

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 798**

By Senator Jeffries

[Introduced February 15, 2024; referred  
to the Committee on Economic Development]

1 A BILL to amend and reenact §24-1-1 and §24-2H-8, of the Code of West Virginia, 1931, as  
 2 amended; and to amend and reenact §31-15A-9 of said code; all relating to the Distressed  
 3 Utilities Account and to utilities being required to hold at least 1/8 capital reserve to be  
 4 eligible to request additional state funding.

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

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.**

1 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the  
 2 Public Service Commission of this state the authority and duty to enforce and regulate the  
 3 practices, services, and rates of public utilities in order to:

4 (1) Ensure fair and prompt regulation of public utilities in the interest of the using and  
 5 consuming public;

6 (2) Provide the availability of adequate, economical, and reliable utility services throughout  
 7 the state;

8 (3) Encourage the well-planned development of utility resources in a manner consistent  
 9 with state needs and in ways consistent with the productive use of the state's energy resources,  
 10 such as coal;

11 (4) Ensure that rates and charges for utility services are just, reasonable, applied without  
 12 unjust discrimination or preference, applied in a manner consistent with the purposes and policies  
 13 set forth in article two-a of this chapter and based primarily on the costs of providing these  
 14 services;

15 (5) Encourage energy conservation and the effective and efficient management of  
 16 regulated utility enterprises; and

17           (6) Encourage removal of artificial barriers to rail carrier service, stimulate competition,  
18 stimulate the free flow of goods and passengers throughout the state and promote the expansion  
19 of the tourism industry, thereby improving the economic condition of the state.

20           (b) The Legislature creates the Public Service Commission to exercise the legislative  
21 powers delegated to it. The Public Service Commission is charged with the responsibility for  
22 appraising and balancing the interests of current and future utility service customers, the general  
23 interests of the state's economy and the interests of the utilities subject to its jurisdiction in its  
24 deliberations and decisions.

25           (c) The Legislature directs the Public Service Commission to identify, explore and consider  
26 the potential benefits or risks associated with emerging and state-of-the-art concepts in utility  
27 management, rate design and conservation. The commission may conduct inquiries and hold  
28 hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other  
29 interested persons the opportunity to comment and shall report to the Governor and the  
30 Legislature regarding its findings and policies to each of these areas not later than the first day of  
31 the regular session of the Legislature in the year 1985, and every two years thereafter.

32           (d) It is legislative policy to ensure that the Legislature and the general public become  
33 better informed regarding the regulation of public utilities in this state and the conduct of the  
34 business of the Public Service Commission. To aid in the achievement of this policy, the Public  
35 Service Commission annually shall present to the Joint Committee on Government and Finance,  
36 created by §4-3-1 *et seq.* of this code, or a subcommittee designated by the joint committee, a  
37 management summary report which describes in a concise manner:

38           (1) The major activities of the commission for the year especially as such activities relate to  
39 the implementation of the provisions of this chapter;

40           (2) Important policy decisions reached and initiatives undertaken during the year;

41           (3) The current balance of supply and demand for natural gas and electric utility services in  
42 the state and forecast of the probable balance for the next ~~ten~~ 10 years; and

43 (4) Other information considered by the commission to be important including  
44 recommendations for statutory reform and the reasons for such recommendations.

45 (e) In addition to any other studies and reports required to be conducted and made by the  
46 Public Service Commission pursuant to any other provision of this section, the commission shall  
47 study and initially report to the Legislature no later than the first day of the regular session of the  
48 Legislature in the year 1980 upon:

49 (1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this  
50 state have been capped off or shut in; the number of such wells; their probable extent of future  
51 production and the reasons given and any justification for capping off or shutting in such wells; the  
52 reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in  
53 this state or the Appalachian areas have been discouraged from drilling, developing or selling the  
54 production of such wells; and whether there are fixed policies by any utility or group of utilities to  
55 avoid the purchase of natural gas produced in the Appalachian region of the United States  
56 generally and in West Virginia specifically.

57 (2) The extent of the export and import of natural gas utility supplies in West Virginia.

58 (3) The cumulative effect of the practices mentioned in §24-1-1(e)(1) and §24-1-1(e)(2)  
59 upon rates theretofore and hereafter charged gas utility customers in West Virginia. In carrying out  
60 the provisions of this section the commission shall have jurisdiction over such persons, whether  
61 public utilities or not, as may be in the opinion of the commission necessary to the exercise of its  
62 mandate and may compel attendance before it, take testimony under oath and compel the  
63 production of papers or other documents. Upon reasonable request by the commission, all other  
64 state agencies shall cooperate with the commission in carrying out the provisions and  
65 requirements of this subsection.

66 (f) No later than the first day of the regular session of the Legislature in the year 1980, the  
67 Public Service Commission shall submit to the Legislature a plan for internal reorganization which  
68 plan shall specifically address the following:

69 (1) A division within the Public Service Commission which shall include the office of the  
70 commissioners, the hearing examiners and such support staff as may be necessary to carry out  
71 the functions of decision-making and general supervision of the commission, which functions shall  
72 not include advocacy in cases before the commission;

73 (2) The creation of a division which shall act as an advocate for the position of and in the  
74 interest of all customers;

75 (3) The means and procedures by which the division to be created pursuant to the  
76 provisions of §24-1-1(f)(2) shall protect the interests of each class of customers and the means by  
77 which the commission will assure that such division will be financially and departmentally  
78 independent of the division created by §24-1-1(f)(1);

79 (4) The creation of a division within the Public Service Commission which shall assume the  
80 duties and responsibilities now charged to the commissioners with regard to motor carriers which  
81 division shall exist separately from those divisions set out in §24-1-1(f)(1) and §24-1-1(f)(2) and  
82 which shall relieve the commissioners of all except minimal administrative responsibilities as to  
83 motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners  
84 from hearing motor carrier cases;

85 (5) Which members of the staff of the Public Service Commission shall be exempted from  
86 the salary schedules or pay plan adopted by the Civil Service Commission and identify such staff  
87 members by job classification or designation, together with the salary or salary ranges for each  
88 such job classification or designation;

89 (6) The manner in which the commission will strengthen its knowledge and independent  
90 capacity to analyze key conditions and trends in the industries it regulates extending from general  
91 industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the  
92 capacity planning, construction management, operating performance, and financial condition of  
93 the major companies within these industries.

94 Such plan shall be based on the concept that each of the divisions mentioned in §24-1-

95 1(f)(1), §24-1-1(f)(2), and §24-1-1(f)(4) shall exist independently of the others and the plan shall  
96 discourage ex parte communications between them by such means as the commission shall  
97 direct, including, but not limited to, separate clerical and professional staffing for each division.  
98 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest  
99 extent possible the recommendations presented to the subcommittee on the Public Service  
100 Commission of the Joint Committee on Government and Finance in a final report dated February  
101 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

102 The commission shall, before January 5, 1980, adopt said plan by order, which order shall  
103 promulgate the same as a rule of the commission to be effective upon the date specified in said  
104 order, which date shall be no later than December 31, 1980. Certified copies of such order and rule  
105 shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the  
106 commission with the clerk of each house of the Legislature, the Governor, and the Secretary of  
107 State. The chairman of the commission shall also file with the office of the Secretary of State the  
108 receipt of the clerk of each house and of the Governor, which receipt shall evidence compliance  
109 with this section.

110 Upon the filing of a certified copy of such order and rule, the clerk of each house of the  
111 Legislature shall report the same to their respective houses and the presiding officer thereof shall  
112 refer the same to appropriate standing committee or committees.

113 Within the limits of funds appropriated therefor, the rule of the Public Service Commission  
114 shall be effective upon the date specified in the order of the commission promulgating it unless an  
115 alternative plan be adopted by general law or unless the rule is disapproved by a concurrent  
116 resolution of the Legislature adopted prior to adjournment sine die of the regular session of the  
117 Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and  
118 disapproved in part by a concurrent resolution of the Legislature adopted prior to such  
119 adjournment, such rule shall be effective to the extent and only to the extent that the same is  
120 approved by such concurrent resolution.

121           The rules promulgated and made effective pursuant to this section shall be effective  
122 notwithstanding any other provisions of this code for the promulgation of rules or regulations.

123           (g) The Public Service Commission is hereby directed to cooperate with the Joint  
124 Committee on Government and Finance of the Legislature in its review, examination and study of  
125 the administrative operations and enforcement record of the Railroad Safety Division of the Public  
126 Service Commission and any similar studies.

127           (h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all  
128 classes have risen dramatically in recent years to the extent that such increases have adversely  
129 affected all customer classes. The Legislature further finds that it must take action necessary to  
130 mitigate the adverse consequences of these dramatic rate increases.

131           (2) The Legislature further finds that the practices of natural gas utilities in purchasing high-  
132 priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia  
133 possesses abundant natural gas, and in securing supplies, directly or indirectly, by contractual  
134 agreements including take-or-pay provisions, indefinite price escalators or most-favored nation  
135 clauses have contributed to the dramatic increase in natural gas prices. It is therefore the policy of  
136 the Legislature to discourage such purchasing practices in order to protect all customer classes.

137           (3) The Legislature further finds that it is in the best interests of the citizens of West Virginia  
138 to encourage the transportation of natural gas in intrastate commerce by interstate or intrastate  
139 pipelines or by local distribution companies in order to provide competition in the natural gas  
140 industry and in order to provide natural gas to consumers at the lowest possible price.

141           (i) The Legislature further finds that transactions between utilities and affiliates are a  
142 contributing factor to the increase in natural gas and electricity prices and tend to confuse  
143 consideration of a proper rate of return calculation. The Legislature therefore finds that it is  
144 imperative that the Public Service Commission have the opportunity to properly study the issue of  
145 proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level  
146 when compared to return or profit that affiliates earn on transactions with sister utilities.

147 (j) The Legislature further finds that water and sewer utilities that are political subdivisions  
148 of the state providing separate or combined services and having at least four thousand five  
149 hundred customers and annual gross revenues of \$3 million or more are most fairly and effectively  
150 regulated by the local governing body with respect to rates, borrowing and capital projects.  
151 Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public  
152 Service Commission over water and sewer utilities that are political subdivisions of the state is  
153 limited to that granted specifically in this code.

154 (k) The Legislature further finds that an adequate cash working capital fund is essential to  
155 allow water and sewer utilities that are political subdivisions of the state to deliver continuous and  
156 compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount  
157 of no less than one eighth of actual annual operation and maintenance expense. This reserve shall  
158 be separate and distinct from and in addition to any repair and replacement fund that may be  
159 required by bond covenants. Further, any public utility that requests any funding from the State  
160 shall maintain a working capital reserve in an amount of no less than one eighth of actual annual  
161 operation and maintenance expense, prior to requesting or being considered to receive such  
162 additional funding.

163 (1) Any public utility that requests such funding from the State shall establish an initial set  
164 of rates, approved by the Public Service Commission that will allow the accumulation of the net  
165 additional funds over current cash balances necessary to achieve the working capital reserve for a  
166 period of 24 months. Nothing in this section shall require the Public Service Commission to  
167 approve any rates for locally rate regulated utilities.

168 (2) The term "funding" in this section includes any loans, grants, bonds, or any other  
169 monies administered or approved by a state agency.

170 (3) Funding for failing or distressed utilities may only be granted under this Article upon an  
171 order from the Public Service Commission, establishing that the utility is failing or distressed,  
172 pursuant to §24-2H-5 of this code, and a capable proximate utility, pursuant to §24-2H-5 of this



173 code, can adequately acquire such failing or distressed utility. The Public Service Commission's  
174 order shall further require the failing or distressed utility to request such funding from the  
175 Distressed Utilities Account established pursuant to §31-15A-9(i) of this code. Such funding shall  
176 only be applied at the direction of the capable proximate utility identified for acquisition and may  
177 only be used by the failing or distressed utility for debt repayment, capital improvements, or a  
178 combination of both.

**ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND WASTEWATER UTILITIES.**

**§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-7 of this code, the distressed utility  
2 and another acquiring public utility shall file a petition with the commission under §24-2-12 of this  
3 code to approve the necessary operating agreement if such alternative is directed by the  
4 commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility  
5 and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to  
6 approve the purchase price of the acquisition. Where the parties are unable to agree on an  
7 acquisition price, the filing may request that an evidentiary hearing be held so that the commission  
8 may determine the acquisition price and any other issues related to the acquisition. The  
9 acquisition price must, at a minimum, satisfy all outstanding loans, tax obligations, required grant  
10 repayment, liens, and indebtedness owed by the failing utility or the acquiring utility must agree to  
11 assume the indebtednesses if legally permitted. The acquiring utility shall consult with the lenders  
12 or lienholders regarding payment in full or the assumption, to the extent legally permissible, of any  
13 outstanding 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 be  
17 permitted for a reasonable period of time after the date of acquisition, to charge and collect rates  
18 from the customers of the failing utility pursuant to a separate tariff, which may be higher or lower  
19 than the existing tariff of the distressed or failing utility, or may allow a surcharge on both the  
20 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, and those agencies are  
28 directed to use their full discretion in working towards long-term solutions that will support  
29 compliance. The failing utility shall cooperate with the acquiring utility in negotiating agreements  
30 with state and federal agencies, including, but not limited to, negotiation of hold harmless  
31 agreements, consent orders or enforcement moratoria during any period of remediation. In  
32 addition, the failing utility shall cooperate with the acquiring utility in obtaining the consent of the  
33 failing utility's and the acquiring utility's bondholder(s) to the acquisition. The acquiring utility must  
34 present to the commission as part of its financing plan, documentation on how the failing utility's  
35 indebtedness will be paid or assumed.

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

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

47 (g) The capable proximate utility may propose one or more of the cost recovery methods or  
48 incentives set forth in §24-2H-9 of this code as part of its petition for approval from the  
49 commission.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 15. 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 of  
2 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 competitive  
32 bid. Pending the disbursement of any money from the infrastructure fund as authorized under this  
33 section, the Water Development Authority shall invest and reinvest the moneys subject to the  
34 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, the  
53 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 or

61 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 the  
63 right to appoint a receiver for the project or infrastructure if the project sponsor should default on  
64 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.

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

85 (h) There is hereby created in the Water Development Authority a separate, special  
86 account which shall be designated and known as the West Virginia Infrastructure Lottery Revenue

87 Debt Service Fund, into which shall be deposited annually for the fiscal year beginning July 1,  
88 2011, and each fiscal year thereafter, the first \$6 million transferred pursuant to §29-22-18d of this  
89 code and any other funds provided therefor: *Provided*, That such deposits and transfers are not  
90 subject to the reservations of funds or requirements for distributions of funds established by §31-  
91 15A-10 and §31-15A-11 of this code. Moneys in the West Virginia Infrastructure Lottery Revenue  
92 Debt Service Fund shall be used to pay debt service on bonds or notes issued by the Water  
93 Development Authority for watershed compliance projects as provided in §31-15A-17b, and to the  
94 extent not needed to pay debt service, for the design or construction of improvements for  
95 watershed compliance projects. Moneys in the West Virginia Infrastructure Lottery Revenue Debt  
96 Service Fund not expended at the close of the fiscal year do not lapse or revert to the General  
97 Fund but are carried forward to the next fiscal year.

98 (i) The Water Development Authority shall establish a separate restricted account within  
99 the infrastructure fund to be expended for the repair and improvement of failing water and  
100 wastewater systems by ~~nonprofit public utilities~~ the distressed or failing utility from grants  
101 approved by the council and supported by recommendations from the Public Service Commission  
102 in accordance with the plan developed under §24-2H-1 *et seq.* of this code. The restricted account  
103 shall be known as the Distressed Utilities Account. Annually, the council may request the Water  
104 Development Authority to transfer from the uncommitted loan balances for each year a total  
105 amount not to exceed \$5 million to the restricted account to fund the grants approved by the  
106 council during that fiscal year. Notwithstanding the provisions of §31-15A-10(b) of this code, the  
107 council may approve grants from this account for up to 100 percent of the cost of failing utility  
108 repairs, replacements and improvements and such grant along with other grants awarded by the  
109 council may exceed 50 percent of the total project cost: *Provided*, That at no time may the balance  
110 of the restricted account exceed \$5 million.

NOTE: The purpose of this bill is to describe Distressed Utilities Accounts and requiring utilities to hold at least 1/8 capital reserve to be eligible to request additional state funding.

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