

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 815

**FISCAL
NOTE**

By Senator Phillips

[Introduced March 19, 2025; referred
to the Committee on Finance]

1 A BILL to amend and reenact §22-36-1, §22-36-5, §22C-1-2, §22C-1-3, §22C-1-5, §22C-1-6,
2 §22C-1-17, §22C-1-22, §22C-2-1, §22C-2-5, §24-1-1, §24-2H-8, §31-15A-4, §31-15A-9
3 and §31-15A-17c of the Code of West Virginia, 1931, as amended; and to amend the code
4 by adding a new section, designated §22C-1-7a, relating to permitting access to funding
5 for public water utilities subject to the Public Service Commission's jurisdiction; defining
6 "public utility"; setting forth legislative findings; defining "non-governmental public utility";
7 modifying definitions of "local entity", "project", and "water development project";
8 permitting Water Development Authority to make loans and grants to public utilities,
9 including non-governmental public utilities, pursuant to loan agreements; establishing
10 rights and remedies with respect to enforcing loan agreement with public utilities;
11 establishing powers of Water Development Authority with respect to non-governmental
12 public utilities; authorizing rulemaking with respect to Water Development Authority;
13 requiring maintenance of public utilities; permitting public utilities to lease, grant, or convey
14 to the Water Development Authority any real property or interests; establishing procedures
15 related to collection of money due to the Water Pollution Control Revolving Fund;
16 establishing requirements to ensure adequate cash and working capital related to funding;
17 authorizing rulemaking with respect to the West Virginia Infrastructure and Jobs
18 Development Council; directing funding consideration for certain for-profit project sponsors
19 under certain circumstances; permitting access to Distressed Utilities Account for public
20 utilities under certain circumstances; and directing the Water Development Authority to
21 make loans or grants from the Critical Needs and Failing Systems Sub Account to a project
22 sponsor under certain circumstances.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22 ENVIRONMENTAL RESOURCES.

ARTICLE 36. ADMINISTRATION OF THE WEST VIRGINIA DRINKING WATER

TREATMENT REVOLVING FUND.**§22-36-1. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (1) "Authority" means the Water Development Authority provided for in §22C-1-4 of this
4 code.

5 (2) "Capacity development" means the technical, managerial, and financial capability of a
6 public water system.

7 (3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property,
8 rights and easements, plans and specifications, and all other expenses necessary or incident to
9 the acquisition, construction, improvement, expansion, extension, repair, or rehabilitation of all or
10 part of a project.

11 (4) "Disadvantaged community" means the service area of a public water system that
12 meets affordability criteria established after public review and comment by the state.

13 (5) "Federal Safe Drinking Water Act" means the federal statute commonly known as the
14 Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be
15 subsequently amended.

16 (6) "Fund" means the West Virginia Drinking Water Treatment Revolving Fund created in
17 this article.

18 (7) "Instrumentality" means the Department of Environmental Protection which has the
19 primary responsibility for administering the fund and this article pursuant to requirements of the
20 federal Safe Drinking Water Act.

21 (8) "Local entity" means any municipality, public utility, or person, including any individual,
22 firm, partnership, association, not-for-profit corporation, or other corporation organized and
23 existing under the laws of the state which may construct and operate an eligible project.

24 (9) "Public water system" means that term as defined in §16-1-9a of this code.

(10) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the Public Service Commission as a public utility under Chapter 24 of this code or which is required to file its tariff with the Public Service Commission.

(11) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(12) "Set-aside accounts" means those accounts that shall be set up for activities required by the federal Safe Drinking Water Act. The moneys for these accounts may be taken from the federal capitalization grant for these non-project activities before the capitalization grant is deposited into the fund.

(13) "Small system" means a public water system serving 10,000 or fewer persons.

§22-36-5. Remedies to enforce payment.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement made between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of, and as the agent for, a particular local entity, all of the rights, powers, and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation, or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus, or other judicial or administrative proceeding, compel performance by a local entity of all the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(C) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation, or judicial decision.

(4) In the case of a loan agreement between the authority and a non-governmental public utility as defined in §22C-1-3(10) of this code, the authority may include such terms appropriate to non-governmental public utilities as provided in §22C-1-7a of this code.

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings.

It is hereby declared to be the public policy of the State of West Virginia and a responsibility of the State of West Virginia, through the establishment, funding, operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to: (1) Protect and improve public health; (2) assure the fullest use and enjoyment of such water by the public; (3) provide suitable environment for the propagation and protection of animal, bird, fish, aquatic and plant life, all of which are essential to the health and well-being of the public; and (4) provide water of the necessary quality and in the amount needed for the development, maintenance and expansion of,

9 and to attract service industries and businesses, agriculture, mining, manufacturing and other
10 types of businesses and industries.

11 To assist in the preservation, protection, improvement and management of the purity and
12 quality of the waters of this state, to prevent or abate pollution of water resources and to promote
13 the health and welfare of citizens of this state, it is the purpose and intent of the Legislature in
14 enacting this article to provide for the necessary, dependable, effective and efficient purification of
15 water; the disposal of liquid and solid wastes harmful to the public health and safety removed from
16 such water; to improve water and stream quality; and to assist and cooperate with governmental
17 agencies in achieving all of the purposes set forth in this section.

18 The Legislature finds and declares that the state has a serious and urgent need for the
19 rehabilitation, renewal, and replacement of existing water treatment, storage, and distribution
20 infrastructure and existing wastewater treatment and collection infrastructure, that the efficient and
21 effective operation and maintenance of utility infrastructure is required to safeguard existing and
22 future infrastructure investment, and that leveraging investor-supplied infrastructure funding in
23 combination with the deployment of state grant and loan resources is critical to address this need
24 and to maintain just and reasonable utility rates for the state's residents.

25 The Legislature further finds and hereby declares that the responsibility of the state as
26 outlined above cannot be effectively met without the establishment, funding, operation and
27 maintenance of water development projects as provided for in this article.

§22C-1-3. Definitions

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Authority" means the Water Development Authority provided for in section four of this
3 article, the duties, powers, responsibilities and functions of which are specified in this article.

4 (2) "Beneficial use" means a use of water by a person or by the general public that is
5 consistent with the public interest, health and welfare in utilizing the water resources of this state,
6 including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining,

7 power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational,
8 aesthetic and scenic use.

9 (3) "Board" means the Water Development Authority Board provided for in section four of
10 this article, which shall manage and control the Water Development Authority.

11 (4) "Bond" or "water development revenue bond" means a revenue bond, note or other
12 evidence of indebtedness issued by the Water Development Authority to effect the intents and
13 purposes of this article.

14 (5) "Construction" includes reconstruction, enlargement, improvement and providing
15 furnishings or equipment.

16 (6) "Cost" means, as applied to water development projects, the cost of their acquisition
17 and construction; the cost of acquisition of all land, rights-of-way, property rights, easements,
18 franchise rights and interests required by the authority for such acquisition and construction; the
19 cost of demolishing or removing any buildings or structures on land so acquired, including the cost
20 of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or
21 constructing and equipping a principal office and suboffices of the authority; the cost of diverting
22 highways, interchange of highways; access roads to private property, including the cost of land or
23 easements therefor; the cost of all machinery, furnishings and equipment; all financing charges
24 and interest prior to and during construction and for no more than eighteen months after
25 completion of construction; the cost of all engineering services and all expenses of research and
26 development with respect to public water facilities, stormwater systems or wastewater facilities;
27 the cost of all legal services and expenses; the cost of all plans, specifications, surveys and
28 estimates of cost and revenues; all working capital and other expenses necessary or incident to
29 determining the feasibility or practicability of acquiring or constructing any such project; all
30 administrative expenses and such other expenses as may be necessary or incident to the
31 acquisition or construction of the project; the financing of such acquisition or construction,
32 including the amount authorized in the resolution of the authority providing for the issuance of

water development revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or water development revenue bonds as authorized by the provisions of this article.

(7) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works or activity in the operation or process of which industrial wastes or other wastes are produced.

(8) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate public water facilities, stormwater systems or wastewater facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(9) "Industrial wastes" means any liquid, gaseous, solid or other waste substance or any combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) "Non-governmental public utility" means a public utility that is not owned or operated by a governmental agency.

59 ~~(10)~~ (11) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark
60 and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar,
61 dyestuffs, acids, chemicals and all other materials or substances not sewage or industrial wastes
62 which may cause or might reasonably be expected to cause or to contribute to the pollution of any
63 of the waters of this state.

64 ~~(11)~~ (12) "Owner" includes all persons, copartnerships or governmental agencies having
65 any title or interest in any property rights, easements and interests authorized to be acquired by
66 this article.

67 ~~(12)~~ (13) "Person" means any public or private corporation, institution, association, firm or
68 company organized or existing under the laws of this or any other state or country; the United
69 States or the State of West Virginia; any federal or state governmental agency; political
70 subdivision; county commission; municipality; industry; sanitary district; public service district;
71 drainage district; soil conservation district; watershed improvement district; partnership; trust;
72 estate; person or individual; group of persons or individuals acting individually or as a group or any
73 other legal entity whatever.

74 ~~(13)~~ (14) "Pollution" means: (a) The discharge, release, escape, deposit or disposition,
75 directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever
76 kind or character, in or near any waters of the state, in such condition, manner or quantity, as does,
77 will or is likely to: (1) contaminate or substantially contribute to the contamination of any of such
78 waters; or (2) alter or substantially contribute to the alteration of the physical, chemical or
79 biological properties of any of such waters, if such contamination or alteration, or the resulting
80 contamination or alteration where a person only contributes thereto, is to such an extent as to
81 make any of such waters: (i) Directly or indirectly harmful, detrimental or injurious to the public
82 health, safety and welfare; or (ii) directly or indirectly detrimental to existing animal, bird, fish,
83 aquatic or plant life; or (iii) unsuitable for present or future domestic, commercial, industrial,
84 agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge,

85 release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage,
86 industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state
87 in such condition, manner or quantity, as does, will or is likely to reduce the quality of the waters of
88 the state below the standards established therefor by the United States or any department,
89 agency, board or commission of this state authorized to establish such standards.

90 ~~(14)~~ (15) "Project" or "water development project" means any ~~public~~ water facility,
91 stormwater system or wastewater facility to be acquired or constructed by a public utility, the
92 acquisition or construction of which is authorized, in whole or in part, by the Water Development
93 Authority or the acquisition or construction of which is financed, in whole or in part, from funds
94 made available by grant or loan by, or through, the authority as provided in this article, including
95 facilities, the acquisition or construction of which is authorized, in whole or in part, by the Water
96 Development Authority or the acquisition or construction of which is financed, in whole or in part,
97 from funds made available by grant or loan by, or through, the authority as provided in this article,
98 including all buildings and facilities which the authority deems necessary for the operation of the
99 project, together with all property, rights, easements and interest which may be required for the
100 operation of the project, but excluding all buildings and facilities used to produce electricity other
101 than electricity for consumption by the authority in the operation and maintenance of the project.

102 ~~(15)~~ (16) "Public roads" mean all public highways, roads and streets in this state, whether
103 maintained by the state, county, municipality or other political subdivision.

104 (17) "Public utility" means any person or persons, or association of persons, however
105 associated, whether incorporated or not, including, without limitation, any governmental agency,
106 operating a wastewater facility or water facility as a public service, which is regulated by the Public
107 Service Commission as a public utility under Chapter 24 of this code or which is required to file its
108 tariff with the Public Service Commission.

109 ~~(16)~~ (18) "Public utility facilities" means public utility plants or installations and includes
110 tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of

111 any public utility.

112 ~~(47)~~ (19) "Revenue" means any money or thing of value collected by, or paid to, the Water
113 Development Authority as rent, use or service fee or charge for use of, or in connection with, any
114 water development project, or as principal of or interest, charges or other fees on loans, or any
115 other collections on loans made by the Water Development Authority to governmental agencies to
116 finance, in whole or in part, the acquisition or construction of any water development project or
117 projects or other money or property which is received and may be expended for or pledged as
118 revenues pursuant to this article.

119 ~~(48)~~ (20) "Sewage" means water-carried human or animal wastes from residences,
120 buildings, industrial establishments or other places, together with such groundwater infiltration and
121 surface waters as may be present.

122 ~~(49)~~ (21) "Stormwater system" means a stormwater system in its entirety or any integral
123 part thereof used to collect, control or dispose of stormwater and an associated stormwater
124 management program. It includes all facilities, structures and natural water courses used for
125 collecting and conducting stormwater to, through and from drainage areas to the points of final
126 outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets,
127 channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches,
128 streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls,
129 pipes, flood control systems, levies and pumping stations. The term "stormwater system" does not
130 include highways, road and drainage easements or stormwater facilities constructed, owned or
131 operated by the West Virginia Division of Highways.

132 ~~(20)~~ (22) "Stormwater management program" means those activities associated with the
133 management, operation and maintenance and control of stormwater and stormwater systems and
134 includes, but is not limited to, public education, stormwater and surface runoff water quality
135 improvement, mapping, planning, flood control, inspection, enforcement and any other activities
136 required by state and federal law. The term "stormwater management program" does not include

those activities associated with the management, operation, maintenance and control of highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of the Division of Highways.

~~(24)~~ (23) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

~~(22)~~ (24) "Wastewater" means any water containing sewage, industrial wastes or other wastes or contaminants derived from the prior use of such water and includes, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

~~(23)~~ (25) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

~~(24)~~ (26) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies and public utilities are subject to terms of loan agreements.

1 To accomplish the public policies and purposes and to meet the responsibility of the state
2 as set forth in this article, the water development authority may initiate, acquire, construct,
3 maintain, repair and operate water development projects or cause the same to be operated
4 pursuant to a lease, sublease or agreement with any person or governmental agency; may make
5 loans and grants to governmental agencies and public utilities for the acquisition or construction of
6 water development projects by governmental agencies and public utilities, which loans may
7 include amounts to refinance debt issued for existing water development projects of the
8 governmental agency or public utility when the refinancing is in conjunction with the financing for a
9 new water development project regardless of the source of the financing for the new project:
10 Provided, That the amount of the refinancing may not exceed 50% of the aggregate amount of the
11 refinancing of an existing project and the financing of a new project; and may issue water
12 development revenue bonds of this state, payable solely from revenues, to pay the cost of
13 projects, or finance projects, in whole or in part, by loans to governmental agencies. A water
14 development project may not be undertaken unless it has been determined by the authority to be
15 consistent with any applicable comprehensive plan of water management approved by the
16 Secretary of the Department of Environmental Protection or in the process of preparation by the
17 secretary and to be consistent with the standards set by the state environmental quality board, for
18 the waters of the state affected thereby. Any resolution of the authority providing for acquiring or
19 constructing projects or for making a loan or grant for projects shall include a finding by the
20 authority that the determinations have been made. A loan agreement shall be entered into
21 between the authority and each governmental agency or public utility to which a loan is made for
22 the acquisition or construction of a water development project, which loan agreement shall
23 include, without limitation, the following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include ~~in addition to~~ the pledge of all revenues from the project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project, or such other repayment and security provisions other than revenue pledges or deeds of trust as may be appropriate for non-governmental public utilities;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency or public utility in regard to the construction or acquisition of the project, including engineering fees and other administrative costs relating to development of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement;

(4) The agreement of the governmental agency or public utility to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project;

(5) The number of proposed customers and their physical locations within the project, and providing as a condition of the agreement, that no proposed customers listed in the project application agreement may be removed from inclusion in the project without prior authorization of the board; and

(6) The agreement of the governmental agency or public utility to perform an annual maintenance audit which maintenance audit shall be submitted to the board and the Public Service Commission of West Virginia.

§22C-1-6. Powers, duties, and responsibilities of authority generally.

1 The Water Development Authority has and may exercise all powers necessary or
2 appropriate to carry out and effectuate its corporate purpose. The authority has the power and
3 capacity to:

4 (1) Adopt and, from time-to-time, amend and repeal bylaws necessary and proper for the
5 regulation of its affairs and the conduct of its business and rules to implement and make effective
6 its powers and duties, such rules to be promulgated in accordance with the provisions of chapter
7 29A of this code.

8 (2) Adopt an official seal.

9 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly
10 designated or provided.

11 (4) Sue and be sued in its own name and plead and be impleaded in its own name and
12 particularly to enforce the obligations and covenants made under §22C-1-9, §22C-1-10, and
13 §22C-1-16 of this code. Any actions against the authority shall be brought in the circuit court of
14 Kanawha County in which the principal office of the authority shall be located.

15 (5) Make loans and grants to governmental agencies and non-governmental public utilities
16 for the acquisition or construction of water development projects by any such governmental
17 agency and, in accordance with the provisions of chapter 29A of this code, adopt rules and
18 procedures for making such loans and grants.

19 (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair,
20 operate, lease or rent to, or contract for operation by a governmental agency or person, water
21 development projects and, in accordance with the provisions of chapter 29A of this code, adopt
22 rules for the use of such projects.

23 (7) Make available the use or services of any water development project to one or more
24 persons, one or more governmental agencies, or any combination thereof.

25 (8) Issue water development revenue bonds and notes and water development revenue

26 refunding bonds of the state, payable solely from revenues as provided in §22C-1-9 of this code
27 unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the
28 cost of, or financing by loans to governmental agencies, one or more water development projects
29 or parts thereof.

30 (9) Acquire by gift or purchase, hold and dispose of real and personal property in the
31 exercise of its powers and the performance of its duties as set forth in this article.

32 (10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such
33 manner as it deems proper, or by the exercise of the right of eminent domain in the manner
34 provided in chapter 54 of this code, such public or private lands, or parts thereof or rights therein,
35 rights-of-way, property, rights, easements, and interests it deems necessary for carrying out the
36 provisions of this article, but excluding the acquisition by the exercise of the right of eminent
37 domain of any public water facilities, stormwater systems, or wastewater facilities, operated under
38 permits issued pursuant to the provisions of §22-11-1 *et seq.* of this code and owned by any
39 person or governmental agency, and compensation shall be paid for public or private lands so
40 taken.

41 (11) Make and enter into all contracts and agreements and execute all instruments
42 necessary or incidental to the performance of its duties and the execution of its powers. When the
43 cost under any such contract or agreement, other than compensation for personal services,
44 involves an expenditure of more than \$25,000, the authority shall make a written contract with the
45 lowest responsible bidder after public notice published as a Class II legal advertisement in
46 compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area for such
47 publication to be the county wherein the work is to be performed or which is affected by the
48 contract, which notice shall state the general character of the work and the general character of
49 the materials to be furnished, the place where plans and specifications therefor may be examined,
50 and the time and place of receiving bids, but a contract or lease for the operation of a water
51 development project constructed and owned by the authority or an agreement for cooperation in

the acquisition or construction of a water development project pursuant to §22C-1-16 of this code is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Appoint such employees, officers, managers, attorneys, independent contractors, and consultants as are necessary to carry out the provisions of this article and to fix their compensation and prescribe their duties: *Provided*, That, beginning on the effective date of the amendments to this section enacted during the regular session of the Legislature, 2024, all employees of the authority are exempt from the classified civil service system: *Provided, however*, That employees of the authority who are currently members of the classified civil service system shall retain their status as long as they remain in their current classification. Thereafter, if the employee leaves his or her current classification and remains an employee of the authority, that employee, at that time, becomes transferred to the classified-exempt service. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues, and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the Governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water facilities, stormwater systems, or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water facilities,

78 stormwater systems, or wastewater facilities.

79 (15) Purchase property coverage and liability insurance for any water development project
80 and for the principal office and suboffices of the authority, insurance protecting the authority and its
81 officers and employees against liability, if any, for damage to property or injury to or death of
82 persons arising from its operations and any other insurance the authority may agree to provide
83 under any resolution authorizing the issuance of water development revenue bonds or in any trust
84 agreement securing the same.

85 (16) Charge, alter, and collect rentals and other charges for the use or services of any
86 water development project as provided in this article and charge and collect reasonable interest,
87 fees, and charges in connection with the making and servicing of loans to governmental agencies
88 in the furtherance of the purposes of this article.

89 (17) Establish or increase reserves from moneys received or to be received by the
90 authority to secure or to pay the principal of and interest on the bonds and notes issued by the
91 authority pursuant to this article.

92 (18) Administer on behalf of the Department of Environmental Protection the Dam Safety
93 Rehabilitation Revolving Fund Loan Program pursuant to the provisions of §22-14-1 *et seq.* of this
94 code. Revenues or moneys designated by this code or otherwise appropriated for use by the
95 authority pursuant to the provisions of this article may not be used for the Dam Safety
96 Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety Rehabilitation
97 Revolving Fund shall be kept separate from all revenues and moneys of the authority.

98 (19) Do all acts necessary and proper to carry out the powers expressly granted to the
99 authority in this article.

§22C-1-7a. Power of authority in respect of non-governmental public utilities.

1 (a) In the case of a loan agreement to a non-governmental public utility as authorized in
2 §22C-1-6(5) of this code, the authority may include such terms appropriate to the characteristics of
3 and constraints applicable to non-governmental public utilities sufficient for the enforcement of the

4 authority's repayment rights.

5 (b) Where the Public Service Commission has approved the acquisition by a non-
6 governmental public utility of all or a portion of the assets of a water facility or a wastewater facility
7 owned by a governmental agency that were funded in whole or in part by a loan or a grant from the
8 authority to the governmental agency under this article or under §22-36-1 et seq., §22C-2-1 et
9 seq., or §31-15A-1 et seq. of this code, upon the recommendation of the Public Service
10 Commission in a final order approving such an acquisition the authority shall (i) release the non-
11 governmental public utility and the governmental agency from the obligation to repay the
12 outstanding amount of any such grant and (ii) permit the non-governmental public utility to assume
13 and refinance the repayment obligations of the governmental agency under any such loan at an
14 equivalent interest rate and on such other terms to which the non-governmental public utility and
15 the authority agree.

16 (c) To facilitate the implementation of this section, the authority shall propose rules for
17 legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.

§22C-1-17. Maintenance, operation and repair of projects; reports by authority to Governor and Legislature.

1 Each water development project, when constructed and placed in operation, shall be
2 maintained and kept in good condition and repair by the authority or if owned by a governmental
3 agency or public utility, by such governmental agency or public utility, or the authority or such
4 governmental agency or public utility shall cause the same to be maintained and kept in good
5 condition and repair. Each such project owned by the authority shall be operated by such
6 operating employees as the authority employs or pursuant to a contract or lease with a
7 governmental agency or person. All public or private property damaged or destroyed in carrying
8 out the provisions of this article and in the exercise of the powers granted hereunder with regard to
9 any project shall be restored or repaired and placed in its original condition, as nearly as
10 practicable, or adequate compensation made therefor out of funds provided in accordance with

the provisions of this article.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

§22C-1-22. Acquisition of property by authority -- Acquisition by purchase; governmental agencies authorized to convey, etc., property.

The authority may acquire by purchase, whenever it deems such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands it deems necessary or convenient for the construction and operation of any water development project upon such terms and at such prices it considers reasonable and can be agreed upon between the authority and the owner thereof, and take title thereto in the name of the state.

All governmental agencies and public utilities, notwithstanding any contrary provision of law, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies or public utilities deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency or public utility concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this

2 article:

3 (a) "Authority" means the Water Development Authority provided for in section four, article
4 one of this chapter.

5 (b) "Cost" as applied to any project financed under the provisions of this article means the
6 total of all costs incurred by a local entity that are reasonable and necessary for carrying out all
7 works and undertakings necessary or incident to the accomplishment of any project including:

8 (1) Developmental, planning and feasibility studies, surveys, plans and specifications;

9 (2) Architectural, engineering, financial, legal or other special services;

10 (3) Acquisition of land and any buildings and improvements on the land or buildings,
11 including the discharge of any obligations of the sellers of the land, buildings or improvements;

12 (4) Site preparation and development, including demolition or removal of existing
13 structures, construction and reconstruction, labor, materials, machinery and equipment;

14 (5) The reasonable costs of financing incurred by the local entity in the course of the
15 development of the project, carrying charges incurred before placing the project in service, interest
16 on funds borrowed to finance the project to a date subsequent to the estimated date the project is
17 to be placed in service, necessary expenses incurred in connection with placing the project in
18 service and the funding of accounts and reserves which the authority may require; and

19 (6) Other items that the Department of Environmental Protection determines to be
20 reasonable and necessary.

21 (c) "Fund" means the state Water Pollution Control Revolving Fund provided for in this
22 article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33
23 U.S.C. §1251, *et seq.*, as amended, the Federal Safe Drinking Water Act 42 U.S.C. §300f
24 0through §300j-26, inclusive, as amended, or by the executive order of the Governor issued to
25 comply with federal laws relating to the acts.

26 (d) "Instrumentality" means the Department of Environmental Protection or the agency
27 designated by an order of the Governor as having the primary responsibility for administering the

fund pursuant to the Clean Water Act, 33 U.S.C. §1251, *et seq.*, as amended, and the Federal Safe Drinking Water Act 42 U.S.C. §300f through §300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means, to the extent permitted by applicable federal law, any county, city, town, municipal corporation, authority, district, public service district, public utility, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

(1) Sewage and wastewater collection, treatment and disposal facilities;

(2) Public water transportation, treatment and distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and

(6) Other projects allowable under federal law.

(g) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the Public Service Commission as a public utility under Chapter 24 of this code or which is required to file its tariff with the Public Service Commission.

§22C-2-5. Collection of money due to the fund.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the

4 following rights and remedies in the event of any default by a local entity under a loan agreement:

5 (1) The authority may directly impose, in its own name and for its own benefit, service
6 charges upon all users of a project funded by a loan distributed to a local entity pursuant to this
7 article and may proceed directly to enforce and collect the service charges, together with all
8 necessary costs of the enforcement and collection.

9 (2) The authority may exercise, in its own name or in the name of and as the agent for a
10 particular local entity, all of the rights, powers and remedies of the local entity with respect to the
11 project or which may be conferred upon the local entity by statute, rule, regulation or judicial
12 decision, including all rights and remedies with respect to users of the project funded by the loan
13 distributed to that local entity pursuant to this article.

14 (3) The authority may, by civil action, mandamus or other judicial or administrative
15 proceeding, compel performance by a local entity of all of the terms and conditions of the loan
16 agreement between the state and that local entity including:

17 (A) The adjustment of service charges as required to repay the loan or otherwise satisfy
18 the terms of the loan agreement;

19 (B) The enforcement and collection of service charges; and

20 (C) The enforcement by the local entity of all rights and remedies conferred by statute, rule,
21 regulation, or judicial decision.

22 (4) In the case of a loan agreement between the authority and a non-governmental public
23 utility as defined in §22C-1-3(10) of this code, the authority may include such terms appropriate to
24 non-governmental public utilities as provided in §22C-1-7a of this code.

25 (b) The enforcement by the local entity of all rights and remedies conferred by statute, rule,
26 regulation or judicial decision. The rights and remedies enumerated in this section are in addition
27 to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

28 (c) For loans made for projects defined in subdivision (6), subsection (f), section one of this
29 article, at the direction of the Department of Environmental Protection, the authority shall take a

30 security or other interest in real or personal property with the right to foreclose upon a default to
31 secure loans made from the fund.

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.

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

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

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

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

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

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

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

(e) In addition to any other studies and reports required to be conducted and made by the

Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

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

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

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

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

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall

not include advocacy in cases before the commission;

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

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

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

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

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division.

Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

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

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

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

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

(g) The Public Service Commission is hereby directed to cooperate with the Joint

Committee on Government and Finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the Railroad Safety Division of the Public Service Commission and any similar studies.

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

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

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

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

(j) The Legislature further finds that water and sewer utilities that are political subdivisions of the state providing separate or combined services and having at least four thousand five hundred customers and annual gross revenues of \$3 million or more are most fairly and effectively

regulated by the local governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public Service Commission over water and sewer utilities that are political subdivisions of the state is limited to that granted specifically in this code.

(k) The Legislature further finds that an adequate cash working capital fund is essential to allow water and sewer utilities that are political subdivisions of the state to deliver continuous and compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants. To be eligible to receive any loans, grants, bonds, or any other monies administered or approved by a state agency, a utility must show that it (i) has maintained this working capital reserve required in this subsection or (ii) has rates and charges in place that will allow the accumulation of the net additional funds over current cash balances necessary to achieve it over a period of 24 months.

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.

(a) After an order has been entered pursuant to §24-2H-7 of this code, the distressed utility and another acquiring public utility shall file a petition with the commission under §24-2-12 of this code to approve the necessary operating agreement if such alternative is directed by the commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to 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

failing utility's and the acquiring utility's bondholder(s) to the acquisition. The acquiring utility must present to the commission as part of its financing plan, documentation on how the failing utility's indebtedness will be paid or assumed.

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

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

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

CHAPTER 31. CORPORATIONS.

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

§31-15A-4. Development of guidelines and preliminary application for funding assistance.

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct,

5 improve or otherwise develop a project or infrastructure project. The guidelines shall include the
6 following factors: (1) The public health benefits of the project or infrastructure project; (2) the
7 economic development benefits of the project or infrastructure project; (3) the degree to which the
8 project or infrastructure project will correct deficiencies in the compliance of water supply or
9 sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to
10 which the project or infrastructure project encourages effective and efficient consolidation of water
11 or sewage treatment systems consistent with the comprehensive plan developed pursuant to
12 section six of this article; (5) the cost effectiveness of the project or infrastructure project as
13 compared with alternatives which achieve substantially the same public health or economic
14 development benefits, including the consideration of providing maximum feasible fire protection;
15 (6) the availability of alternative sources of funding which could finance all or a part of the project
16 and infrastructure project, and the need for the assistance of the council to finance the project or
17 infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and
18 maintain the system if the project or infrastructure project is approved; (8) the degree to which the
19 project or infrastructure project achieves other state or regional planning goals; (9) the estimated
20 date upon which the project or infrastructure project could commence if funding were available and
21 the estimated completion date of the project or infrastructure project; and (10) such other
22 considerations as the council may consider necessary or appropriate to accomplish the purpose
23 and intent of this article. The council shall propose rules for legislative approval in accordance with
24 §29A-3-1 et seq. of this code to govern (x) the eligibility of a project sponsor that is a non-
25 governmental public utility as defined in §22C-1-3(10) of this code for grant and loan assistance as
26 provided in §31-15A-9(d) of this code; (y) the waiver of repayment requirements for grants made to
27 project sponsors the assets of which are to be acquired by another public utility as provided in
28 §22C-1-7a of this code; and (z) the eligibility of for-profit project sponsors directed by the Public
29 Service Commission to acquire or rehabilitate utility facilities owned by distressed or failing utilities
30 pursuant to §24-2H-7 of this code for (1) loans at rates other than current market interest rates

31 under §31-15A-9(f) of this code, (2) funds from the Distressed Utilities Account under §31-15A-9(i)
32 of this code, or (3) funds from the Critical Needs and Failing Systems Sub Account under §31-15A-
33 17c(a) of this code.

34 (b) The council shall create a preliminary application form which shall be used by all project
35 sponsors requesting funding assistance from state infrastructure agencies to plan, acquire,
36 construct, improve or otherwise develop an infrastructure project or project. The preliminary
37 application form shall contain all information required by all state infrastructure agencies that will
38 be required to issue permits and/or certificates regarding the project or infrastructure project. The
39 preliminary application shall require the project sponsor to set forth the type and proposed location
40 of the infrastructure project or project; the estimated total cost of the project; the amount of funding
41 assistance required and the specific uses of the funding; other sources of funding available or
42 potentially available for the infrastructure project or project; information demonstrating the need for
43 the infrastructure project or project and that the proposed funding of the project is the most
44 economically feasible and viable alternative to completing the project or infrastructure project; and
45 such other information as the council considers necessary to enable it to recommend the type of
46 project or infrastructure project financing, in terms of the kind, amount and source of funding,
47 which the project sponsor should pursue and which the state infrastructure agency or agencies
48 should consider an appropriate investment of public funds, and to otherwise carry out the intent of
49 this article.

**§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: *Provided*, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the Water Development Authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the Water Development Authority shall invest and reinvest the moneys subject to the limitations set forth in §31-18-1 *et seq.* of this code.

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

(d) Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority to a project sponsor that is a non-governmental public utility as defined in §22C-1-3(10) of this code shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development Authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement may include such terms as the Water Development Authority is authorized to include under §22C-1-7a of this code. Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority to a project sponsor that is not a non-governmental public utility as defined in §22C-1-3(10) of this code shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development Authority and the project sponsor to which the loan,

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

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

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

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

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

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

(f) The interest rate on any loan to governmental, quasi-governmental, or not-for-profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not-for-profit project sponsors and for-profit project sponsors directed by the Public Service Commission to acquire or rehabilitate utility facilities owned by distressed or failing utilities pursuant to §24-2H-7 of this code, to require that loans made to all other for-profit entities

82 shall bear interest at the current market rates. Therefore, no loan may be made by the council to a
83 for-profit entity other than as described in the preceding sentence at an interest rate which is less
84 than the current market rate at the time of the loan agreement.

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

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

107 (i) The Water Development Authority shall establish a separate restricted account within

the infrastructure fund to be expended for the acquisition, repair and improvement of failing water and wastewater systems ~~by nonprofit public utilities~~ from grants approved by the council and either (A) supported by recommendations from the Public Service Commission in accordance with the plan developed under §24-2H-1 et seq. of this code or (B) to be undertaken by a capable and proximate public utility directed by the Public Service Commission to acquire or rehabilitate utility facilities owned by distressed or failing utilities pursuant to §24-2H-7 of this code. The restricted account shall be known as the Distressed Utilities Account. Annually, the council may request the Water Development Authority to transfer from the uncommitted loan balances for each year a total amount not to exceed \$5 million to the restricted account to fund the grants approved by the council during that fiscal year. Notwithstanding the provisions of §31-15A-10(b) of this code, the council may approve grants from this account for up to 100 percent of the cost of failing utility repairs, replacements and improvements and such grant along with other grants awarded by the council may exceed 50 percent of the total project cost: *Provided*, That at no time may the balance of the restricted account exceed \$5 million.

§31-15A-17c. Critical Needs and Failing Systems Sub Account.

Notwithstanding any provision of this article to the contrary:

(a) The Water Development Authority shall establish a separate and segregated sub account in the Infrastructure Fund designated the Critical Needs and Failing Systems Sub Account into which the council may instruct the Water Development Authority to transfer from the uncommitted loan balances on June 30 each year, up to \$12 million.

(b) The council shall direct the Water Development Authority to make loans or grants from the Critical Needs and Failing Systems Sub Account to a project sponsor (including a capable and proximate public utility directed by the Public Service Commission to acquire or rehabilitate utility facilities owned by distressed or failing utilities pursuant to §24-2H-7 of this code) when the council determines that a project will address a critical immediate need by:

(1) The continuation of water or wastewater services;

12 (2) Addressing water facility or wastewater facility failure due to the age of the facility or
13 facilities; or

14 (3) Providing extensions to a water facility or wastewater facility that will add customers
15 with a total project cost of less than \$2 million: *Provided*, That a person or governmental agency,
16 as those terms are defined in §31-15A-2 of this code, shall pay any overage not to exceed 10
17 percent of the total project cost.

18 (c) Grant limitations and allocations contained in §31-15A-10(b) and §31-15A-10(c) of this
19 code do not apply to grants made from the Critical Needs and Failing Systems Sub Account.

NOTE: The purpose of this bill is to extend access to loan and grant funding from the Water Development Authority to non-governmental public utilities.

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