereby
17 threatening human health and hindering economic growth.

18 (g) West Virginia needs a comprehensive plan to confront the financial, organizational,
19 and regulatory challenges faced by water and wastewater utilities in the state to ensure that all

20 citizens of West Virginia have access to safe drinking water and adequate and safe wastewater
21 treatment.

§24-2H-3. Definitions.

1 A “distressed utility” is a water or wastewater utility, that for financial, operational, or
2 managerial reasons:

3 (1) (A) Is in continual violation of statutory or regulatory standards of the Bureau for Public
4 Health, the Department of Environmental Protection, or the commission, which affect the water
5 quality, safety, adequacy, efficiency, or reasonableness of the service provided by the water or
6 wastewater utility; and

7 (B) Fails to comply within a reasonable period of time with any final, nonappealable order
8 of the Department of Environmental Protection, Bureau for Public Health, or the commission
9 concerning the safety, adequacy, efficiency, or reasonableness of service, including, but not
10 limited to, the availability of water, the potability of water, the palatability of water, or the provision
11 of water at adequate volume and pressure and the collection and treatment of wastewater;

12 (2) Is no longer able to provide adequate, efficient, safe, and reasonable utility services;
13 or

14 (3) Fails to timely pay some or all of its financial obligations, including, but not limited to,
15 its federal and state tax obligations and its bond payments to the West Virginia Water
16 Development Authority, the United States Department of Agriculture (USDA), or other
17 bondholders; fails to maintain its debt service reserve; or fails to submit an audit as required by
18 its bond or loan documents or state law.

19 A “failing water or wastewater utility” means a public utility that:

20 (1) Meets the definition of a distressed water or wastewater utility; and either

21 (2) Has not, after a reasonable time period, been stabilized and improved by corrective
22 measures put in place under §24-2H-4 of this code; or

23 (3) Has had the requirements of §24-2H-4 of this code suspended for good cause shown

24 by an order of the commission.

25 A “capable proximate water or wastewater utility” means a public utility which regularly
26 provides adequate, safe, and reasonable service of the same type as the distressed utility and is
27 situated close enough to the facilities of a distressed utility that operational management is
28 reasonable, financially viable, and nonadverse to the interests of the current customers of the
29 nondistressed utility.

§24-2H-4. Preparation of list of potentially unstable water and wastewater utilities.

1 Annually, the commission shall prepare a list of water and wastewater utilities that appear
2 to be financially unstable by reviewing annual reports, rate case filings, and other financial data
3 available to it. Commission staff shall contact each utility placed on the list and provide advice
4 and assistance in resolving any financial instability or managerial or operational issues that are
5 contributing to the utility’s financial instability.

§24-2H-5. Determination of whether a utility qualifies as a “distressed utility”, “failing utility,” or a “capable proximate utility”.

1 (a) In determining whether a utility is distressed or failing, the commission shall consider
2 the following factors:

3 (1) The financial, managerial, and technical ability of the utility;

4 (2) The level of expenditures necessary to make improvements to the water or wastewater
5 utility to assure compliance with applicable statutory and regulatory standards concerning the
6 adequacy, efficiency, safety, or reasonableness of utility service and the impact of those
7 expenditures on customer rates;

8 (3) The opinion and advice, if any, of the Department of Environmental Protection and the
9 Bureau for Public Health as to steps that may be necessary to assure compliance with applicable
10 statutory or regulatory standards concerning the adequacy, efficiency, safety, or reasonableness
11 of utility service;

12 (4) The status of the utility’s bond payments and other financial obligations;

13 (5) The status and result of any corrective measures previously put into place under §24-
14 2H-4 of this code; and

15 (6) Any other relevant matter.

16 (b) In determining whether a utility is a capable proximate utility, the commission shall
17 consider the following factors:

18 (1) The financial, managerial, and technical ability of all proximate public utilities providing
19 the same type of service;

20 (2) Expansion of the franchise or operating area of the acquiring utility to include the
21 service area of the distressed utility;

22 (3) The financial, managerial, operational, and rate demands that may result from the
23 current proceeding and the cumulative impact of other demands where the utility has been
24 identified as a capable proximate utility; and

25 (4) Any other relevant matter.

§24-2H-6. Notice to distressed or failing utility and formal proceeding.

1 A proceeding under this article may be initiated by the commission on its own motion, or
2 by the staff of the commission, or any other person or entity having a legal interest in the financial,
3 managerial, or operational condition of the utility, by filing a petition with the commission. In any
4 such petition, the utility shall be named as the respondent. The commission shall include as
5 additional parties any capable proximate public and private utilities that may be able to acquire
6 the utility.

7 The commission shall hold an evidentiary and public hearing(s) in the utility's service area.
8 The commission shall give notice of the time, place, and subject matter of the hearing as follows:

9 (a) A Class I legal publication in a qualified newspaper pursuant to 59-3-2(a) of this code
10 in the county or counties where the utility is located to take place no more than ten days before
11 the date of the hearing.

12 (b) Issuance of a press release.

- 13 (c) Written notice by certified mail or registered mail to:
14 (1) The utility;
15 (2) The Consumer Advocate Division;
16 (3) Capable proximate public or private utilities that were made parties to the proceeding;
17 and
18 (4) The county commission if the utility is a public service district; or
19 (5) The municipality if the utility is owned and operated by the municipality.
20 (d) The utility shall give notice to its customers of the time, place, and subject matter of
21 the hearing either as a bill insert or printed on its monthly bill statement as ordered by the
22 commission.

23 The public hearing shall be conducted to receive public comments, including, but not
24 limited to, comments regarding possible options available to bring the distressed or failing utility
25 into compliance with appropriate statutory and regulatory standards concerning actual or
26 imminent public health problems or unreasonable quality and reliability service standards. At the
27 evidentiary hearing, the commission shall receive evidence to determine if the utility is a
28 distressed or failing utility and whether a capable proximate utility should acquire the utility. If
29 there is more than one capable proximate utility, then sufficient evidence should be presented to
30 allow the commission to determine the appropriate capable proximate utility to acquire the
31 distressed or failing utility.

§24-2H-7. Commission order for acquisition of failing utility; list of distressed and failing utilities to Legislature.

1 (a) Following the evidentiary hearing, the commission shall enter a final order stating
2 whether the utility is a distressed or failing utility and identifying the capable proximate utilities, if
3 any, as defined in §24-2H-3 of this code. If the commission determines that a utility is a distressed
4 utility, then the commission may make an order consistent with subsection (b) of this section. If
5 the commission determines that the utility is a failing utility, then the commission may order the

6 acquisition of the failing utility by the most suitable capable proximate water or wastewater utility,
7 if there are more than one.

8 (b) Before the commission may designate a water or wastewater utility as failing and order
9 acquisition by a capable proximate utility, it shall determine whether there are any alternatives to
10 an ordered acquisition. If the commission determines that an alternative to designating a utility
11 as failing and ordering an acquisition is reasonable and cost effective, it may order the distressed
12 utility and, if applicable, the alternative capable proximate utility, to implement the alternative.
13 Commission staff shall work with the utility to implement the alternative, as necessary.
14 Alternatives that the commission may consider include, but are not limited to, the following:

15 (1) Reorganization of the utility under new management or a new board, subject to the
16 approval of the applicable county commission(s) or municipal government;

17 (2) Operation of the distressed utility by another public utility or management or service
18 company under a mutually agreed arms-length contract;

19 (3) Appointment of a receiver to assure the provision of adequate, efficient, safe, and
20 reasonable service and facilities to the public pursuant to §24-2-7(b) of this code;

21 (4) Merger of the water or wastewater utility with one or more other public utilities, subject
22 to the approval of the applicable county commission(s) or municipal government;

23 (5) The acquisition of the distressed utility through a mutual agreement made at arms-
24 length; and

25 (6) Any viable alternative other than an ordered acquisition by a capable proximate utility.

26 (c) The commission shall provide a list of utilities designated by a final order of the
27 commission as a distressed or failing utility to the Legislature as part of its annual Management
28 Summary Report beginning in the 2021 reporting period and annually thereafter. The commission
29 shall provide the same list to the Water Development Authority and the Infrastructure and Jobs
30 Development Council on or before January 31 of each year beginning in 2021.

§24-2H-8. Commission approval of operating agreement, acquisition price; rates for

distressed and failing utilities; improvement plan; debt obligations; cost recovery.

1 (a) After an order has been entered pursuant to §24-2H-4 of this code, the distressed utility
2 and acquiring utility shall file a petition with the commission under §24-2-12 of this code to approve
3 the necessary operating agreement if such alternative is directed by the commission. After an
4 order has been entered pursuant to §24-2H-7 of this code, the failing utility and acquiring utility
5 shall file a petition with the commission under §24-2-12 of this code, to approve the purchase
6 price of the acquisition. Where the parties are unable to agree on an acquisition price, the filing
7 may request that an evidentiary hearing be held so that the commission may determine the
8 acquisition price and any other issues related to the acquisition. The acquisition price must, at a
9 minimum, satisfy all outstanding loans, tax obligations, required grant repayment, liens, and
10 indebtedness owed by the failing utility or the acquiring utility must agree to assume the
11 indebtedness if legally permitted. The acquiring utility shall consult with the lenders or lienholders
12 regarding payment in full or the assumption, to the extent legally permissible, of any outstanding
13 obligations of the failing utility.

14 (b) The parties to an acquisition may propose to the commission other methods of
15 determining the acquisition price.

16 (c) As part of the proceeding, the acquiring utility may propose to the commission that it
17 be permitted for a reasonable period of time after the date of acquisition, to charge and collect
18 rates from the customers of the failing utility pursuant to a separate tariff which may be higher or
19 lower than the existing tariff of the distressed or failing utility or may allow a surcharge on both
20 the acquired and existing customers. A separate tariff or rate filing must be made by the acquiring
21 utility before the commission will consider any increase in rates or allow a surcharge to be placed
22 on the acquiring utility's acquired or existing ratepayers.

23 (d) As part of this proceeding, the acquiring utility shall submit to the commission for
24 approval a plan, including a timetable for bringing the failing utility into compliance with applicable
25 statutory and regulatory standards, including, but not limited to, plans for regionalization. The

26 acquiring utility shall have previously obtained the approval of the plan from the Department of
27 Environmental Protection and the Bureau for Public Health, as applicable. The Department of
28 Environmental Protection and the Bureau for Public Health are directed to use their full discretion
29 in working toward long-term solutions that will support compliance. The failing utility shall
30 cooperate with the acquiring utility in negotiating agreements with state and federal agencies,
31 including, but not limited to, negotiation of hold harmless agreements, consent orders, or
32 enforcement moratoria during any period of remediation. In addition, the failing utility shall
33 cooperate with the acquiring utility in obtaining the consent of the failing utility's and the acquiring
34 utility's bondholder(s) to the acquisition. The acquiring utility must present to the commission as
35 part of its financing plan, documentation on how the failing utility's indebtedness will be paid or
36 assumed.

37 (e) A nonprofit acquiring public utility may seek grant funding from the Distressed Utilities
38 Account established pursuant to §31-15A-9(i) of this code to repair, maintain, and replace the
39 distressed water and wastewater utilities facilities as needed. A for-profit acquiring public utility
40 may seek below-market loans pursuant to §31-15A-9(f) of this code to assist in repairing and
41 replacing failing water and wastewater utilities or its facilities as needed. The reasonably and
42 prudently incurred costs of the acquiring utility shall be recoverable in rates as provided in §24-
43 2H-9 of this code.

44 (f) If the distressed or failing utility is a public service district, then the commission shall
45 make a recommendation to the respective county commission(s) with regard to the acquisition of
46 distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing
47 utility is a municipal corporation, then the commission shall make a recommendation to the
48 respective municipal council with regard to the acquisition of distressed or failing utilities as
49 provided in §8-12-17 of this code.

50 The capable proximate utility may propose one or more of the cost recovery methods or
51 incentives set forth in section nine of this article as part of its petition for approval from the

52 commission.

§24-2H-9. Recovery of costs for acquisition, operation, repairs, and improvements to distressed or failing utility facilities.

1 The commission may approve an appropriate and reasonable cost recovery mechanism
2 to allow the capable proximate utility to recover its acquisition costs and projected cost of service
3 of operating, maintaining, and improving the facilities of the failing water or wastewater utility or
4 its net costs incurred for operating, maintaining, and improving the distressed utility under an
5 operating agreement. The cost recovery mechanism may include a surcharge or surcharges on
6 both acquired and existing customers if approved by the commission in a separate rate or tariff
7 proceeding which shall be considered by the commission on an expedited basis without the need
8 for a full base rate proceeding. Rate increments and surcharges established pursuant to this
9 section shall be subject to adjustment on an annual basis to reflect changes in costs, additional
10 projected capital, and operating costs and true-up of any over or under recoveries of costs. Cost
11 recovery mechanisms may also include:

12 (1) A surcharge above existing rates that allows recovery of additional incremental cost
13 increases, net of contributions necessary to operate, maintain, and improve the failing utility's
14 service level to an acceptable level and into compliance with all applicable regulatory standards;

15 (2) An acquisition adjustment to private for profit utilities as an incentive to acquire a failing
16 utility;

17 (3) An increased return on investment as an incentive to acquire a failing utility; or

18 (4) Any other incentive method proposed by the acquiring utility if the method is
19 determined by the commission to be appropriate, reasonable, and in the public interest.

CHAPTER 31. CORPORATIONS.

**ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT
COUNCIL.**

§31-15A-9. Infrastructure Fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements; West Virginia Infrastructure Lottery Revenue Debt Service Fund; use of funds for projects.

1 (a) The Water Development Authority shall create and establish a special revolving fund
2 of moneys made available by appropriation, grant, contribution or loan to be known as the West
3 Virginia Infrastructure Fund. This fund shall be governed, administered and accounted for by the
4 directors, officers and managerial staff of the Water Development Authority as a special purpose
5 account separate and distinct from any other moneys, funds or funds owned and managed by the
6 Water Development Authority. The infrastructure fund shall consist of sub-accounts, as deemed
7 necessary by the council or the Water Development Authority, for the deposit of: (1) Infrastructure
8 revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds, or other revenues
9 received by the infrastructure fund from any source, public or private; (3) amounts received as
10 payments on any loans made by the Water Development Authority to pay for the cost of a project
11 or infrastructure project; (4) insurance proceeds payable to the Water Development Authority or
12 the infrastructure fund in connection with any infrastructure project or project; (5) all income
13 earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with §31-
14 15B-4 of this code; and (7) all proceeds derived from the sale of bonds issued pursuant to §31-
15 15B-1 *et seq.* of this code.

16 Any money collected pursuant to this section shall be paid into the West Virginia
17 infrastructure fund by the state agent or entity charged with the collection of the same, credited to
18 the infrastructure fund, and used only for purposes set forth in this article or §31-15B-1 *et seq.* of
19 this code.

20 Amounts in the infrastructure fund shall be segregated and administered by the Water
21 Development Authority separate and apart from its other assets and programs. Amounts in the
22 infrastructure fund may not be transferred to any other fund or account or used, other than

23 indirectly, for the purposes of any other program of the Water Development Authority, except that
24 the Water Development Authority may use funds in the infrastructure fund to reimburse itself for
25 any administrative costs incurred by it and approved by the council in connection with any loan,
26 loan guarantee, grant or other funding assistance made by the Water Development Authority
27 pursuant to this article.

28 (b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure
29 fund shall be deposited by the Water Development Authority in one or more banking institutions:
30 *Provided*, That any moneys so deposited shall be deposited in a banking institution located in this
31 state. The banking institution shall be selected by the Water Development Authority by
32 competitive bid. Pending the disbursement of any money from the infrastructure fund as
33 authorized under this section, the Water Development Authority shall invest and reinvest the
34 moneys subject to the limitations set forth in §31-18-1 *et seq.* of this code.

35 (c) To further accomplish the purposes and intent of this article and §31-15B-1 *et seq.* of
36 this code, the Water Development Authority may pledge infrastructure revenues and from time to
37 time establish one or more restricted accounts within the infrastructure fund for the purpose of
38 providing funds to guarantee loans for infrastructure projects or projects: *Provided*, That for any
39 fiscal year the Water Development Authority may not deposit into the restricted accounts more
40 than 20 percent of the aggregate amount of infrastructure revenues deposited into the
41 infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article
42 unless recourse under the loan guarantee is limited solely to amounts in the restricted account or
43 accounts. No person shall have any recourse to any restricted accounts established pursuant to
44 this subsection other than those persons to whom the loan guarantee or guarantees have been
45 made.

46 (d) Each loan, loan guarantee, grant or other assistance made or provided by the Water
47 Development Authority shall be evidenced by a loan, loan guarantee, grant or assistance
48 agreement between the Water Development Authority and the project sponsor to which the loan,

49 loan guarantee, grant or assistance shall be made or provided, which agreement shall include,
50 without limitation and to the extent applicable, the following provisions:

51 (1) The estimated cost of the infrastructure project or project, the amount of the loan, loan
52 guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee,
53 the terms of repayment and the security therefor, if any;

54 (2) The specific purposes for which the loan or grant proceed shall be expended or the
55 benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure
56 for disbursing loan or grant proceeds;

57 (3) The duties and obligations imposed regarding the acquisition, construction,
58 improvement, or operation of the project or infrastructure project; and

59 (4) The agreement of the governmental agency to comply with all applicable federal and
60 state laws, and all rules and regulations issued or imposed by the Water Development Authority
61 or other state, federal, or local bodies regarding the acquisition, construction, improvement, or
62 operation of the infrastructure project or project and granting the Water Development Authority
63 the right to appoint a receiver for the project or infrastructure if the project sponsor should default
64 on any terms of the agreement.

65 (e) Any resolution of the Water Development Authority approving loan, loan guarantee,
66 grant or other assistance shall include a finding and determination that the requirements of this
67 section have been met.

68 (f) The interest rate on any loan to governmental, quasi-governmental, or not-for-profit
69 project sponsors for projects made pursuant to this article shall not exceed three percent per
70 annum. Due to the limited availability of funds available for loans for projects, it is the public policy
71 of this state to prioritize funding needs to first meet the needs of governmental, quasi-
72 governmental and not-for-profit project sponsors and to require that loans made to for-profit
73 entities shall bear interest at the current market rates. Therefore, no loan may be made by the
74 council to a for-profit entity at an interest rate which is less than the current market rate at the time

75 of the loan agreement, except in the case where a for-profit entity is seeking a loan from the
76 council to make repairs, replacements, and improvements to an acquired failing utility as
77 designated by the Public Service Commission and defined in §24-2H-3 of this code. In those
78 cases, the for-profit entity shall pay an interest rate not to exceed three percent per annum or the
79 rate set forth in this subsection for governmental, quasi-governmental, and not-for-profit project
80 sponsors.

81 (g) The Water Development Authority shall cause an annual audit to be made by an
82 independent certified public accountant of its books, accounts, and records, with respect to the
83 receipts, disbursements, contracts, leases, assignments, loans, grants, and all other matters
84 relating to the financial operation of the infrastructure fund, including the operating of any sub-
85 account within the infrastructure fund. The person performing such audit shall furnish copies of
86 the audit report to the Commissioner of Finance and Administration, where they shall be placed
87 on file and made available for inspection by the general public. The person performing such audit
88 shall also furnish copies of the audit report to the Legislature's Joint Committee on Government
89 and Finance.

90 (h) There is hereby created in the Water Development Authority a separate, special
91 account which shall be designated and known as the West Virginia Infrastructure Lottery Revenue
92 Debt Service Fund, into which shall be deposited annually for the fiscal year beginning July 1,
93 2011, and each fiscal year thereafter, the first \$6 million transferred pursuant to §29-22-18d of
94 this code and any other funds provided therefor: *Provided*, That such deposits and transfers are
95 not subject to the reservations of funds or requirements for distributions of funds established by
96 §31-15A-10 and §31-15A-11 of this code. Moneys in the West Virginia Infrastructure Lottery
97 Revenue Debt Service Fund shall be used to pay debt service on bonds or notes issued by the
98 Water Development Authority for watershed compliance projects as provided in §31-15A-17b of
99 this code, and to the extent not needed to pay debt service, for the design or construction of
100 improvements for watershed compliance projects. Moneys in the West Virginia Infrastructure

101 Lottery Revenue Debt Service Fund not expended at the close of the fiscal year do not lapse or
102 revert to the General Fund but are carried forward to the next fiscal year.

103 (i) The Water Development Authority shall establish a separate restricted account within
104 the infrastructure fund to be expended for the repair and improvement of failing water and
105 wastewater systems by nonprofit public utilities as recommended by the council and supported
106 by recommendations from the Public Service Commission in accordance with the plan developed
107 under §24-2H-1, et seq. of this code. The restricted account shall be known as the Distressed
108 Utilities Account. Annually, prior to any division of funds by congressional district, the council may
109 direct the Water Development Authority to transfer available funds from the infrastructure fund in
110 an amount not to exceed \$5 million to the restricted account. Notwithstanding the provisions of
111 §24-2H-10(b) of this code, the council may approve grants from this account for up to 100 percent
112 of the cost of failing utility repairs, replacements, and improvements and such grant along with
113 other grants awarded by the council may exceed 50 percent of the total project cost: *Provided,*
114 That at no time may the balance of the restricted account exceed \$5 million.

NOTE: The purpose of this bill is to provide the commission with authority to order the acquisition of failing utilities and a variety of tools to assist distressed and failing utilities; allow for an acquiring utility to recover costs associated with the acquisition of a failing utility and any costs associated with the repair, replacement or improvement of the failing utility facilities; allow for profit entities to receive below market loans from the Water Development Authority to repair, replace and improve failing utilities; provide for grants up to 100 percent of the cost of repair, replacement, debt repayment, grant repayment, and improvement of a failing utility by a nonprofit public utility.

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