

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5210

By Delegates Hanshaw (Mr. Speaker) and

Hornbuckle

(By Request of the Executive)

[Introduced February 05, 2026; referred to the

Committee on Energy and Public Works]

1 A BILL to amend and reenact §22-36-1, §22-36-3, §22-36-4, §22-36-5, §22C-1-3, §22C-1-4,
2 §22C-1-5, §22C-1-6a, §22C-1-8, §22C-2-1, §22C-2-3, §22C-2-4, §22C-2-5, §24-2H-1,
3 §24-2H-3, §24-2H-4, §24-2H-5, §24-2H-6, §24-2H-7, §24-2H-8, §31-15A-1, §31-15A-2,
4 §31-15A-3, §31-15A-10, §31-15A-13, and §31-15A-17, of the Code of West Virginia, 1931,
5 as amended; and to amend the code by adding eight new sections, designated §22C-1-5a,
6 §24-2H-3a, §24-2H-3b, §24-2H-3c, §24-2H-4a, §24-2H-7a, §31-15A-3a, and §31-15A-9a,
7 relating to comprehensive reform of the state's water infrastructure systems; granting the
8 West Virginia Department of Environmental Protection administrative authority over the
9 West Virginia Drinking Water Treatment Revolving Fund and the Water Pollution Control
10 Revolving Fund; renaming the Infrastructure and Jobs Development Council the Water
11 Development and Infrastructure Council; eliminating the Water Development Authority
12 Board and shifting its responsibilities to the Water Development and Infrastructure Council;
13 allowing private utilities to be eligible for low-interest loans through the Water Development
14 Authority, so long as the issuance of loans to public utilities are prioritized; renaming the
15 Distressed and Failing Utilities Improvement Act the Distressed and Failing Water and
16 Wastewater Utilities Improvement Act; requiring mandatory reporting to municipal
17 governing bodies and county commissions; requiring initial and renewed training for
18 municipal governing bodies and county commissions overseeing public water and/or
19 wastewater utilities; designating water and wastewater regions across the state;
20 authorizing utilities to enter into Regional Cooperative Agreements, which shall include
21 and encourage shared resources, and which should afford the participating utilities with
22 benefits, such as relaxed regulatory requirements; creating a voluntary Early Intervention
23 Pilot Program which shall afford six to 10 public water and wastewater utilities with an
24 opportunity to address critical matters before the utilities end up on the distressed and
25 failing utilities watch list; modifying the process for placing public water and wastewater
26 utilities on the watch list for water and wastewater utilities; establishing a mandatory

improvement period for public water and wastewater utilities on the watch list for distressed and failing utilities; authorizing the Public Service Commission to order utilities which are exempt from being ordered to acquire a distressed or failing utility to enter into a memorandum of understanding to ensure that the distressed or failing utility continues to properly function while the Public Service Commission identifies an alternative acquiring utility; codifying the Consolidation Committee on the Water Development and Infrastructure Council, which allows for considering whether voluntary consolidation would improve an infrastructure project; establishing new guidelines for the use of state funds, which addresses when a public water or wastewater utility seeking funding is in substantial noncompliance with state regulations; requiring guidelines for determining when to fund projects that include line extensions, and authorizing public water utilities to obtain use contracts with potential new customers before obtaining funding; allowing public water and wastewater utilities to seek a waiver of a preliminary engineering report prior to obtaining a recommendation to seek funding; requiring the Water Development Authority to work with public water and wastewater utilities to rectify any issues which may prevent the utility from being eligible for state funding for infrastructure projects; and updating definitions in accordance with the changes made throughout.

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.

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

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

4 ~~code.~~

5 ~~(2)~~ (1) "Capacity development" means the technical, managerial, and financial capability of
6 a public water system.

7 ~~(3)~~ (2) "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)~~ (3) "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)~~ (4) "Federal Safe Drinking Water Act" means the federal statute commonly known as
14 the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be
15 subsequently amended.

16 ~~(6)~~ (5) "Fund" means the West Virginia Drinking Water Treatment Revolving Fund created
17 in this article.

18 ~~(7)~~ (6) "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)~~ (7) "Local entity" means any municipality, public utility, or person, including any
22 individual, firm, partnership, association, not-for-profit corporation, or other corporation organized
23 and existing under the laws of the state which may construct and operate an eligible project.

24 ~~(9)~~ (8) "Public water system" means that term as defined in §16-1-9a of this code.

25 ~~(10)~~ (9) "Project" means a project for improving a drinking water system for the purpose of
26 achieving or maintaining compliance with applicable state and federal drinking water regulations.

27 ~~(11)~~ (10) "Set-aside accounts" means those accounts that shall be set up for activities
28 required by the federal Safe Drinking Water Act. The moneys for these accounts may be taken
29 from the federal capitalization grant for these non-project activities before the capitalization grant

is deposited into the fund.

~~(42)~~ (11) "Small system" means a public water system serving 10,000 or fewer persons.

§22-36-3. West Virginia Drinking Water Treatment Revolving Fund; duties of Department of Environmental Protection and Water Development Authority; set-aside accounts.

(a) There is continued in the office of the State Treasurer a permanent and perpetual special fund to be known as the West Virginia Drinking Water Treatment Revolving Fund. The fund shall be administered and managed in accordance with the provisions of the federal Safe Drinking Water Act by the Department of Environmental Protection. The Department of Environmental Protection may draw all or a portion of those moneys available under capitalization agreements, and with the capitalization grant awards from the United States Environmental Protection Agency under the federal Safe Drinking Water Act, and deposit such moneys into the fund and the set-aside accounts.

(b) The fund, less the set-aside account moneys, shall be administered and managed by the ~~Water Development Authority under the direction of the~~ Department of Environmental Protection. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund and set-aside accounts, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal Safe Drinking Water Act.

(c) In order to carry out the administration and management of the fund, the ~~authority and the Department of Environmental Protection are~~ is authorized to employ officers, employees, agents, advisors, and consultants, including attorneys, financial advisors, engineers, other technical advisors, and public accountants, and notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or

instrumentality.

(d) The ~~authority~~ Department of Environmental Protection shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to govern the pledge of loans to secure bonds of the ~~authority~~ Department of Environmental Protection.

(e) ~~Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee.~~ Moneys in the fund shall not be commingled with other money of the ~~authority~~ Department of Environmental Protection. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the ~~authority~~ Department of Environmental Protection in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal Safe Drinking Water Act, set-aside accounts shall be set up in accounts separate from the West Virginia Drinking Water Treatment Revolving Fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal Safe Drinking Water Act. The Department of Environmental Protection shall establish and administer the set-aside accounts as permitted by the federal Safe Drinking Water Act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program.

§22-36-4. Management of funds.

The ~~authority~~ Department of Environmental Protection shall manage the funds received pursuant to the provisions of this article for accounting purposes. The ~~authority~~ Department of Environmental Protection shall cause an audit of its books and accounts to be made at least once each fiscal year and the costs thereof may be defrayed as administrative expenses under the provisions of this article. The audit shall be conducted by a certified public accountant and provide an auditor's opinion on the fund's financial statements, a report on the internal controls, and a report prepared in compliance with the provisions of the West Virginia Drinking Water Treatment

8 Revolving Fund.

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

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

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

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

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

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

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

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

23 (b) The rights and remedies enumerated in this article are in addition to rights and
24 remedies conferred upon the ~~authority~~ Department of Environmental Protection by law or pursuant

25 to the loan agreement.

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§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) ~~(4)~~ "Construction" includes reconstruction, enlargement, improvement and providing
15 furnishings or equipment.

16 (6) ~~(5)~~ "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
33 water development revenue bonds to be paid into any special funds from the proceeds of such
34 bonds; and the financing of the placing of any such project in operation. Any obligation or
35 expenses incurred by any governmental agency, with the approval of the authority, for surveys,
36 borings, preparation of plans and specifications and other engineering services in connection with
37 the acquisition or construction of a project are a part of the cost of such project and shall be
38 reimbursed out of the proceeds of loans or water development revenue bonds as authorized by
39 the provisions of this article.

40 (6) "Council" means the West Virginia Water Development and Infrastructure Council
41 created in §31-15A-3 of this code.

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

46 (8) "Governmental agency" means the state government or any agency, department,

47 division or unit thereof; counties; municipalities; watershed improvement districts; soil
48 conservation districts; sanitary districts; public service districts; drainage districts; regional
49 governmental authorities and any other governmental agency, entity, political subdivision, public
50 corporation or agency having the authority to acquire, construct or operate public water facilities,
51 stormwater systems or wastewater facilities; the United States government or any agency,
52 department, division or unit thereof; and any agency, commission or authority established
53 pursuant to an interstate compact or agreement.

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

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

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

67 (12) "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) "Pollution" means: (a) The discharge, release, escape, deposit or disposition, directly
75 or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or
76 character, in or near any waters of the state, in such condition, manner or quantity, as does, will or
77 is likely to: (1) contaminate or substantially contribute to the contamination of any of such waters;
78 or (2) alter or substantially contribute to the alteration of the physical, chemical or biological
79 properties of any of such waters, if such contamination or alteration, or the resulting contamination
80 or alteration where a person only contributes thereto, is to such an extent as to make any of such
81 waters: (i) Directly or indirectly harmful, detrimental or injurious to the public health, safety and
82 welfare; or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life; or
83 (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational,
84 scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit or
85 disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes,
86 of whatever kind or character, in or near any waters of the state in such condition, manner or
87 quantity, as does, will or is likely to reduce the quality of the waters of the state below the standards
88 established therefor by the United States or any department, agency, board or commission of this
89 state authorized to establish such standards.

90 (14) "Project" or "water development project" means any public water facility, stormwater
91 system or wastewater facility, the acquisition or construction of which is authorized, in whole or in
92 part, by the Water Development Authority or the acquisition or construction of which is financed, in
93 whole or in part, from funds made available by grant or loan by, or through, the authority as
94 provided in this article, including facilities, the acquisition or construction of which is authorized, in
95 whole or in part, by the Water Development Authority or the acquisition or construction of which is
96 financed, in whole or in part, from funds made available by grant or loan by, or through, the
97 authority as provided in this article, including all buildings and facilities which the authority deems
98 necessary for the operation of the project, together with all property, rights, easements and interest

which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) "Private utility" means any water facility, stormwater system or wastewater facility that is owned by a privately owned entity that operates for-profit.

(16) "Private water development project" means any water facility, stormwater system or wastewater facility of a private utility, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

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

~~(46)~~ (18) "Public utility facilities" means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

~~(47)~~ (19) "Revenue" means any money or thing of value collected by, or paid to, the Water Development Authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the Water Development Authority to governmental agencies to

125 finance, in whole or in part, the acquisition or construction of any water development project or
126 projects or other money or property which is received and may be expended for or pledged as
127 revenues pursuant to this article.

128 ~~(48)~~ (20) "Sewage" means water-carried human or animal wastes from residences,
129 buildings, industrial establishments or other places, together with such groundwater infiltration and
130 surface waters as may be present.

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

141 ~~(20)~~ (22) "Stormwater management program" means those activities associated with the
142 management, operation and maintenance and control of stormwater and stormwater systems and
143 includes, but is not limited to, public education, stormwater and surface runoff water quality
144 improvement, mapping, planning, flood control, inspection, enforcement and any other activities
145 required by state and federal law. The term "stormwater management program" does not include
146 those activities associated with the management, operation, maintenance and control of
147 highways, road and drainage easements or stormwater facilities constructed, owned or operated
148 by the West Virginia Division of Highways without the express agreement of the Commissioner of
149 the Division of Highways.

150 ~~(24)~~ (23) "Water resources", "water" or "waters" means any and all water on or beneath the

151 surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within
152 this state, or bordering this state and within its jurisdiction, and includes, without limiting the
153 generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks,
154 ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities),
155 impounding reservoirs, springs, wells and watercourses.

156 ~~(22)~~ (24) "Wastewater" means any water containing sewage, industrial wastes or other
157 wastes or contaminants derived from the prior use of such water and includes, without limiting the
158 generality of the foregoing, surface water of the type storm sewers are designed to collect and
159 dispose of.

160 ~~(23)~~ (25) "Wastewater facilities" means facilities for the purpose of treating, neutralizing,
161 disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the
162 generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes or
163 other wastes, waste water and the residue thereof; facilities for the temporary or permanent
164 impoundment of wastewater, both surface and underground; and sanitary sewers or other
165 collection systems, whether on the surface or underground, designed to transport wastewater
166 together with the equipment and furnishings thereof and their appurtenances and systems,
167 whether on the surface or underground, including force mains and pumping facilities therefor.

168 ~~(24)~~ (26) "Water facility" means all facilities, land and equipment used for the collection of
169 water, both surface and underground, transportation of water, treatment of water and distribution
170 of water all for the purpose of providing potable, sanitary water suitable for human consumption
171 and use.

**§22C-1-4. Water Development Authority; Water Development Board; organization of
authority and board; appointment of board members; their term of office,
compensation and expenses; Director of Authority; compensation.**

1 (a) The Water Development Authority is continued. The authority is a governmental
2 instrumentality of the state and a body corporate. The exercise by the authority of the powers

3 conferred by this article and the carrying out of its purposes and duties are essential governmental
4 functions and for a public purpose.

5 (b) The authority is controlled, managed and operated by a ~~seven-member board known~~
6 ~~as the Water Development Board. The Governor or designee, the secretary of the Department of~~
7 ~~Environmental Protection or designee and the Commissioner of the Bureau for Public Health or~~
8 ~~designee are members ex officio of the board. Four members are appointed by the Governor, by~~
9 ~~and with the advice and consent of the Senate, for six-year terms, which are staggered in~~
10 ~~accordance with the initial appointments under prior enactment of this section. In the event of a~~
11 ~~vacancy, appointments are filled in the same manner as the original appointment for the remainder~~
12 ~~of the unexpired term. A member continues to serve until the appointment and qualification of the~~
13 ~~successor. More than two appointed board members may not at any one time belong to the same~~
14 ~~political party. Appointed board members may be reappointed to serve additional terms~~ the West
15 Virginia Water Development and Infrastructure Council created in §31-15A-3 of this code. All
16 references in this code to the Water Development Board shall be construed as reference to the
17 West Virginia Water Development and Infrastructure Council.

18 (c) ~~All members of the board shall be citizens of the state. Each appointed member of the~~
19 ~~board, before entering upon his or her duties, shall comply with the requirements of article one,~~
20 ~~chapter six of this code and give bond in the sum of \$25,000 in the manner provided in article two~~
21 ~~of said chapter. The Governor may remove any board member for cause as provided in article six~~
22 ~~of said chapter.~~

23 (d) ~~The Governor or designee serves as chair. The board annually elects one of its~~
24 ~~appointed members as vice chair and appoints a secretary-treasurer, who need not be a member~~
25 ~~of the board. Four members of the board is a quorum and the affirmative vote of four members is~~
26 ~~necessary for any action taken by vote of the board. A vacancy in the membership of the board~~
27 ~~does not impair the rights of a quorum by such vote to exercise all the rights and perform all the~~
28 ~~duties of the board and the authority. The person appointed as secretary-treasurer, including a~~

~~board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in article two, chapter six of this code.~~

~~(e) The Governor or designee, the Secretary of the Department of Environmental Protection and the Commissioner of the Bureau for Public Health do not receive compensation for serving as board members. Each appointed member receives an annual salary of \$12,000, payable at least twice per month. Each of the seven board members is reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties as a member of the board in a manner consistent with guidelines of the Travel Management Office of the Department of Administration. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.~~

~~(f) There is a director of the authority appointed by the Governor, with the advice and consent of the Senate, who serves at the Governor's will and pleasure. The director is responsible for managing and administering the daily functions of the authority and for performing other functions necessary to the effective operation of the authority. The compensation of the director is fixed annually by the board council.~~

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

~~(a) To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans.~~

~~(b) Loans made pursuant to this section may include amounts to refinance debt issued for~~

8 existing water development projects of the governmental agency when the refinancing is in
9 conjunction with the financing for a new water development project regardless of the source of the
10 financing for the new project. ~~Provided, That. However,~~ the amount of the refinancing may not
11 exceed 50% of the aggregate amount of the refinancing of an existing project and the financing of
12 a new project; and may issue water development revenue bonds of this state, payable solely from
13 revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to
14 governmental agencies.

15 (c) A water development project may not be undertaken unless it has been determined by
16 the authority to be consistent with any applicable comprehensive plan of water management
17 approved by the Secretary of the Department of Environmental Protection or in the process of
18 preparation by the secretary and to be consistent with the standards set by the state
19 environmental quality board, for the waters of the state affected thereby. Any resolution of the
20 authority providing for acquiring or constructing projects or for making a loan or grant for projects
21 shall include a finding by the authority that the determinations have been made.

22 (d) A loan agreement shall be entered into between the authority and each governmental
23 agency to which a loan is made for the acquisition or construction of a water development project,
24 which loan agreement shall include, without limitation, the following provisions:

25 (1) The cost of the project, the amount of the loan, the terms of repayment of the loan and
26 the security therefor, which may include, in addition to the pledge of all revenues from the project
27 after a reasonable allowance for operation and maintenance expenses, a deed of trust or other
28 appropriate security instrument creating a lien on the project;

29 (2) The specific purposes for which the proceeds of the loan shall be expended including
30 the refinancing of existing water development project debt as provided above, the procedures as
31 to the disbursement of loan proceeds and the duties and obligations imposed upon the
32 governmental agency in regard to the construction or acquisition of the project, including
33 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 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~~ council; and

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

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

(a) To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may make loans to the water facilities, stormwater systems, or wastewater facilities for the acquisition or construction of private water development projects by governmental agencies, which loans may be made to private utilities. Loans to private utilities may be offered at an interest rate that is lower than the market rate.

(b) Any loan issued to a private utility pursuant to this section will not be eligible for refinancing, and may not be forgiven. However, if a private utility acquires a public utility, whether voluntarily or involuntarily, then the private utility may seek refinancing for any loan previously

10 obtained by the public utility pursuant to §22C-1-5 of this code.

11 (c) A private water development project may not be undertaken unless it has been
12 determined by the authority to be consistent with any applicable comprehensive plan of water
13 management approved by the Secretary of the Department of Environmental Protection or in the
14 process of preparation by the secretary and to be consistent with the standards set by the state
15 environmental quality board, for the waters of the state affected thereby. Any resolution of the
16 authority providing for acquiring or constructing projects or for making a loan for projects shall
17 include a finding by the authority that the determinations have been made.

18 (d) A loan agreement shall be entered into between the authority and each private utility to
19 which a loan is made for the acquisition or construction of a water development project, which loan
20 agreement shall include, without limitation, the following provisions:

21 (1) The cost of the project, the amount of the loan, the terms of repayment of the loan and
22 the security therefor, which may include, in addition to the pledge of all revenues from the project
23 after a reasonable allowance for operation and maintenance expenses, a deed of trust or other
24 appropriate security instrument creating a lien on the project;

25 (2) The specific purposes for which the proceeds of the loan shall be expended, the
26 procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon
27 the private utility in regard to the construction or acquisition of the project, including engineering
28 fees and other administrative costs relating to development of the project;

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

34 (4) The agreement of the private utility to comply with all applicable laws, rules and
35 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 council; and

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

(e) Nothing in this section shall be construed as requiring the water development authority to issue a loan to a qualifying private utility. In issuing any loan under this section, the authority should consider, in order of priority:

(1) Immediate or emergent public health and safety large;

(2) Increasing affordability to customers; and

(3) Preference to issuing loans to qualifying public utilities over qualifying private utilities.

(f) A private utility may not receive any grant from any fund created under this article. Privately owned, for-profit entities which do not own a water facility, stormwater system, or wastewater facility are not eligible for a loan from the water development authority.

§22C-1-6a. Additional powers of the West Virginia Water Development Authority; Creation of Economic Enhancement Grant Fund.

(a) The Water Development Authority shall create and establish a special fund of moneys made available by appropriations, grants, contributions or other sources to be known as the West Virginia Economic Enhancement Grant Fund. This fund shall be governed, administered and accounted for by the directors, officers and management staff of the Water Development Authority as a special program account separate and distinct from any other money, fund or funds owned and/or managed by the Water Development Authority. The Economic Enhancement Grant Fund shall consist of subaccounts as deemed necessary by the Water Development Authority for the

8 deposit of any appropriations, grants, gifts, contributions or other moneys received by the
9 Economic Enhancement Grant Fund from any source, public or private, and all income earned on
10 moneys held in the Economic Enhancement Grant Fund. Amounts in the Economic Enhancement
11 Grant Fund shall be administered by the Water Development Authority separate and apart from its
12 other assets and programs. Amounts in the Economic Enhancement Grant Fund may not be
13 transferred to any other fund or account or used for the payment of any other programs of the
14 Water Development Authority except the Water Development Authority may use funds in the
15 Economic Enhancement Grant Fund to reimburse itself for any administration costs incurred by it.
16 Pending distribution of any money in the Economic Enhancement Grant Fund the Water
17 Development Authority shall invest and reinvest the money subject to the limitations of §22C-1-15
18 of this code.

19 (b) The Water Development Authority shall establish the Matching Grant Subaccount in the
20 Economic Enhancement Grant Fund to be expended to provide the local or state match for any
21 federal or other programs that require a match for projects and infrastructure projects as defined in
22 §31-15A-2 of this code and where the commitment of the matching funds is required to be made
23 and submitted with the application for the federal or other grant. Upon receipt of a
24 recommendation from the ~~West Virginia Infrastructure and Jobs Development~~ Water Development
25 and Infrastructure Council and/or the West Virginia Department of Economic Development, the
26 Water Development Authority shall review the application of a governmental agency or not-for-
27 profit and if the governmental agency or not-for-profit is eligible for the federal or other matching
28 grant funding, set aside moneys in the subaccount and provide a written binding commitment to
29 the governmental agency or not-for-profit to submit with its application. If the federal or other
30 programs subsequently approve funding to the governmental agency or not-for-profit, the Water
31 Development Authority shall enter into a grant agreement with the governmental agency or not-
32 for-profit providing the grant funding if the governmental agency or not-for-profit is in compliance
33 with §12-4-14 of this code. The Water Development Authority shall disperse funds under the grant

agreement from time to time to comply with the terms of the other funding sources.

(c) The Water Development Authority shall establish the Enhancement Grant Subaccount in the Economic Enhancement Grant Fund to be expended as grants to governmental agencies or not-for-profits to cover all or a portion of the costs of projects or infrastructure projects as defined in §31-15A-2 of this code and more specifically:

(1) To cover the cost of bid overruns for projects and infrastructure projects approved by the West Virginia ~~Infrastructure and Jobs Development~~ Water Development and Infrastructure Council;

(2) To cover all or a portion of the costs of extending or expanding water, stormwater and/or wastewater service to enhance economic development and/or tourism when recommended by the Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of Tourism;

(3) To cover the costs of facilitating the merger and/or consolidation of water or wastewater providers where all parties to the proposed merger make joint applications to the West Virginia ~~Infrastructure and Jobs Development~~ Water Development and Infrastructure Council;

(4) To cover the cost of water, stormwater and/or wastewater projects for governmental agencies where the combined rates for water, stormwater and wastewater exceed 1.5% of the governmental agency's Median Household Income;

(5) To cover the startup costs for governmental utilities that are providing or extending service to unserved areas of the State;

(6) To provide a commitment to cover the difference between the cost of funded projects and the updated cost estimate, and when the project is bid, to provide a grant for the dollar difference between the committed funding and the bid results; and

(7) To cover all or a portion of the infrastructure projects to enhance economic development and/or tourism when recommended by the Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of Tourism.

(d) The Water Development Authority is hereby authorized to enter into grant agreements with governmental agencies and not-for-profits to evidence the grant which agreements shall include the following provisions:

(1) The estimated cost of the project or infrastructure project, the amount of the grant and the other funding sources;

(2) The specific purpose for which the grant proceeds shall be expended and the conditions and procedures for distributing the 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 or not-for-profit 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.

(e) The Water Development Authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records with respect to the system and distributions and all matters relating to the financial application of the Economic Enhancement Grant Fund including all subaccounts therein. The Water Development Authority shall provide copies of the audit report to the Legislature.

§22C-1-8. Expenditure of funds for study and engineering of proposed projects.

With the approval and the consent of the ~~board~~ council, either the director of the Division of Environmental Protection or the commissioner of the bureau of public health, or both of them, shall expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed water development project and may use its engineering and other forces, including consulting engineers and sanitary engineers, for the purpose of effecting such study. All such expenses incurred by the director or commissioner prior to the issuance of water development revenue bonds or notes under this article shall be paid by the director or commissioner and

8 charged to the appropriate water development project and the director and commissioner shall
9 keep proper records and accounts, showing the amounts so charged. Upon the sale of water
10 development revenue bonds or notes for a water development project, the funds so expended by
11 the director or commissioner, with the approval of the authority, in connection with such project,
12 shall be repaid to the Division of Environmental Protection or bureau of public health from the
13 proceeds of such bonds or notes.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

1 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)~~ (a) "Cost" as applied to any project financed under the provisions of this article means
6 the 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 Department of

Environmental Protection may require; and

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

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

~~(d)~~ (c) "Instrumentality" means the Department of Environmental Protection or the agency 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)~~ (d) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

~~(f)~~ (e) "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

45 (6) Other projects allowable under federal law.

§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

1 (a) ~~Under the direction of the Division of Environmental Protection, the water development~~
2 ~~authority~~ The Department of Environmental Protection shall establish, administer and manage a
3 permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control
4 Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the
5 Legislature, moneys allocated to the state by the federal government expressly for the purposes of
6 establishing and maintaining a state water pollution control revolving fund, all receipts from loans
7 made from the fund to local entities, all income from the investment of moneys held in the fund,
8 and all other sums designated for deposits to the fund from any source, public or private. Moneys
9 in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a
10 project: *Provided*, That moneys in the fund shall be utilized to defray the costs incurred by the
11 ~~authority and the~~ Division of Environmental Protection in administering the provisions of this
12 article: *Provided, however*, That moneys in the fund shall be used to make grants for projects to
13 the extent allowed or authorized by federal law.

14 (b) ~~The director of the Division~~ Secretary of the Department of Environmental Protection, in
15 ~~consultation with the authority~~, shall promulgate legislative rules in accordance with the provisions
16 of ~~article three, chapter twenty-nine~~ a §29A-3-1 et seq. of this code, to:

17 (1) Govern the disbursement of moneys from the fund; and

18 (2) Establish a state water pollution control revolving fund program to direct the distribution
19 of grants or loans from the fund to particular local entities and establish the interest rates and
20 repayment terms of the loans.

21 (c) In order to carry out the administration and management of the fund, the ~~authority~~
22 Department of Environmental Protection is authorized to employ officers, employees, agents,
23 advisers and consultants, including attorneys, financial advisers, engineers, other technical

advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority Department of Environmental Protection shall promulgate legislative rules in accordance with the provisions of ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the ~~director of the authority or the director's~~ Secretary of the Department of Environmental Protection or the secretary's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority Department of Environmental Protection. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority Department of Environmental Protection in obligations or securities which are considered lawful investments for public funds under this code.

§22C-2-4. Annual audit.

The authority Department of Environmental Protection 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 defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of ~~subsection (a), section three~~ §22C-2-3(a) of this article.

§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 Department of Environmental Protection has

4 and may, at its option, exercise the following rights and remedies in the event of any default by a
5 local entity under a loan agreement:

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

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

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

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

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

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

24 (c) For loans made for projects defined in ~~subdivision (6), subsection (f), section one of this~~
25 ~~article, at the direction of the Department of Environmental Protection, the authority §22C-2-~~
26 1(e)(6) of this code, the Department of Environmental Protection shall take a security or other
27 interest in real or personal property with the right to foreclose upon a default to secure loans made
28 from the fund.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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

§24-2H-1. Short title.

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

§24-2H-3. Definitions.

1 (a) "Consolidation Committee" means the established committee within the council, as
2 created in §31-15A-3a of this code.

3 ~~(b) A "distressed utility" is~~ "Distressed utility" means a water or wastewater utility that, ~~for~~
4 financial, operational, or managerial reasons:

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

9 ~~(B)(2)~~ Fails to comply within a reasonable period of time with any final, nonappealable
10 order of the Department of Environmental Protection, Bureau for Public Health, or the commission
11 concerning the safety, adequacy, efficiency, or reasonableness of service, including, but not
12 limited to, the availability of water, the potability of water, the palatability of water, or the provision
13 of water at adequate volume and pressure, and the collection and treatment of wastewater;

14 ~~(2)(3)~~ Is no longer able to provide adequate, efficient, safe, and reasonable utility services;
15 or

16 ~~(3)(4)~~ Fails to timely pay some or all of its financial obligations, including, but not limited to,
17 its federal and state tax obligations and its bond payments to the West Virginia Water

Development Authority, the United States Department of Agriculture, or other bondholders; fails to maintain its debt service reserve; or fails to submit an audit as required by its bond or loan documents or state law.

(b)(c) "Failing water or wastewater utility" means a public utility that: meets the definition of a distressed water or wastewater utility, and either:

(A) Has not, after a reasonable time period, been stabilized and improved by corrective measures put in place under §24-2H-4a or §24-2H-7 of this code; or

(B) Has had the requirements of §24-2H-7 of this code suspended for good cause shown by an order of the commission.

(e)(d) "Capable proximate water or wastewater utility" means a public or private utility which regularly provides adequate, safe, and reasonable service of the same type as the distressed utility and is situated close enough to the facilities of a distressed utility that operational management is reasonable, financially viable, and nonadverse to the interests of the current customers of the nondistressed utility. A "capable proximate water or wastewater utility" may also be referred to as an "acquiring utility."

(e) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, which is, or shall hereafter be held to be, a public service. For the purposes of this article, "public utility" or "utility" shall refer only to wastewater utilities and water utilities.

(f) "Wastewater utility" means a public utility that treats, neutralizes, disposes of, stabilizes, cools, segregates or holds wastewater, including, for the treatment and disposal of sewage, industrial wastes or other wastes, waste water and the residue thereof; allows for the temporary or permanent impoundment of wastewater, both surface and underground; and provides 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.

(g) "Water utility" means a public utility that collects water, both surface and underground, transports water, treats water, and distributes water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§24-2H-3a. Mandatory reporting and training.

(a) Annual Reports. –

(1) Any water and/or wastewater utilities which operates under the supervision or management of a municipal governing body must provide that municipal governing body with annual operational and financial reports.

(2) Any water and/or wastewater utility which operates under the supervision of a county commission must provide that county commission with annual operational and financial reports.

(3) This subsection does not prevent a municipal governing body or county commission from requiring a water and/or wastewater utility under its control to provide operational and/or financial reports more frequently.

(b) Initial and Renewed Training. – Any person who is a member of a municipal governing body or county commission that is operating or has oversight of a waterworks system shall complete at least six hours of initial training within six months of taking office, and shall require all board members and senior managers of the municipal or county waterworks system to complete at least six hours of initial training within six months of taking office or employment.

(1) Any person required to take initial training shall also be required to complete at least six hours of continuing education within six months of any re-appointment or re-election to the position. However, if the person is not in an elected or appointed position, then that person is required to complete at least six hours of continuing education every two years.

(2) Initial training and continuing education shall focus on financial management, regulatory compliance, and operational best practices. Each waterworks system shall submit a verified certificate to the Public Service Commission at the end of each calendar year, confirming

22 that it is in compliance.

23 (3) The Public Service Commission shall provide, or cause to be provided, the training
24 required by this section. Upon request by a municipal governing body or county commission, the
25 Public Service Commission may approve training provided by other entities as sufficient to meet
26 the requirements of this subsection.

27 (c) The requirements of this section only apply to those waterworks systems which are
28 regulated pursuant to §8-19-1 et seq. of this code, §8-20-1 et seq. of this code, §16-13-1 et seq. of
29 this code, or §16-13A-1 et seq. of this code. The requirements set forth in this section shall
30 preempt any training obligation which requires less training than is set forth herein, but it does not
31 prevent a governing body from requiring more training.

§24-2H-3b. Regional Cooperative Agreements.

1 (a) Designation of Regions. – The Public Service Commission shall designate each part of
2 the state into separate regions. In designating a region, the Public Service Commission shall
3 consider the presence of existing water and wastewater utilities which are in geographic proximity
4 to one another. Such proximity may include whole counties, but does not have to be limited by
5 county lines. The Public Service Commission should consider any unique circumstances of the
6 utilities, and should attempt to include, within each region, utilities with disparate strengths and
7 challenges, such that the utilities in each region may be best positioned to complement one
8 another.

9 (b) Contents of the Agreement. – Each utility in each region may enter into a cooperative
10 agreement with the other utilities in its region. A Regional Cooperative Agreement may include:

11 (1) Shared employees, including licensed operators, technicians, and office staff;

12 (2) Shared resources, including office space, office materials, and vehicles; and

13 (3) Shared facilities or systems, if possible.

14 (c) Other Provisions of the Agreement. – The instrument of the Regional Cooperative
15 Agreement:

(1) Must be in writing;

(2) Must be executed by all participating utilities;

(3) Must be filed with the Public Service Commission;

(4) May be amended to modify provisions or participating utilities; and

(5) May only include utilities of like facilities, either water or wastewater. However, a facility that is a hybrid water and wastewater utility may join the Regional Cooperative Agreement of either water or wastewater facilities, upon approval by the Public Service Commission.

(d) Notice of Agreement. –

(1) Prior to executing the Regional Cooperative Agreement, each participating utility must provide its customers with notice of the agreement, and explain any changes to contact information or services.

(2) The utilities must provide courtesy copies of the agreement to the Department of Environmental Protection, the Bureau of Public Health, or both, depending on whether the utility is water, wastewater, or a hybrid, prior to entering into the agreement.

(3) A utility which is joining an executed agreement must notify its customers and its regulatory agency before the modification is executed.

(e) Benefits to the Utilities. –

(1) Any legal requirement, under state code or by legislative rules, which necessitates each utility have its own specialized personnel may be preempted by this section, and thereby permit more than one utility to share such personnel. Specifically, the public water and/or wastewater utilities that have entered into a Regional Cooperative Agreement may share personnel, as set forth in Series 4 and 5 of Title 64 of the West Virginia Code of State Rules, so long as the shared personnel is otherwise qualified. However, before the participating utilities may share personnel, the Bureau of Public Health and/or the Department of Environmental Protection must review the proposed Regional Cooperative Agreement, in writing, and confirm that the proposal will not negatively impact the functionality of any participating utility.

(2) By the Regional Cooperative Agreement, the utilities may agree to jointly submit reports required by any regulatory agency of the executive branch of state government. Those reports may be submitted by a single employee, in a joint report, so long as the submission clearly delineates the reporting requirements for each utility, and so long as the submission is otherwise consistent with the requirements of the regulatory agency. The regulatory agency may require separate reports if the submitted report is deemed insufficient or unclear.

(f) *Limitations.* – The Public Service Commission, the Department of Environmental Protection, and/or the Bureau of Public Health may prevent utilities from entering into a term or condition, or may prevent a utility from so entering, if the Regional Cooperative Agreement:

(1) Is likely to impede the ability of any state regulatory agency from properly regulating any participating utility;

(2) Is likely to impact the safety, effectiveness, or reliability of services to customers of any participating utility, or otherwise harm public health;

(3) May be detrimental to the functionality of a utility, either administratively or physically;

(4) May negatively impact the ability of a participating utility to receive state or federal funding for infrastructure projects; or

(5) Assumes a benefit that is not allowed, or includes terms which are not otherwise lawful.

(g) *Voluntariness.* – Except as set forth in §24-2H-4a of this code, a utility cannot be required to enter into a Regional Cooperative Agreement, nor can a utility be penalized for refusing to so enter.

(h) *Distressed Utility.* – If a utility participating in a Regional Cooperative Agreement is determined to be a distressed or failing utility, as set forth in §24-2H-6 of this code, the agreement may not be amended to allow that utility to be removed from the Regional Cooperative Agreement without the approval of the Public Service Commission.

§24-2H-3c. Early Intervention Pilot Program.

(a) *Initial Participants.* – The Public Service Commission will select at least three, but no

2 more than five public water utilities, and at least three, but no more than five, public wastewater
3 utilities, to participate in the Early Intervention Pilot Program. Of the utilities, the Public Service
4 Commission may select one or more hybrid public water and wastewater utilities, so long as the
5 total number of utilities initially selected does not exceed 10.

6 (1) The Public Service Commission will select participants that it believes are most likely to
7 benefit from the Early Intervention Pilot Program. It may consider if a utility is at risk of ending up
8 on the watch list, as set forth in §24-2H-4 of this code.

9 (2) To select the initial participants, the Public Service Commission shall consult with the
10 Department of Environmental Protection, the Bureau of Public Health, and the Water
11 Development Authority. The Public Service Commission may not select any utility which receives
12 an objection from two out of the three of the state entities included in this subdivision.

13 (3) The Public Service Commission should also consult with the West Virginia Rural Water
14 Association, the West Virginia Municipal Water Quality Association, and the West Virginia chapter
15 of the National Association of Water Companies in determining the initial participants for the Early
16 Intervention Pilot Program. A public utility may request that it be an initial participant.

17 (4) While the Public Service Commission, in conformity with this subsection, may select
18 which utilities are allowed to enter the Early Intervention Pilot Program, no utility is required to
19 enter into the Early Intervention Pilot Program. Entry into this program is, at all times, voluntary.

20 (5) The Public Service Commission shall select its first public water utility and its first public
21 wastewater utility by December 31, 2026.

22 (b) *Terms of the Program.* – The Public Service Commission shall develop an
23 individualized course of action designed to best address the needs of the utility.

24 (1) The individualized course of action shall be designed by the Public Service
25 Commission, the Department of Environmental Protection, the Bureau of Public Health, the Water
26 Development Authority, the West Virginia Rural Water Association, the West Virginia Municipal
27 Water Quality Association, and the West Virginia chapter of the National Association of Water

Companies, which entities shall collectively be referred to as the "stakeholders." The stakeholders may rely on and accept any other knowledgeable or interested party who can provide insight or guidance, including, but not limited, to other state agencies, political subdivisions, and utilities in the region.

(2) The individualized course of action shall be designed to help each utility come into compliance with state regulations, develop infrastructure projects and seek funding, receive mentoring or additional training, or any other measure or action with the stakeholders and the utility believe would be beneficial. The Public Service Commission may create and implement an asset management program.

(3) If the stakeholders and the utility cannot agree on the individualized course of action, then the Public Service Commission may expel the utility from the program, or the utility may decide to leave the program. The Public Service Commission should select a new utility to take their place.

(c) Progress. – An individualized course of action shall include measurable goals, and a timeframe for reaching those objectives. If the utility and the stakeholder agree that the goals have been met, the utility may be deemed to have successfully completed the Early Intervention Pilot Program, and released. If, at any time, the utility believes that its participation is not worthwhile, or if the stakeholders believe that the program is not productive for a utility, then either may unilaterally end the utility's participation in the program. No utility may participate in the program for longer than twenty-four consecutive months.

(d) Stakeholders. – The named stakeholders do not constitute a public body, pursuant to §6-9A-1 et seq. of this code, nor may the stakeholders receive compensation or reimbursement from the state. The collaboration of the stakeholders is intended to provide meaningful and efficient assistance to the utilities in the Early Intervention Pilot Program, and informal and frequent discussions are encouraged. The stakeholders must be afforded notice of the terms of an individualized course of action, and an opportunity to make suggestions. However, while the

54 stakeholders are encouraged to act collaboratively, decisions required under this section may be
55 made without consensus, so long as at least two state agencies determine that the action is in the
56 best interest of the utility. The West Virginia Rural Water Association, the West Virginia Municipal
57 Water Quality Association, and the West Virginia chapter of the National Association of Water
58 Companies may participate to the extent they choose, and while voluntary participation would be
59 beneficial, it is not necessary for completing the tasks set forth herein. Nothing contained herein
60 prohibits any state agency from otherwise performing its obligations under any other provision of
61 law. Further, nothing contained herein prohibits real-time problem-solving by one or more
62 stakeholder, when a participating utility has a need for immediate assistance.

63 (e) *New Participants.* – If the Public Service Commission determines that the Early
64 Intervention Pilot Program has demonstrated meaningful success, the Public Service Commission
65 may increase the number of participating utilities. However, the Public Service Commission may
66 not add more than 10 public water, wastewater, or hybrid water and wastewater utilities in a
67 calendar year.

68 (f) *Watch List.* – A utility’s participation in the Early Intervention Pilot Program will not
69 prevent the Public Service Commission from placing the utility on the watch list, as allowed by §24-
70 2H-4 of this code.

71 (g) *Sunset.* – The Early Intervention Pilot Program shall sunset on December 31, 2031.

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

1 (a) *Watch List.* – Annually, at least by November 1, the ~~commission~~ Public Service
2 Commission shall prepare a list of water and wastewater utilities that appear to be financially
3 unstable by reviewing annual reports, rate case filings and other financial data available to it.
4 ~~Commission staff shall contact each utility placed on the list and provide advice and assistance in~~
5 ~~resolving any financial instability or managerial or operational issues that are contributing to the~~
6 ~~utility’s financial instability.~~ The Public Service Commission shall also include water and
7 wastewater utilities that are in continual violation of statutory or regulatory standards of the Bureau

for Public Health, the Department of Environmental Protection, or the Public Service Commission, when those violations affect or have the potential to affect the water quality, safety, adequacy, efficiency, or reasonableness of the services provided by the utility.

(b) Collaboration. – The Public Service Commission shall create this "watch list" in collaboration with the Bureau for Public Health, the Department of Environmental Protection, and the Water Development Authority. The commission shall provide the list of potentially unstable water and wastewater utilities to the West Virginia Rural Water Association.

(c) Notice. – Commission staff shall publish annually, by hyperlink, the list of potentially unstable water and wastewater utilities on the commission's homepage no later than November 1. The Public Service Commission shall contact each utility placed on the watch list and advise the utility of its status, prior to the watch list being published on its homepage.

(d) Amendments. – If there is an imminent need, the Public Service Commission may amend the watch list after November 1. An "imminent need" is present when a utility is incapable of providing safe or reliable services to its customers, is unable to obtain necessary financial assistance for infrastructure project, or is otherwise in need of urgent intervention. The Public Service Commission may only declare an imminent need upon the agreement of the Bureau of Public Health or the Department of Environmental Protection.

§24-2H-4a.	Improvement	Period.
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(a) Terms of the Improvement Period. – Utilities on the watch list will be placed on a mandatory improvement period. The stakeholders described in §24-2H-3c of this code will establish an individualized improvement plan for each utility. The improvement plan may include any course of action which is necessary for the utility to be successfully removed from the watch list, including, but not limited to, those set forth in §24-2H-3c of this code. The improvement period may include any requirement of the utility, which the Public Service Commission, with the stakeholders, deem necessary for improvement. The Public Service Commission may further mandate that a utility on an improvement period enter into a Regional Cooperative Agreement, as

9 set forth in §24-2H-3b of this code, provided that the other participating utilities are willing to
10 consent to that utility's inclusion.

11 (b) *Duration of the Improvement Period.* – Each improvement period shall be for a period of
12 12 months.

13 (1) However, if the utility is not making a substantial effort to participate in the improvement
14 period, the Public Service Commission may end an improvement period upon one month's written
15 notice.

16 (2) Further, if the utility is making a substantial effort to participate in the improvement
17 period, and it is likely that the utility can successfully complete the improvement period, but not
18 within 12 months, then the improvement period may be extended to 18 months total.

19 (3) Whether an improvement period shall be extended or ended upon the agreement of two
20 state agencies who are stakeholders.

21 (4) The date of the improvement period shall begin on the date the improvement plan is
22 provided to the utility, in writing, or by January 1 of the calendar year following the date the watch
23 list is published, whichever date comes first.

24 (c) *Unsuccessful Completion.* – If a utility is not successful in improving, then the
25 commission will proceed to seek a final order establishing that the utility is a distressed or failing
26 utility for the purposes of §24-2H-6 of this code. Even if a utility makes substantial improvement
27 during the improvement period, if the improvement is not sufficient for the utility to be able to
28 effectively accomplish the legal, financial, or operational requirements necessary to provide its
29 customers with safe, reliable services, then the commission may proceed to a determination that
30 the utility is distressed or failing.

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

1 (a) The Public Service Commission has the authority to declare that a utility to be a
2 "distressed utility," a "failing utility," or a "capable proximate utility."

3 **(b)** In determining whether a utility is distressed or failing, the commission shall consider
4 the following factors:

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

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

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

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

15 (5) The status and result of any corrective measures previously put into place under ~~§24-~~
16 ~~2H-7~~ §24-2H-4a of this code; and

17 (6) Any other relevant matter.

18 **(b)** **(c)** In determining whether a utility is a capable proximate utility, the commission shall
19 consider the following factors:

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

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

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

27 (4) Eligibility of the capable proximate utility to receive state grant funding and federal grant
28 funding in a similar manner as the distressed or failing utility; and

29 (5) Any other relevant matter.

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

1 (a) A proceeding under this article may be initiated by the commission on its own motion, or
2 by the staff of the commission, or any other person or entity having a legal interest in the financial,
3 managerial, or operational condition of the utility, by filing a petition with the commission that
4 includes all of the factual data supporting the justification for the utility to be considered as a
5 distressed or failing utility that the petitioner has available to them at the time of filing: *Provided*,
6 That high water loss or unaccounted for water shall not be considered the sole evidence of a
7 distressed or failing utility. In any such petition, the utility shall be named as the respondent. The
8 commission shall include, as additional parties, any capable proximate public and private utilities
9 that may be able to assist or acquire the utility.

10 (b) The commission shall hold evidentiary and public hearing(s) in a location in or within 25
11 miles of the utility's service area. The commission shall give reasonable notice of the time, place,
12 and subject matter of the hearing as follows:

13 (1) Issuance of a press release;

14 (2) Written notice by certified mail or registered mail to:

15 (A) The utility;

16 (B) The Consumer Advocate Division;

17 (C) Capable proximate public or private utility or utilities that were made parties to the
18 proceeding; and

19 (D) The county commission if the utility is a public service district; or

20 (E) The municipality if the utility is owned and operated by the municipality.

21 (3) The utility shall give notice to its customers of the time, place, and subject matter of the
22 hearing either as a bill insert or printed on its monthly bill statement as ordered by the commission.

23 (c) The public hearing shall be conducted to receive public comments, including, but not
24 limited to, comments regarding possible options available to bring the distressed or failing utility

25 into compliance with appropriate statutory and regulatory standards concerning actual or
26 imminent public health problems or unreasonable quality and reliability service standards. At the
27 evidentiary hearing, the commission shall receive evidence to determine if the utility is a distressed
28 or failing utility and whether a capable proximate utility should assist or acquire the utility. If there is
29 more than one capable proximate utility, then sufficient evidence should be presented to allow the
30 commission to determine the appropriate capable proximate utility to assist or acquire the
31 distressed or failing utility.

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

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

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

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

17 (2) Operation of the distressed utility by another public utility or management or service

company under a mutually agreed arms-length contract;

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

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

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

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

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

(d) Notwithstanding any provision of this code to the contrary, the commission shall not order a utility that is a political subdivision of the state to acquire a distressed or failing utility if the aggregate cost of necessary capital improvements for the distressed or failing utility which will be borne by the acquiring utility exceeds:

(1) the aggregate required contribution under the commission's extension of mains rules for new customers; or

(2) grant funds from the Water Development Authority Distressed Utilities Account created under §31-15A-9(i) of this code; or

(3) other grant funds; or

(4) any combination of the above.

§24-2H-7a. Distressed or Failing Memorandums of Understanding.

(a) Required Memorandums of Understanding. – If a political subdivision of the state is

2 otherwise exempt from acquiring a distressed or failing utility pursuant to §24-2H-7(d) of this code,
3 the Public Service Commission may require the exempt utility to enter into a memorandum of
4 understanding with the distressed or failing utility. In the memorandum of understanding, the utility
5 exempt from forced acquisition will be identified as the "controlling utility."

6 (b) *Terms and Conditions.* – Although the controlling utility and the distressed or failing
7 utility have a right to be heard, the Public Service Commission shall have ultimate authority over
8 the terms and conditions of the memorandum of understanding.

9 (1) Both the controlling utility and the distressed or failing utility will be obligated to execute
10 the memorandum of understanding, and will be legally bound by its terms and conditions.

11 (2) Through the memorandum of understanding, the controlling utility will be required to
12 provide the distressed or failing utility with operational support, which may include technical
13 advice, personnel, accounting, office supplies, programs, and other tangible and intangible assets
14 which are necessary to ensure that services to the customers of the distressed or failing utility
15 continue uninterrupted.

16 (3) The controlling utility may be required to assume the maintenance costs of the
17 distressed or failing utility, so long as the controlling utility can do so without needing to implement
18 a rate differential on the customers of the controlling utility.

19 (4) The controlling utility will not be required to assume the debt of the distressed or failing
20 utility, and the controlling utility will not be responsible for the infrastructure costs of the distressed
21 or failing utility. The controlling utility may be required to assist the distressed or failing utility in
22 seeking funding for infrastructure costs.

23 (5) At the end of each month, the controlling utility shall submit a written monthly invoice of
24 its actual costs, which said invoice shall be provided to the Public Service Commission and the
25 distressed or failing utility. Monthly income to the distressed or failing utility shall be first paid to
26 any debt or outside financial obligation of the distressed or failing utility. Any remaining monthly
27 income to the distressed or failing utility shall be paid to reimburse the controlling utility for actual

costs. The Public Service Commission and the distressed or failing utility shall have ten business days upon receipt of notice to object to the monthly invoice of actual costs. Upon an objection, the Public Service Commission, the controlling utility, and distressed or failing utility shall negotiate, in good faith, the appropriate amount to be paid, with the Public Service Commission serving as the final arbiter.

(c) Control of the Failing Utility. – During the course of the memorandum of understanding, the distressed or failing utility will maintain its own legal identity separate and apart from the controlling utility. The county commission, governing municipal council, or board responsible for the distressed or failing utility at the time the memorandum of understanding is entered shall continue to oversee the distressed or failing utility. However, the Public Service Commission is authorized to void any vote which is contrary to the memorandum of understanding, is contrary to any other provision of this article, could impede consolidation, or otherwise harms or negatively impacts the customers or the facilities. The Public Service Commission is authorized to mandate any action which is required by the memorandum of understanding.

(d) Appeal. – A controlling utility may seek a final hearing with the Public Service Commission on the order requiring it to enter into a memorandum of understanding, as set forth in this section. While the controlling utility may not be required to execute the memorandum of understanding pending a final hearing, the commission can incorporate the terms of the proposed memorandum of understanding into an order, and such order shall not be stayed pending appeal. A distressed or failing utility may appeal the final order of the commission, but may not seek a stay of the order pending appeal.

(e) Duration of Agreement. – A memorandum of understanding mandated by the commission pursuant to this section shall remain in full force and effect for as long as the commission deems necessary, but shall not be considered a permanent solution for addressing a distressed or failing utility. If the controlling utility and the distressed or failing utility agree that the collaborative nature of the memorandum of understanding is mutually beneficial, then the

54 commission may allow the two utilities to enter into a new memorandum of understanding, outside
55 of the control of the commission. The commission may deny a voluntary memorandum of
56 understanding if the underlying cause of the utility becoming a distressed or failing utility has not
57 been, or will not be, adequately addressed, or if the commission has identified a utility which can
58 be legally obligated to acquire the distressed or failing utility pursuant to §24-2H-7 of this code.

§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~~ If the
9 failing utility is a political subdivision of the state, then the acquisition price must, at a minimum,
10 satisfy all outstanding loans, tax obligations, required grant repayment, liens, and indebtedness
11 owed by the failing utility or the acquiring utility must agree to assume the indebtednesses if legally
12 permitted. The acquiring utility shall consult with the lenders or lienholders regarding payment in
13 full or the assumption, to the extent legally permissible, of any outstanding obligations of the failing
14 utility.

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

17 (c) As part of the proceeding, the acquiring utility may propose to the commission that it be
18 permitted for a reasonable period of time after the date of acquisition, to charge and collect rates
19 from the customers of the failing utility pursuant to a separate tariff, which may be higher or lower

20 than the existing tariff of the distressed or failing utility, or may allow a surcharge on both the
21 acquired and existing customers. A separate tariff or rate filing must be made by the acquiring
22 utility before the commission will consider any increase in rates or allow a surcharge to be placed
23 on the acquiring utility's acquired or existing ratepayers.

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

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

42 (f) If the distressed or failing utility is a public service district, then the commission shall
43 make a recommendation to the respective county commission(s) with regard to the acquisition of
44 distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing
45 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. It shall not be necessary for the board of the failing or distressed utility to approve the sale of the failing or distressed utility to a capable proximate utility, if the distressed or failing utility is a public service district, and the sale is approved by the county commission, or if the distressed or failing utility is a municipal utility, and the sale is approved by the municipal council.

(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~~

WATER DEVELOPMENT AND INFRASTRUCTURE COUNCIL.

§31-15A-1. Short title.

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Water Development and Infrastructure Act."

§31-15A-2. Definitions.

For purposes of this article:

(a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other obligation issued by the water development authority pursuant to this article, including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such bonds.

(b) "Code" means the Code of West Virginia, 1931, as amended;

(c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and

analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: *Provided*, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(d) "Council" means the West Virginia ~~infrastructure and jobs development~~ water development and infrastructure council created in section three of this article;

(e) "Division of environmental protection" means the Division of Environmental Protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined: (1) Is essential to the immediate economic development of an area of the state; and (2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia Housing Development Fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(l) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition,

62 construction, improving, expanding, renovation, leasing or otherwise disposing of the project or
63 any part thereof or interest therein; and (2) preparing land for construction and making, installing or
64 constructing improvements on the land, including water or wastewater facilities or any part thereof,
65 steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges,
66 railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage
67 and flood control facilities, whether on or off the site;

68 (m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all
69 amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from
70 any source for the use of all or any part of any project completed pursuant to this article; and any
71 other amounts received by the State Treasurer, council or the water development authority for the
72 purposes of this article;

73 (n) "Need of the project sponsors" means there is a public need for a project. The council
74 shall construe a population increase evidenced by the last two decennial censuses in a county in
75 which a project is proposed, as a factor supporting the conclusion that a need exists for projects in
76 that county.

77 (o) "Project" means any wastewater facility, water facility project or any combination
78 thereof, constructed or operated or to be constructed or operated by a project sponsor;

79 (p) "Project sponsor" means any governmental agency or person, or any combination
80 thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct,
81 improve or otherwise develop a project;

82 (q) "Public service commission" means the Public Service Commission of West Virginia
83 created and established under section three, article one, chapter twenty-four of this code, or any
84 successor to all or any substantial part of its powers and duties;

85 (r) "Person" means any individual, corporation, partnership, association, limited liability
86 company or any other form of business organization;

87 (s) "Public utility" means any person or persons, or association of persons, however

88 associated, whether incorporated or not, including, without limitation, any governmental agency,
89 operating a wastewater facility or water facility as a public service, which is regulated by the Public
90 Service Commission as a public utility under chapter twenty-four of this code or which is required
91 to file its tariff with the Public Service Commission;

92 (t) "State Development Office" means the West Virginia Development Office established
93 under article two, chapter five-b of this code, or any successor to all or any substantial part of its
94 powers and duties;

95 (u) "State infrastructure agency" means the division of health, Division of Environmental
96 Protection, Housing Development Fund, Public Service Commission, state Development Office,
97 water development authority, economic development authority and any other state agency,
98 division, body, authority, commission, instrumentality or entity which now or in the future receives
99 applications for the funding of, and provides funding or technical assistance to, the planning,
100 acquisition, construction or improvement of a project;

101 (v) "Wastewater facility" means all facilities, land and equipment used for or in connection
102 with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater,
103 including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or
104 other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent
105 impoundment of wastewater, both surface and underground; and sanitary sewers or other
106 collection systems, whether on the surface or underground, designed to transport wastewater
107 together with the equipment and furnishings therefor or thereof and their appurtenances and
108 systems, whether on the surface or underground including force mains and pumping facilities
109 therefor;

110 (w) "Water development authority" means the West Virginia water development authority
111 continued pursuant to the provisions of article one, chapter twenty-two-c of this code, or any
112 successor to all or any substantial part of its powers and duties; and

113 (x) "Water facility" means all facilities, land and equipment used for or in connection with

114 the collection and/or storage of water, both surface and underground, transportation of water,
115 storage of water, treatment of water and distribution of water all for the purpose of providing
116 potable, sanitary water suitable for human consumption and use.

§31-15A-3. West Virginia Infrastructure and Jobs Development Water Development and Infrastructure Council continued; members of council; staff of council.

1 (a) The West Virginia Infrastructure and Jobs Development Council is continued as the
2 West Virginia Water Development and Infrastructure Council. All references to the West Virginia
3 Infrastructure and Jobs Development Council shall be construed as reference to the West Virginia
4 Water Development and Infrastructure Council. The council is a governmental instrumentality of
5 the state. The exercise by the council of the powers conferred by this article and the carrying out of
6 its purpose and duties shall be considered and held to be, and are determined to be, essential
7 governmental functions and for a public purpose.

8 (b) The council shall consist of thirteen members, including:

9 (1) The Governor or designee;

10 (2) The Executive Director of the Housing Development Fund or his or her designee;

11 (3) The ~~Director of the Division~~ Secretary of the Department of Environmental Protection or
12 his or her designee;

13 (4) The Director of the Economic Development Authority or his or her designee;

14 (5) The Director of the Water Development Authority or his or her designee;

15 (6) The Director of the ~~Division of Health~~ Bureau of Public Health or his or her designee;

16 (7) The Chairman of the Public Service Commission or his or her designee; and

17 (8) Six members representing the general public: *Provided*, That there shall be at least one
18 member representing the general public from each congressional district. No more than one
19 member representing the general public may be a resident of the same county.

20 (c) The Governor shall appoint the public members of the council who shall serve three-
21 year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the State Rail Authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy Commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be ex officio, nonvoting members of the council.

(e) The Governor shall appoint the legislative members of the council: *Provided*, That no more than three of the legislative members may be of the same political party.

(f) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Seven members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(g) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(h) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor's Civil Contingent Fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor's Civil Contingent Fund.

(i) The Water Development Authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

(j) The council shall invite to each meeting one or more representatives of the United States Department of Agriculture, Rural Economic Community Development, the United States Economic Development Agency and the United States Army Corps of Engineers or any successors thereto. The council shall invite other appropriate parties as is necessary to effectuate the purposes of this article.

§31-15A-3a. Consolidation Committee continued; authority of the Consolidation Committee.

(a) Continuation. – The Consolidation Committee, as created by the council’s bylaws, is continued within the council. The composition and terms of the Consolidation Committee shall be proscribed by the council, through its bylaws. Members may not receive compensation, but voting members who are not state employees will be entitled to reimbursement for all necessary and reasonable expenses. The bylaws of the council shall continue to control the operation of the Consolidation Committee, except where the bylaws are preempted by statute.

(b) Mission. – It is the objective of the Consolidation Committee to ensure that the council does not approve state funding for projects when the costs or complexities can be eliminated or reduced by voluntary consolidation or merger. Except for critical needs and bid overruns, the Consolidation Committee shall review every project which seeks \$100,000 or greater in state grants from the Council. The Consolidation Committee may review additional projects, in its discretion.

(c) Capable Proximate Utilities. – Prior to determining whether a project is eligible for funding, the project sponsor shall solicit a non-binding valuation or letter of intent from any capable proximate utility, as defined in §24-2H-3 of this code.

(1) The Public Service Commission will help the project sponsor identify a capable

proximate utility, and, for these purposes, may identify more than one utility which may qualify as a capable proximate utility.

(2) The project sponsor will be responsible for providing any capable proximate utility with written notice of the proposed project. Any noticed capable proximate utility will have ten business days to respond in writing. A capable proximate utility may request that the project sponsor or the Consolidation Committee allow additional time to respond.

(3) If a capable proximate utility provides a non-binding valuation indicating that acquisition or consolidation would result in a lower long-term cost to the customers of the project sponsor than the proposed project, or if the functionality that an acquisition or consolidation would afford would substantially alter the scope or cost of the project, then the Consolidation Committee should heavily weigh such valuation in determining whether the project is eligible for state funding.

(4) A capable proximate utility may withdraw a non-binding valuation at any time. Such withdrawal shall be considered by the Consolidation Committee in determining eligibility.

(d) *Stakeholder Participation.* – The Consolidation Committee shall also work with the stakeholders, as set forth in §24-2H-3c of this code, to identify water and wastewater systems which should consolidate, regionalize, or otherwise pull resources for the betterment of their systems. In determining when systems should consolidate, both the Consolidation Committee and the stakeholders shall consider the financial and operational impact that consolidation would have on the affected systems and their customers.

(e) *Finding of Ineligibility.* – If the Consolidation Committee determines that the project sponsor can connect or share facilities, lines or other mechanisms with another utility, or the project sponsor can take other physical or legal action to join or collaborate with another utility, and doing so would render the project unnecessary, or would substantially impact the necessary scope of the project, then the Consolidation Committee should determine that the requested project is not eligible for funding.

(1) If the Consolidation Committee determines that consolidation, regionalization, or other

43 action is necessary for the long-term functionality of a system seeking state funds, then the
44 Consolidation Committee may determine that the system is ineligible for funding from the council
45 until such action has been achieved.

46 (2) If a project sponsor or project sponsors request funding for a project which includes
47 connecting, sharing, or merging of two facilities, lines, or other mechanisms, the Consolidation
48 Committee may still render the project ineligible for state funding if there is a more economical
49 alternative for joinder.

50 (f) *Regaining Eligibility.* – The Consolidation Committee may place appropriate and
51 reasonable requirements which must be met before the public utility regains eligibility for funding.
52 The Consolidation Committee shall collaborate with the stakeholders to ensure that its findings
53 and recommendations are appropriately tailored to the circumstances.

54 (g) *Exceptions to Ineligibility.* –

55 (1) The Consolidation Committee shall recommend approval of an otherwise ineligible
56 public utility, if failure to fund could endanger the health or safety of the existing customers of the
57 public utility, or if failure to fund could have a significant negative impact on the economy of the
58 region where the public utility is located.

59 (2) The Consolidation Committee may also recommend approval of an otherwise ineligible
60 public utility, if failure to consolidate is due solely to the unwillingness of the other utility to
61 cooperate.

62 (h) *Impact on Other State Funds.* – Upon a finding by the Consolidation Committee that a
63 water or wastewater system is ineligible for state funding by the council, due to the fault of the
64 public utility seeking approval, the Water Development Authority shall likewise determine that the
65 public utility is ineligible for other state funded grants. However, any state grants awarded prior to
66 the Consolidation Committee's determination may be honored if there is an executed contract, or if
67 state funding is necessary to maintain federal funding. An ineligible public utility may still receive
68 loans from the council or the Water Development Authority.

§31-15A-9a. Guidelines on use of state funds.

1 (a) The predominant goal of the council is to ensure that customers of public water and
2 wastewater utilities receive safe, reliable, and effective services. Accordingly, in considering the
3 issuance of grants or loans to public water or wastewater utilities for a project, the council shall
4 prioritize the health and safety of the customers who will be affected by the project. While the
5 guidelines set forth in this section are designed to ensure that the council only authorizes state
6 funding to viable and productive projects, nothing contained in this section prohibits the council
7 from funding a project when the failure to fund could endanger the health or safety of the existing
8 customers of the public utility, or if failure to fund could have a significant negative impact on the
9 economy of the region where the public utility is located.

10 (b) If the project sponsor is a public utility that is in substantial noncompliance with any
11 lawful requirement of a state regulatory agency, including, but not limited to, the Public Service
12 Commission, the Department of Health, or the Department of Environmental Protection, the
13 council may only approve the issuance of a grant or loan under this article or under §22C-1-1 et
14 seq. of this code if:

15 (1) The reason for the utility being in substantial noncompliance would be rectified, or
16 mostly rectified, by the completion of the project, and the state regulatory agency that has found
17 the utility in substantial noncompliance submits written support for the project being approved; or

18 (2) The council finds that the project is necessary for the safety or health of the customers.

19 (c) The council may deny funding for a project if the project sponsor is a public utility that
20 has more than one finding of noncompliance from a state regulatory agency, including, but not
21 limited to, Public Service Commission, the Department of Health, or the Department of
22 Environmental Protection, or if a state regulatory agency has identified the project sponsor as
23 repeatedly or willfully being noncompliant with the requirements of the state regulatory agency.

24 (d) The council shall adopt uniform guidelines for determining when it can approve a
25 project to receive a grant or a loan under this article or under §22C-1-1 et seq. of this code when

26 the project includes an extension of water or wastewater services, including the addition of new
27 lines or new customers. These guidelines must include an assessment of the total cost of state
28 funds and whether the added customers have alternative means for safe, reliable, and effective
29 services. If the project adds new customers to a water system or a combined water and
30 wastewater system, the project sponsor is hereby authorized to enter into contractual agreements
31 with the anticipated new customers, which mandates that the new customers will use the services
32 for at least five years upon completion of the project. These contractual agreements may include a
33 temporary covenant that binds the property of the new customer. The council may consider the
34 agreements and covenants, which shall be provided to the council by the applicant, in determining
35 whether to approve the project for state funding.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant, or for engineering assistance.

1 (a) To further accomplish the purpose and intent of this article, the Water Development
2 Authority shall use the moneys in the Infrastructure Fund created pursuant to §31-15A-9 of this
3 code, upon receipt of one or more recommendations from the council pursuant to §31-15A-5 of
4 this code, to make loans, with or without interest, loan guarantees, or grants, and to provide other
5 assistance, financial, technical, or otherwise, to finance all or part of the costs of infrastructure
6 projects or projects to be undertaken by a project sponsor: ~~Provided, That any~~ so long as moneys
7 disbursed from the Infrastructure Fund in the form of grants shall not exceed 25 percent of the total
8 funds available for the funding of projects. ~~Provided, however, That~~ If on the first day of each
9 month, the amount available for grants is below \$1,000,000 the council may convert up to 30
10 percent of the funds available for loans to be used for grants, if and when needed to make an
11 award.

12 (b) No loan, loan guarantee, grant, or other assistance shall be made or provided except
13 upon a determination by the council that the loan, loan guarantee, grant, or other assistance and
14 the manner in which it will be provided are necessary or appropriate to accomplish the purposes

15 and intent of this article, based upon an application submitted to the council. ~~Provided further,~~
16 ~~That~~ No grant shall be made to a project sponsor that is not a governmental agency or a not-for-
17 profit corporation under the provisions of Section 501(c) of the Internal Revenue Code of 1986, as
18 amended. Applications for loans, loan guarantees, grants, or other assistance may be submitted
19 by a project sponsor for one or more infrastructure projects on preliminary application forms
20 prepared by the council pursuant to §31-15A-4 of this code. Any recommendation of the council
21 approving a loan, loan guarantee, grant, or other assistance shall include a finding and
22 determination by the council that the requirements of this section have been met. The council shall
23 base any decisions to loan money for projects to project sponsors pursuant to this article solely on
24 the need of the project sponsors.

25 ~~(b)~~ (c) The council has the authority in its sole discretion to make grants to project sponsors
26 if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given
27 the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of
28 the project except through grants. ~~Provided, That~~ No project sponsor shall receive infrastructure
29 grant money in an amount in excess of 50 percent of the total cost of the project. Therefore, the
30 council may consider the economic or financial conditions of the area to be served.

31 (d) As a condition for receipt of a grant or loan under this ~~subsection~~ article, the council
32 may require, in addition to any other conditions, that the applicant pursue other state or federal
33 grant or loan programs. Upon a recommendation by the council, the Water Development Authority
34 ~~shall~~ may provide the grant in accordance with the recommendation. The council shall develop
35 criteria to be considered in making grants to project sponsors which shall require consideration of
36 the economic or financial conditions of the area to be served and the availability of other funding
37 sources. The council shall adopt procedural rules regarding the manner in which grants will be
38 awarded in conformity with this section. The procedural rules shall be adopted pursuant to §29A-3-
39 1 et seq. of this code.

40 ~~(e)~~ (e) Notwithstanding any other provision of this article to the contrary, the council shall

41 apply a mandatory minimum end user utility rate that must be met by the project sponsor before
42 funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon
43 a uniform statewide percentage of the median household income in a particular geographic area
44 and said rate shall not exceed six-tenths of one percent. Effective June 15, 2022, funding
45 assistance shall be made from the Infrastructure Fund for loans and grants to projects, after
46 transfers required to make the state match for the water and wastewater revolving loan programs
47 pursuant to §22C-2-1 et seq. and §16-13C-1 et seq. of this code. When determining median
48 household income of a geographic area of the project to be served, the council shall consider any
49 surveys of the income of the households that will be served by the project.

50 ~~(d)~~ (f) No loan or grant funds may be made available for a project if the project to be funded
51 will provide subsidized services to certain users in the service area of the project.

52 ~~(e)~~ (g) Notwithstanding any other provision of this article to the contrary, engineering
53 studies and requirements imposed by the council for preliminary applications shall not exceed
54 those engineering studies and requirements which are necessary for the council to determine the
55 economic feasibility of the project.

56 (1) The council may require each public utility to provide a preliminary engineering report
57 prior to receiving a recommendation to proceed. However, any public utility may request a waiver
58 of this requirement, which the council shall consider. If the public utility requesting the waiver of a
59 preliminary engineering report is a political subdivision of the state providing a separate or
60 combined services and has at least 4,500 customers and annual combined gross revenue of \$3
61 million or more, then the council shall appropriately balance the benefits and impediments of
62 requiring a preliminary engineering report prior to seeking funding, including, but not limited to:

63 (A) Whether it is necessary to determine the economic viability of the project;

64 (B) Whether it allows the council to appropriately consider consolidation;

65 (C) Whether the requirement could result in unreasonable costs to the utility;

66 (D) Whether the requirement could result in unreasonable delays to the project; and

67 (E) Whether the project sponsor has previously requested funding through the council,
68 and, if so, whether those prior projects were technically feasible.

69 (2) If the council determines that the engineering studies and requirements for the
70 preapplication would impose an undue hardship on any project sponsor, the council may provide
71 funding assistance to project sponsors to defray the expenses of the preapplication process from
72 moneys available in the Infrastructure Fund for making loans: ~~Provided, That the council may only~~
73 provide so long as the funding assistance in an amount equal to does not exceed \$5,000 or 50
74 percent of the total preapplication cost of the project, whichever amount is greater. If the project is
75 ultimately approved for a loan by the council, the amount of funding assistance provided to the
76 project sponsor for the preapplication process shall be included in the total amount of the loan to
77 be repaid by the project sponsor. If the project is not ultimately approved by the council, then the
78 amount of funding assistance provided to the project sponsor will be considered a grant by the
79 council and the total amount of the assistance shall be forgiven. In no event may the amount of
80 funding assistance to defray the expenses of the preapplication process provided to all project
81 sponsors exceed, in the aggregate, \$1,300,000 annually.

82 (f) (h) The council shall report to the Governor, the Speaker of the House of Delegates, and
83 the President of the Senate during each regular and interim session of the Legislature, on its
84 activities and decisions relating to distribution or planned distribution of grants and loans under the
85 criteria to be developed pursuant to this article.

86 (i) If the council denies a recommendation to proceed, for any reason, the Water
87 Development Authority, in collaboration with the council, shall work with the project sponsor to
88 remedy the grounds for the denial. If the project sponsor is unable to rectify the grounds for the
89 denial within six months, then the denial shall become final. Nothing contained herein prohibits a
90 project sponsor from submitting a new application for a project.

91 (j) A recommendation pursuant to this section does not guarantee that the council will
92 award funding, nor does it obligate the state to expend any funds towards the project. The council

93 shall only award a state grant by a binding commitment, which may only be issued after the project
94 sponsor has obtained all other available federal, state, and private funding.

§31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; ~~transactions between the water development board and officers having certain interests in such transactions~~ authority.

1 No part of the infrastructure fund or the West Virginia infrastructure revenue debt service
2 fund shall inure to the benefit of or be distributable to the ~~water development board directors or~~
3 ~~officers~~ or employees of the water development authority except that the water development
4 authority is authorized and empowered to pay reasonable compensation, ~~other than to members~~
5 ~~of the water development board, including the chairman, vice chairman, secretary-treasurer for~~
6 services rendered and to make loans and exercise its other powers as previously specified in
7 furtherance of its corporate purpose: *Provided*, That no loans shall be made, and no property shall
8 be purchased or leased from, or sold, leased or otherwise disposed of, to any ~~water development~~
9 ~~board member or officer~~ or employee of the water development authority.

§31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance.

1 (a) To accomplish the purpose and intent of this article, the water development authority is
2 hereby empowered at the written request of the council to issue from time to time infrastructure
3 revenue bonds of the state in such principal amounts as the council deems necessary to make
4 loans and loan guarantees and other forms of financial assistance to project sponsors for one or
5 more projects or infrastructure projects: *Provided*, That the water development authority may not
6 issue any such bonds, other than refunding bonds, unless the council by resolution determines
7 that the aggregate cost of the projects or infrastructure projects expected to be constructed during
8 any annual period exceeds (1) the projected annual infrastructure revenues for the same period,

9 and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue
10 debt service fund that are due the water development authority on all outstanding loans previously
11 made by the water development authority pursuant to the provisions of this article.

12 (b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of
13 making loans and loan guarantees and other forms of financial assistance to sponsors of one or
14 more projects or infrastructure projects, and shall be deposited in one or more special accounts
15 with the trustee under the trust agreement securing such bonds and disbursed from time to time
16 for projects or infrastructure projects in accordance with this article: *Provided*, That
17 notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in
18 the special account shall be dedicated for the purpose of providing funding for costs of
19 infrastructure projects as defined in subsection (l), section two, of this article.

20 (c) The water development authority may not authorize the disbursement of any proceeds
21 of infrastructure revenue bonds unless it has received documentation from the council pursuant to
22 the provisions of section ten of this article.

23 (d) There is hereby created in the water development authority a special fund which shall
24 be designated and known as the "West Virginia Infrastructure Revenue Debt Service Fund," into
25 which shall be transferred solely from the loan repayments deposited in the infrastructure fund the
26 amounts certified by the director of the water development authority as necessary to pay the
27 principal, premium, if any, and interest on infrastructure revenue bonds and any reserve
28 requirements, subject to the terms of any agreement with the holders of the infrastructure revenue
29 bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall
30 be pledged to the repayment of the principal, interest and redemption premium, if any, on any
31 infrastructure revenue bonds authorized by this article: *Provided*, That amounts on deposit in the
32 fund may be used to establish or maintain reserves created for the purposes of securing such
33 infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is
34 made, and the West Virginia infrastructure revenue debt service fund so pledged shall

35 immediately be subject to the lien of the pledge without any physical delivery thereof or further act,
36 and the lien of any such pledge shall be valid and binding as against all parties having claims of
37 any kind in tort, contract or otherwise against the water development authority irrespective of
38 whether the parties have notice thereof.

39 (e) Except as may otherwise be expressly provided in this article or by resolution of the
40 water development authority, every issue of infrastructure revenue bonds shall be special
41 obligations of the water development authority payable solely from amounts in the West Virginia
42 infrastructure revenue debt service fund, and the reserves created for this purpose by the water
43 development authority, without preference or priority among the bonds regardless of when issued,
44 subject only to any agreements with the holders of any bonds to the contrary. All such bonds are
45 hereby declared to be negotiable instruments.

46 (f) Infrastructure revenue bonds shall be authorized by resolution of the water development
47 authority. These bonds shall bear such dates and shall mature at such times, in case of any note or
48 renewal thereof not exceeding five years from the date of issue of the original note, and in the case
49 of any bond not exceeding fifty years from the date of issue, as the resolution may provide.
50 Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be
51 taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the
52 registration privileges, shall be payable in the medium and place of payment, and shall be subject
53 to the terms of redemption as the water development authority may authorize. Infrastructure
54 revenue bonds may be sold by the water development authority at public or private sale at the
55 price the water development authority determines in consultation with the council. Infrastructure
56 revenue bonds shall be executed by the chairman and the vice chairman of the water development
57 authority, either or both of whom may use a facsimile signature. The official seal of the water
58 development authority or a facsimile thereof shall be affixed thereto or printed thereon and
59 attested by manual or facsimile signature by the secretary-treasurer of the water development
60 authority. If any officer whose signature, or a facsimile of whose signature appears on any

61 infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature
62 or facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had
63 remained in office until such delivery, and if the seal of the water development authority has been
64 changed after a facsimile has been imprinted on such bond, the facsimile will continue to be
65 sufficient for all purposes.

66 (g) Any resolution authorizing any infrastructure revenue bonds may contain provisions,
67 subject to any agreement with bondholders or noteholders which may then exist, which
68 agreements shall be part of the contract with the holder thereof, with respect to the pledge of or
69 other use and disposition of amounts in the infrastructure revenue debt service fund; the setting
70 aside of reserve funds; the disposition of any assets of the water development authority; limitations
71 on the purpose to which the proceeds of sale of bonds may be applied; the authorization of notes
72 issued in anticipation of the issuance of bonds; an agreement of the water development authority
73 to do all things necessary for the authorization, issuance and sale of such bonds in such amounts
74 as may be necessary for the timely retirement of such notes; limitations on the issuance of
75 additional bonds; the terms upon which additional bonds may be issued and secured; the
76 refunding of outstanding bonds and the renewal of outstanding notes; the procedures, if any, by
77 which the terms of any contract with bondholders or noteholders may be amended or abrogated;
78 the amount of bonds the holders of which must consent thereto and the manner in which such
79 consent may be given; and any other matter which in any way affects the security for or protection
80 of the bonds.

81 (h) In the event that the sum of all reserves pledged to the payment of the bonds is less
82 than the minimum reserve requirements established in any resolution or resolutions authorizing
83 the issuance of the bonds, the chairman or the director of the water development authority shall
84 certify, on or before December 1, of each year, the amount of such deficiency to the Governor of
85 the state for inclusion, if the Governor shall so elect, of the amount of such deficiency in the budget
86 to be submitted to the next session of the Legislature for appropriation to the water development

87 authority to be pledged for payment of such bonds: *Provided*, That the Legislature shall not be
88 required to make any appropriations so requested, and the amount of such deficiencies shall not
89 constitute a debt or liability of the state.

90 (i) Neither the officers or ~~board members~~ employees of the water development authority,
91 nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds
92 or be subject to any personal liability or accountability by reason of the issuance thereof.

NOTE: The purpose of this bill is to comprehensively reform the state's water and wastewater infrastructure, streamline and clarify the process for issuing certain state grants and loans for water and wastewater infrastructure projects, eliminating the Water Development Authority Board and reassigning any necessary functions, requiring additional reports and on-going training for city and county operators of public water and wastewater systems, allowing public water and wastewater systems to enter into Regional Cooperative Agreements, creating an Early Intervention Pilot Program for struggling public water and wastewater utilities, updating the methodology for the watch list for troubled public water and wastewater utilities, establishing an improvement period for public water and wastewater utilities on the watch list, and allowing for required memorandums of understanding when an identified acquiring utility is exempt from forced consolidation.

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