

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 5210

By Delegates Hanshaw (Mr. Speaker) and

Hornbuckle

(By Request of the Executive)

[Originating in the Committee on Energy and Public

Works; Reported on February 25, 2026]

1 A BILL to amend and reenact §22C-1-3, §22C-1-4, §24-2H-1, §24-2H-3, §24-2H-4, §24-2H-5,
2 §24-2H-6, §24-2H-7, §24-2H-8, §31-15A-1, §31-15A-2, and §31-15A-10, of the Code of
3 West Virginia, 1931, as amended; and to amend the code by adding thereto the following
4 new sections, designated as §22C-1-5a, §24-2-4i, §24-2H-3a, §24-2H-3b, §24-2H-3c,
5 §24-2H-4a, §24-2H-7a, §24-2J-1, §24-2J-2, §24-2J-3, §24-2J-4, §24-2J-5, §24-2J-6, §24-
6 2J-7, §24-2J-8, §24-2J-9, §24-2J-10, §24-2J-11, §24-2J-12, §24-2J-13, §31-15A-3a, and
7 §31-15A-9a, relating to comprehensive reform of the state's water infrastructure systems;
8 allowing certain private utilities to be eligible for low-interest loans through the Water
9 Development Authority, so long as the issuance of loans to public utilities are prioritized;
10 providing for an inflation-based rate adjustment for publicly owned water and sewer
11 utilities; renaming the Distressed and Failing Utilities Improvement Act the Distressed and
12 Failing Water and Wastewater Utilities Improvement Act; requiring mandatory reporting to
13 municipal governing bodies and county commissions; requiring initial and renewed training
14 for municipal governing bodies and county commissions overseeing public water and/or
15 wastewater utilities; designating water and wastewater regions across the state;
16 authorizing utilities to enter into Regional Cooperative Agreements, which shall include
17 and encourage shared resources, and which should afford the participating utilities with
18 benefits, such as relaxed regulatory requirements; creating a voluntary Early Intervention
19 Pilot Program which shall afford six to ten public water and wastewater utilities with an
20 opportunity to address critical matters before the utilities end up on the distressed and
21 failing utilities watch list; modifying the process for placing public water and wastewater
22 utilities on the watch list for water and wastewater utilities; establishing a mandatory
23 improvement period for public water and wastewater utilities on the watch list for
24 distressed and failing utilities; authorizing the Public Service Commission to order utilities
25 which are exempt from being ordered to acquire a distressed or failing utility to enter into a
26 memorandum of understanding to ensure that the distressed or failing utility continues to

27 properly function while the Public Service Commission identifies an alternative acquiring
28 utility; codifying the Consolidation Committee on the Water Development and
29 Infrastructure Council, which allows for considering whether voluntary consolidation would
30 improve an infrastructure project; establishing new guidelines for the use of state funds,
31 which addresses when a public water or wastewater utility seeking funding is in substantial
32 noncompliance with state regulations, and when a public water or wastewater utility is not
33 current on its financial audits or has findings in said financial audits which are of concern;
34 requiring guidelines for determining when to fund projects that include line extensions, and
35 authorizing public water utilities to obtain use contracts with potential new customers
36 before obtaining funding; allowing public water and wastewater utilities to seek a waiver of
37 a preliminary engineering report prior to obtaining a recommendation to seek funding;
38 requiring the Water Development Authority to work with public water and wastewater
39 utilities to rectify any issues which may prevent the utility from being eligible for state
40 funding for infrastructure projects; creating the Struggling Utilities Improvement Pilot
41 Program; providing for the creation of a struggling utility support team within the Water
42 Development Authority; authorizing the creation of subaccount within the Economic
43 Enhancement Grant Fund to fund the support team; providing for the process for selecting
44 utilities to participate in the pilot program; providing for notice to participating utilities;
45 providing procedures for improvement plans, periods, assessment of improvement period,
46 complaints by the support team against struggling utilities; authorizing the support team to
47 charge the participating utility for certain cost of the improvement period and to forgive
48 certain costs based on the utilities improvement; providing for limitations and application of
49 open meetings requirements, confidentiality of documents, stakeholder meetings, and
50 reports of the support team to the Governor and Legislature; updating definitions; and
51 technical changes throughout.

Be it enacted by the Legislature of West Virginia:

**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 §22C-1-4 of this
3 code section four of this article, the duties, powers, responsibilities and functions of which are
4 specified in this article.

5 (2) "Beneficial use" means a use of water by a person or by the general public that is
6 consistent with the public interest, health and welfare in utilizing the water resources of this state,
7 including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining,
8 power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational,
9 aesthetic and scenic use.

10 (3) "Board" means the Water Development Authority Board provided for in §22C-1-4 of this
11 code section four of this article, which shall manage and control the Water Development Authority.

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

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

17 (6) "Cost" means, as applied to water development projects, the cost of their acquisition
18 and construction; the cost of acquisition of all land, rights-of-way, property rights, easements,
19 franchise rights and interests required by the authority for such acquisition and construction; the
20 cost of demolishing or removing any buildings or structures on land so acquired, including the cost

21 of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or
22 constructing and equipping a principal office and suboffices of the authority; the cost of diverting
23 highways, interchange of highways; access roads to private property, including the cost of land or
24 easements therefor; the cost of all machinery, furnishings and equipment; all financing charges
25 and interest prior to and during construction and for no more than eighteen months after
26 completion of construction; the cost of all engineering services and all expenses of research and
27 development with respect to public water facilities, stormwater systems or wastewater facilities;
28 the cost of all legal services and expenses; the cost of all plans, specifications, surveys and
29 estimates of cost and revenues; all working capital and other expenses necessary or incident to
30 determining the feasibility or practicability of acquiring or constructing any such project; all
31 administrative expenses and such other expenses as may be necessary or incident to the
32 acquisition or construction of the project; the financing of such acquisition or construction,
33 including the amount authorized in the resolution of the authority providing for the issuance of
34 water development revenue bonds to be paid into any special funds from the proceeds of such
35 bonds; and the financing of the placing of any such project in operation. Any obligation or
36 expenses incurred by any governmental agency, with the approval of the authority, for surveys,
37 borings, preparation of plans and specifications and other engineering services in connection with
38 the acquisition or construction of a project are a part of the cost of such project and shall be
39 reimbursed out of the proceeds of loans or water development revenue bonds as authorized by
40 the provisions of this article.

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

45 (8) "Governmental agency" means the state government or any agency, department,
46 division or unit thereof; counties; municipalities; watershed improvement districts; soil

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

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

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

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

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

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

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

99 used to produce electricity other than electricity for consumption by the authority in the operation
100 and maintenance of the project.

101 (15) "Private utility" means any water facility, stormwater system or wastewater facility that
102 is owned by a privately owned entity that operates for-profit, or is an association, and is also
103 registered to do business in the state of West Virginia. This definition shall not include any
104 homeowners or property owners association, condominium unit owners association, or other
105 common interest community, solely on the basis that such entity owns, or manages, a retention
106 basin, detention basin, stormwater pond, or similar passive stormwater feature, for the benefit of
107 its members.

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

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

122 ~~(46)~~ (18) "Public utility facilities" means public utility plants or installations and includes
123 tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of
124 any public utility.

125 ~~(17)~~ (19) "Revenue" means any money or thing of value collected by, or paid to, the Water
126 Development Authority as rent, use or service fee or charge for use of, or in connection with, any
127 water development project, or as principal of or interest, charges or other fees on loans, or any
128 other collections on loans made by the Water Development Authority to governmental agencies to
129 finance, in whole or in part, the acquisition or construction of any water development project or
130 projects or other money or property which is received and may be expended for or pledged as
131 revenues pursuant to this article.

132 ~~(18)~~ (20) "Sewage" means water-carried human or animal wastes from residences,
133 buildings, industrial establishments or other places, together with such groundwater infiltration and
134 surface waters as may be present.

135 ~~(19)~~ (21) "Stormwater system" means a stormwater system in its entirety or any integral
136 part thereof used to collect, control or dispose of stormwater and an associated stormwater
137 management program. It includes all facilities, structures and natural water courses used for
138 collecting and conducting stormwater to, through and from drainage areas to the points of final
139 outlet, including, but not limited to, any and all of the following: Inlets, conduits, corrals, outlets,
140 channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches,
141 streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls,
142 pipes, flood control systems, levies and pumping stations. The term "stormwater system" does not
143 include highways, road and drainage easements or stormwater facilities constructed, owned or
144 operated by the West Virginia Division of Highways.

145 ~~(20)~~ (22) "Stormwater management program" means those activities associated with the
146 management, operation and maintenance and control of stormwater and stormwater systems and
147 includes, but is not limited to, public education, stormwater and surface runoff water quality
148 improvement, mapping, planning, flood control, inspection, enforcement and any other activities
149 required by state and federal law. The term "stormwater management program" does not include
150 those activities associated with the management, operation, maintenance and control of

151 highways, road and drainage easements or stormwater facilities constructed, owned or operated
152 by the West Virginia Division of Highways without the express agreement of the Commissioner of
153 the Division of Highways.

154 ~~(21)~~ (23) "Water resources", "water" or "waters" means any and all water on or beneath the
155 surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within
156 this state, or bordering this state and within its jurisdiction, and includes, without limiting the
157 generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks,
158 ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities),
159 impounding reservoirs, springs, wells and watercourses.

160 ~~(22)~~ (24) "Wastewater" means any water containing sewage, industrial wastes or other
161 wastes or contaminants derived from the prior use of such water and includes, without limiting the
162 generality of the foregoing, surface water of the type storm sewers are designed to collect and
163 dispose of.

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

172 ~~(24)~~ (26) "Water facility" means all facilities, land and equipment used for the collection of
173 water, both surface and underground, transportation of water, treatment of water and distribution
174 of water all for the purpose of providing potable, sanitary water suitable for human consumption
175 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.

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

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

25 duties of the board and the authority. The person appointed as secretary-treasurer, including a
26 board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in
27 article two, chapter six of this code.

28 (e) The Governor or designee, the Secretary of the Department of Environmental
29 Protection and the Commissioner of the Bureau for Public Health do not receive compensation for
30 serving as board members. Each appointed member ~~receives an annual salary of \$12,000,~~
31 payable at least twice per month is entitled to receive compensation for attending official meetings
32 or engaging in official duties not to exceed the amount paid to members of the Legislature for their
33 interim duties as recommended by the Citizens Legislative Compensation Commission and
34 authorized by law. Each of the seven board members is ~~reimbursed~~ entitled to reimbursement for
35 all reasonable and necessary expenses actually incurred in the performance of duties as a
36 member of the board in a manner consistent with guidelines of the Travel Management Office of
37 the Department of Administration. All expenses incurred by the board are payable solely from
38 funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or
39 obligation is not incurred by the authority beyond the extent to which moneys are available from
40 funds of the authority or from such appropriations.

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

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

1 (a) To accomplish the public policies and purposes and to meet the responsibility of the
2 state as set forth in this article, the water development authority may make loans to the water
3 facilities, stormwater systems, or wastewater facilities for the acquisition or construction of private

4 water development projects by governmental agencies, which loans may be made to private
5 utilities which have been compelled to assume any part of the responsibilities of the acquisition,
6 operation, or construction of a failing utility, including relevant water development projects, under
7 the provisions of §24-2H-1, et. seq. of this Code. Loans to private utilities, from nonbond
8 proceeds, may be offered at an interest rate that is equal to or greater than the market rate.

9 (b) Any loan issued to a private utility pursuant to this section will not be eligible for
10 refinancing, and may not be forgiven. However, if a private utility acquires a public utility, whether
11 voluntarily or involuntarily, then the private utility may seek refinancing for any loan previously
12 obtained by the public utility pursuant to §22C-1-5 of this code.

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

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

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

27 (2) The specific purposes for which the proceeds of the loan shall be expended, the
28 procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon
29 the private utility in regard to the construction or acquisition of the project, including engineering

30 fees and other administrative costs relating to development of the project;

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

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

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

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

46 (e) Nothing in this section shall be construed as requiring the water development authority
47 to make a loan to a qualifying private utility. Further, the water development authority must hold a
48 private utility to, at least, the same financial standards for eligibility that it does public utilities,
49 including meeting any metric or requirement necessary to ensure that the private utility is able to
50 repay the loan. In making any loan under this section, the authority should consider:

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

52 (2) Increasing affordability to customers; and

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

54 (f) A private utility may not receive any grant from any fund created under this article.
55 Privately owned, for-profit entities which do not own a water facility, stormwater system, or

56 wastewater facility are not eligible for a loan from the water development authority.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4i. Inflation-based rate adjustment for publicly owned water and sewer utilities.

"Public Utility Stability Act".

1 (a) The Legislature finds a need to provide a mechanism for water and sewer utilities that
2 are political subdivisions of the state to implement annual rate increases based upon the United
3 States Department of Labor Statistics Water and Sewerage Maintenance Index, and therefore
4 establishes this section, to be known as the "Public Utility Stability Act".

5 (b) Urban Consumer Water and Sewerage Maintenance Index rate change – Effective July
6 1, 2026, and subject to §24-2-4i(g) of this code, a publicly owned water and/or sewer utility shall be
7 permitted to increase rates for the treatment and distribution of water and collecting and treatment
8 of wastewater once on or after January 1 of each year, without, as applicable:

9 (1) The filing of an application for approval by the commission; or

10 (2) Seeking passage of a municipal ordinance pursuant to Chapter 8 of this code; or

11 (3) The approval of a county commission pursuant to Chapter 16 of this code.

12 (c) An increase as described in §24-2-4i(b) of this code shall be considered just and
13 reasonable and not unfairly discriminatory, prejudicial, or preferential if:

14 (1) The percentage increase over the prior rate is equal to or less than the percentage
15 increase in the United States Department of Labor Bureau of Labor Statistics Urban Consumer
16 Water and Sewerage Maintenance Index (the "Index") between September of the year preceding
17 the effective date of the requested rate increase and September of the year prior to the year
18 preceding the effective date of the requested rate increase (the "relevant time period");

19 (2) The utility files a revised tariff in compliance with the commission's rules and
20 regulations; and

21 (3) Notice is provided as directed by the commission.

22 (c) The fact that a utility has already raised its rates in a given year pursuant to §24-2-4i(b)
23 of this code shall not preclude a utility from applying for and receiving from the commission or its
24 governing body a rate increase pursuant to the provisions delineated in this section: *Provided,*
25 That the commission or applicable governing body shall take into account the prior rate increase
26 taken pursuant to this section when considering the utility's application to increase rates.

27 (d) After September 30 of each year, the commission shall issue a general order stating the
28 percentage increase in the Index and the inflation factor to apply to the rates currently in effect to
29 calculate the maximum rate increase authorized by §24-2-4i(b) of this code. Any rate increase that
30 a utility believes is at or below the aforementioned increase in the Index shall be identified as such
31 when filed with the commission.

32 (e)(1) A rate adjustment pursuant to §24-2-4i(b) of this code shall be subject to challenge
33 by the commission only if:

34 (A) The utility is not a municipal utility and is a utility with fewer than 4,500 customers and
35 annual gross combined revenues of less than \$3 million; and

36 (B) The commission determines that the increase is in fact in excess of the amount of the
37 increase in the Index for the relevant time period. If the commission determines that such rate
38 increase is in excess of the increase in the Index for the relevant time period, it may enter an order
39 suspending the rate increase. If such an order is entered, the utility shall be entitled to a hearing as
40 authorized in §24-2-3 or §24-2-4a of this code or it may correct its requested rates, in which case
41 the suspension will be lifted and the rates may go into effect as of the original requested effective
42 date or the date that the utility corrects its rates, whichever comes later.

43 (2) A county commission may request that the commission review a rate increase
44 implemented by a utility with at least 4,500 customers and annual gross combined revenues of \$3
45 million or more under §24-2-4i(b) of this code to determine whether such increase is in excess of
46 the amount of the increase in the Index for the relevant time period.

47 (3) A city council may request that the commission review a rate increase implemented
48 by a municipally owned utility under §24-2-4i(b) of this code to determine whether such increase is
49 in excess of the amount of the increase in the Index for the relevant time period.

50 (f) (1) A publicly owned water and/or sewer utility that is not a municipal utility and that has
51 fewer than 4,500 customers and annual gross combined revenues of less than \$3 million, may
52 implement up to three annual indexed rate increases under §24-2-4i(b) of this code before filing for
53 a rate increase under the other applicable provisions of Chapter 24 of this code: *Provided*, That
54 any rate approved by the commission shall not be applied retroactively.

55 (2) A municipally owned water and/or sewer utility may implement up to three annual
56 indexed rate increases under §24-2-4i(b) of this code before seeking passage of an ordinance
57 pursuant to the provisions of Chapter 8 of this code.

58 (3) A publicly owned water and/or sewer utility that is not a municipal utility and that has
59 4,500 or more customers and annual gross combined revenues of \$3 million or more, may
60 implement up to three annual indexed rate increases under §24-2-4i(b) of this code before filing for
61 approval of rates pursuant to the provisions of Chapter 16 of this code.

62 (g) The commission shall prescribe such rules and regulations as to the giving of notice of
63 a change in rates pursuant to this section as are deemed reasonable and proper, and in the public
64 interest.

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

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

23 (A) 1) Has not, after a reasonable time period, been stabilized and improved by corrective
24 measures put in place under §24-2H-4a or §24-2H-7 of this code; or

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

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

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

37 (f) "Wastewater utility," for purposes of this article, means a public utility that treats,
 38 neutralizes, disposes of, stabilizes, cools, segregates or holds wastewater, including, for the
 39 treatment and disposal of sewage, industrial wastes or other wastes, waste water and the residue
 40 thereof; allows for the temporary or permanent impoundment of wastewater, both surface and
 41 underground; and provides sanitary sewers or other collection systems, whether on the surface or
 42 underground, designed to transport wastewater together with the equipment and furnishings
 43 thereof and their appurtenances and systems, whether on the surface or underground, including
 44 force mains and pumping facilities therefor.

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

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

1 (a) Annual Reports. –

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

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

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

10 (4) Reports required by this subsection shall be contemporaneously submitted
11 electronically to the Public Service Commission.

12 (b) *Initial and Renewed Training.* – Any person who is a member of a municipal governing
13 body, county commission, or a board member of a public service district that is operating or has
14 oversight of a water and/or wastewater utility system shall complete at least six hours of initial
15 training within six months of taking office, and shall require all board members and senior
16 managers of the municipal or county waterworks system to complete at least six hours of initial
17 training within six months of taking office or employment.

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

22 (2) Initial training and continuing education shall focus on financial management,
23 regulatory compliance, and operational best practices. Each water or wastewater utility system
24 shall submit a verified certificate to the Public Service Commission at the end of each calendar
25 year, confirming that it is in compliance.

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

30 excess of the amount required by this subsection. The Public Service Commission may allow any
31 officer, manager, or employee of a public water or wastewater utility to attend the training, even if
32 this subsection does not require that person to attend the training, and the Public Service
33 Commission may allow any officer, manager, or employee of a private water or wastewater utility
34 that operates through a homeowners' association to attend the training.

35 (4) At least one hour of initial training and at least half an hour of renewed training must
36 include information relating to state and federal funding options for infrastructure projects, and the
37 standard process for obtaining said funding, including the role of regional councils and the various
38 state agencies that may provide assistance. Training on this topic must include written handouts
39 which advises those receiving the training on available state and federal grants and loans,
40 information relevant to obtaining applications or more information for said funding, and the contact
41 information for at least one person within state government who the trainee may contact for more
42 information. The written handouts must also be made publicly available on the websites of the
43 Public Service Commission and the Water Development Authority.

44 (c) The requirements of this section only apply to those water or wastewater utility systems
45 which are regulated pursuant to §8-19-1 et seq. of this code, §8-20-1 et seq. of this code, §16-13-1
46 et seq. of this code, or §16-13A-1 et seq. of this code. The requirements set forth in this section
47 shall preempt any training obligation which requires less training than is set forth herein, but it does
48 not 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:

16 (1) Must be in writing;

17 (2) Must be executed by all participating utilities;

18 (3) Must be filed with and approved by the Public Service Commission;

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

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

23 (d) Notice of Agreement. –

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

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

30 (3) A utility which is joining an executed agreement must notify its customers and its

31 regulatory agency before the modification is executed.

32 (e) *Benefits to the Utilities.* –

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

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

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

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

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

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

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

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

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

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

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

1 (a) *Initial Participants*. – The Public Service Commission will select at least six, but no more
2 than ten public water and/or wastewater utilities to participate in the Early Intervention Pilot
3 Program.

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

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

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

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

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

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

22 (1) The individualized course of action may be designed by the Public Service
23 Commission, the Department of Environmental Protection, the Bureau of Public Health, the Water
24 Development Authority, the West Virginia Rural Water Association, the West Virginia Municipal
25 Water Quality Association, and the West Virginia chapter of the National Association of Water
26 Companies, which entities shall collectively be referred to as the "stakeholders." The stakeholders
27 may rely on and accept any other knowledgeable or interested party who can provide insight or
28 guidance, including, but not limited, to other state agencies, political subdivisions, and utilities in
29 the region.

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

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

39 (c) Progress. – An individualized course of action shall include measurable goals, and a
40 timeframe for reaching those objectives. If the utility and the stakeholder agree that the goals have

41 been met, the utility may be deemed to have successfully completed the Early Intervention Pilot
42 Program, and be released. If, at any time, the utility believes that its participation is not worthwhile,
43 or if the stakeholders believe that the program is not productive for a utility, then either may
44 unilaterally end the utility's participation in the program. No utility may participate in the program
45 for longer than twenty-four consecutive months: *Provided*, That the Public Service Commission
46 may extend a utility's participation for additional periods of up to twelve months each, upon a
47 finding that the extension is necessary for the successful completion of an ongoing project or
48 course of action.

49 (d) *Stakeholders*. – The named stakeholders do not constitute a public body, pursuant to
50 §6-9A-1 *et seq.* of this code, nor may the stakeholders receive compensation or reimbursement
51 from the state. The collaboration of the stakeholders is intended to provide meaningful and
52 efficient assistance to the utilities in the Early Intervention Pilot Program, and informal and
53 frequent discussions are encouraged. The stakeholders must be afforded notice of the terms of
54 an individualized course of action, and an opportunity to make suggestions. However, while the
55 stakeholders are encouraged to act collaboratively, decisions required under this section may be
56 made without consensus, so long as at least two state agencies determine that the action is in the
57 best interest of the utility. The West Virginia Rural Water Association, the West Virginia Municipal
58 Water Quality Association, and the West Virginia chapter of the National Association of Water
59 Companies may participate to the extent they choose, and while voluntary participation would be
60 beneficial, it is not necessary for completing the tasks set forth herein. Nothing contained herein
61 prohibits any state agency from otherwise performing its obligations under any other provision of
62 law. Further, nothing contained herein prohibits real-time problem-solving by one or more
63 stakeholder, when a participating utility has a need for immediate assistance.

64 (e) *New Participants*. – If the Public Service Commission determines that the Early
65 Intervention Pilot Program has demonstrated meaningful success, the Public Service Commission
66 may increase the number of participating utilities. However, the Public Service Commission may

67 not add more than 10 public water and/or wastewater utilities in a 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 The Public Service Commission may consider managerial or
6 operational issues that are contributing to the utility’s financial instability. The Public Service
7 Commission shall also include water and wastewater utilities that are in continual violation of
8 statutory or regulatory standards of the Bureau for Public Health, the Department of
9 Environmental Protection, or the Public Service Commission, when those violations affect or have
10 the potential to affect the water quality, safety, adequacy, efficiency, or reasonableness of the
11 services provided by the utility.

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

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

20 (d) Amendments. – If there is an imminent need, the Public Service Commission may

21 amend the watch list after November 1, which may be amended without seeking the approval of
 22 the Bureau for Public Health, the Department of Environmental Protection, or the Water
 23 Development Authority, if prior consultation is not feasible. An "imminent need" is present when a
 24 utility is incapable of providing safe or reliable services to its customers, is unable to obtain
 25 necessary financial assistance for infrastructure project, or is otherwise in need of urgent
 26 intervention. The Public Service Commission may only declare an imminent need upon the
 27 agreement of the Bureau of Public Health or the Department of Environmental Protection.

§24-2H-4a. **Improvement** **Period.**

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

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 (4) The utility shall give notice to each registered owner of any bonds, notes or other debt
24 obligations of the utility.

25 (c) The public hearing shall be conducted to receive public comments, including, but not
26 limited to, comments regarding possible options available to bring the distressed or failing utility
27 into compliance with appropriate statutory and regulatory standards concerning actual or
28 imminent public health problems or unreasonable quality and reliability service standards. At the
29 evidentiary hearing, the commission shall receive evidence to determine if the utility is a distressed
30 or failing utility and whether a capable proximate utility should assist or acquire the utility. If there is
31 more than one capable proximate utility, then sufficient evidence should be presented to allow the
32 commission to determine the appropriate capable proximate utility to assist or acquire the
33 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
18 company under a mutually agreed arms-length contract;

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

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

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

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

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

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

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

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

39 (3) other grant funds; or

40 (4) any combination of the above.

41 (f) Within 10 business days of the entry of a final order that orders the acquisition of a failing
42 utility, the commission shall notify the registered owners of all outstanding bonds, notes, or other
43 debt obligations of the failing utility.

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

1 (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
28 costs. The distressed or failing utility shall have ten business days upon receipt of notice to object
29 to the monthly invoice of actual costs. Upon an objection, the Public Service Commission shall
30 arbitrate the dispute between the controlling utility and the distressed or failing utility.

31 (c) Control of the Failing Utility. – During the course of the memorandum of understanding,

32 the distressed or failing utility will maintain its own legal identity separate and apart from the
33 controlling utility. The county commission, governing municipal council, or board responsible for
34 the distressed or failing utility at the time the memorandum of understanding is entered shall
35 continue to oversee the distressed or failing utility. However, the Public Service Commission is
36 authorized to void any vote which is contrary to the memorandum of understanding, is contrary to
37 any other provision of this article, could impede consolidation, or otherwise harms or negatively
38 impacts the customers or the facilities. The Public Service Commission is authorized to mandate
39 any action which is required by the memorandum of understanding.

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

47 (e) *Duration of Agreement.* – A memorandum of understanding mandated by the
48 commission pursuant to this section shall remain in full force and effect for as long as the
49 commission deems necessary, but shall not be considered a permanent solution for addressing a
50 distressed or failing utility. If the controlling utility and the distressed or failing utility agree that the
51 collaborative nature of the memorandum of understanding is mutually beneficial, then the
52 commission may allow the two utilities to enter into a new memorandum of understanding, outside
53 of the control of the commission. The commission may deny a voluntary memorandum of
54 understanding if the underlying cause of the utility becoming a distressed or failing utility has not
55 been, or will not be, adequately addressed, or if the commission has identified a utility which can
56 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
46 respective municipal council with regard to the acquisition of distressed or failing utilities as
47 provided in §8-12-17 of this code.

48 (1) Notwithstanding any other provision of this code, a county commission may remove the
49 board members of a public service district found to be failing or distressed without petitioning a
50 circuit court for removal of board members and the county commission may appoint its members
51 as board members of the failed or distressed public service district for the purpose of implementing

52 an acquisition or alternative to an acquisition, as ordered by the commission.

53 (2) No sale shall occur without prior notice to and written consent of the registered owners
54 of the utility's outstanding bonds, notes or other obligations: *Provided*, that unless otherwise
55 contradicted by bond covenants, such consent shall not be unreasonably withheld: *Provided*,
56 however, that such consent shall not be withheld if at, or before, closing of the transaction, the
57 bond, note, or other obligation is satisfied..

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

ARTICLE 2J. STRUGGLING UTILITIES IMPROVEMENT PILOT PROGRAM.

§24-2J-1. Legislative Findings and Intent.

1 The Legislature finds that safe, reliable, and effective water and wastewater utilities are
2 essential to both public health and economic growth. Yet, many small water and wastewater
3 utilities in West Virginia face significant challenges in maintaining adequate services due to limited
4 resources, aging infrastructure, and difficulty attracting qualified personnel. The Legislature
5 further finds that some utilities may benefit from more robust state engagement. It is the intent of
6 the Legislature to create the Struggling Utilities Improvement Pilot Program to allow the state to
7 provide direct, targeted support for one or more struggling utilities in order to remediate significant
8 challenges to the operational, financial, and structural viability of the utility.

§24-2J-2. Definitions.

1 As used in this article:

2 (1) "Director" shall mean the director of the Water Development Authority, as established in
3 §22C-1-4(f) of the code.

4 (2) "Economic Enhancement Grant Fund" shall mean the fund established in §22C-1-6a of
5 this code.

6 (3) "Participating utility" shall mean any utility that participates, whether voluntarily or
7 pursuant to order, in the pilot program.

8 (4) "Pilot program" or "program" means the Struggling Utilities Improvement Pilot Program,
9 as established in §24-2J-3 of this code.

10 (5) "Struggling utility" means any utility that meet two or more of the criteria considered by
11 the Struggling Utilities Support Team in selecting program participants, as set forth in §24-2J-6 of
12 this code.

13 (6) "Support team" shall mean the Struggling Utilities Support Team, as created in §24-2J-
14 5 of this code. It may refer to the team as a whole, or a member of the team.

15 (7) "Utility" means a water and/or wastewater utility which is operated by a municipality, a
16 public service district, or any political subdivision, but is not operated by a political subdivision that
17 has at least 4,500 customers and annual combined gross revenues of \$3 million or more, as
18 described in §24-2-1(b) of this code.

19 (8) "Wastewater utility," for purposes of this article, means a public utility that treats,
20 neutralizes, disposes of, stabilizes, cools, segregates or holds wastewater, including, for the
21 treatment and disposal of sewage, industrial wastes or other wastes, waste water and the residue
22 thereof; allows for the temporary or permanent impoundment of wastewater, both surface and
23 underground; and provides sanitary sewers or other collection systems, whether on the surface or
24 underground, designed to transport wastewater together with the equipment and furnishings
25 thereof and their appurtenances and systems, whether on the surface or underground, including
26 force mains and pumping facilities therefor.

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

§24-2J-3. Struggling Utilities Improvement Pilot Program.

2 The Struggling Utilities Improvement Pilot Program is hereby created. The Struggling
3 Utilities Support Team shall develop and implement the pilot program concerning the concentrated
4 improvement of participating utilities in the manner as set forth in this article. The pilot program
5 shall terminate on July 1, 2031.

§24-2J-4. Struggling Utilities Subaccount.

1 The Water Development Authority shall establish a Struggling Utilities Subaccount in the
2 Economic Enhancement Grant Fund, as created in §22C-1-6a of this code, to be expended to
3 implement the Struggling Utilities Improvement Pilot Program, including, but not limited to,
4 salaries, benefits, consultants, office supplies, travel, and other administrative or operational
5 costs. The Director of the Water Development Authority shall transfer \$1 million from the
6 Economic Enhancement Grant Fund into the Struggling Utilities Subaccount within 30 days of the
7 effective date of this article. The subaccount shall also include any payments remitted in
8 accordance with §24-2J-12 of this code.

§24-2J-5. Struggling Utilities Support Team.

1 (a) Establishment. – There is hereby created within the Water Development Authority the
2 Struggling Utilities Support Team, which shall administer the Struggling Utilities Improvement Pilot
3 Program, as set forth in this article.

4 (b) Composition. – The support team shall consist of three members employed, at will, by
5 the Water Development Authority, who shall possess, in the aggregate, expertise in water and
6 wastewater engineering, utility finance and accounting, utility operations and management, and
7 regulatory compliance. Of the three members of the support team, the Water Development
8 Authority shall designate a team leader to oversee the direction and actions of the support team,
9 and to manage the daily operations thereof.

10 (c) Available Resources. – As its budget allows, the support team may hire support staff,
11 and may contract with qualified consultants, engineering firms, financial advisors, utility
12 management companies, and other experts, as necessary to fulfill its duties under this article.

13 (d) Powers and Duties. – The support team shall have the following powers and duties:

14 (1) Select utilities to participate in the pilot program;

15 (2) Create and implement improvement plans for participating utilities;

16 (3) Help participating utilities take measures necessary to improve;

17 (4) Assess whether each participating utility successfully completes the program;

18 (5) File complaints to compel participation, when warranted; and

19 (6) Take all other actions which are necessary or reasonable under this article.

20 (e) Rulemaking Authority. –Pursuant to §29A-3-3 of this code, the Director of the Water
21 Development Authority may adopt procedural rules governing the formal and informal procedures
22 of the support team, together with forms and instructions. The support team may also develop
23 guidelines, standards, and policies for its operation.

§24-2J-6. Selection Process for Participating Utilities.

1 (a) Authority. – The support team is authorized to select participating utilities, in
2 accordance with the provisions of this section. No utility is entitled to be selected to the program.

3 (b) Recommendations. – Within 90 days of the effective date of this article, the Department
4 of Environmental Protection, the Bureau of Public Health, and the Public Service Commission
5 shall each provide the support team with a list of utilities that it recommends for participation in the
6 program. Each shall provide the support team with information relevant to its recommendations,
7 including, but not limited to, findings of noncompliance, financial audits, and concerns with
8 management.

9 (1) The Department of Environmental Protection, the Bureau of Public Health, and the
10 Public Service Commission shall consult with the support team. Each shall freely answer any
11 inquiry of the support team, and shall provide the support team with any requested information
12 pertinent to the selection process.

13 (2) The support team shall consider any utility recommended by the Department of
14 Environmental Protection, the Bureau of Public Health, or the Public Service Commission but it is

15 not bound by any recommendation, and may select participating utilities that were not
16 recommended.

17 (c) *Nominations.* – A utility may volunteer to participate in the program. A utility may also
18 be nominated by a customer of the utility, or by a community leader or citizen with an interest in the
19 continued viability of the utility. The support team shall afford volunteering and nominating utilities
20 the same level of consideration as a recommendation by a state agency.

21 (d) *Review of Records.* – The support team shall review all available data, including annual
22 financial reports, compliance data from regulatory agencies, customer complaints, infrastructure
23 condition, management capacity indicators, and other relevant information. Its analysis of data
24 should be focused on utilities that can most benefit from the program.

25 (e) *Criteria.* – The support team shall consider the following criteria:

26 (1) Imminent threats to public health or safety;

27 (2) Substantial noncompliance with a state regulatory agency;

28 (3) Multiple findings of noncompliance with a state regulatory agency;

29 (4) Ineligibility for state funding due to not meeting the debt service coverage ratio;

30 (5) High water loss or system inefficiencies;

31 (6) Failure to conduct annual audits or to adopt audit recommendations;

32 (7) Failure to maintain operating reserves or has operating deficits;

33 (8) Deferred maintenance or aging infrastructure;

34 (9) Absence of a certified operator or excessive turnover in personnel;

35 (10) Failure to hold regular public meetings;

36 (11) High rates of customer complaints; or

37 (12) Any other criteria, provided that the criteria is made publicly available.

38 (f) *Location.* –The support team may consider management of its resources in the
39 selection process. The support team may choose to select participating utilities from a single
40 geographic area, or a single county.

41 (g) *Already Failing.* – The support team may not include a utility that has been declared a
42 failing utility, pursuant to §24-2H-7 of this code, without the consent of the Public Service
43 Commission.

44 (h) *Timeframe.* – The support team shall select its first participating utility no later than
45 January 1, 2027.

§24-2J-7. Notice to Selected Utility.

1 (a) *Written Notice.* – Upon making a selection pursuant to §24-2J-6 of this code, the
2 support team will promptly notify the utility, in writing, that it has been selected to participate in the
3 pilot program. Notice will be provided to the public and manager of the utility. If the utility is a
4 municipality, notice will also be provided to the mayor and the chair of the city council. If the utility
5 is a public service district, notice will be provided to the chair of the board and the chair of the
6 county commission. The notice shall provide the selected utility with contact information for the
7 support team, and request that the utility contact the support team.

8 (b) *Meetings.* – The support team shall schedule, or attempt to schedule, a meeting with
9 the utility to discuss the program. The support team may also request to be placed on the agenda
10 of the governing board of the utility to provide a public presentation regarding the pilot program is,
11 and how participating in the program is expected to help the utility and its customers.

12 (c) *Non-Selected Utilities.* – If a utility that volunteered to participate in the program was not
13 selected, the support team shall provide that utility with notice that it has not been selected, which
14 may include information regarding other resources that may be available to help the utility.

§24-2J-8. Improvement Plan.

1 (a) *Creating the Improvement Plan.* – The support team shall create an individualized
2 improvement plan for each utility participating in the pilot program that may be developed based
3 on input from the participating utility and other knowledgeable and interested parties including the
4 Department of Environmental Protection, the Bureau of Public Health, the Public Service

5 Commission, the West Virginia Rural Water Association, the West Virginia Municipal Water
6 Quality Association, the West Virginia chapter of the National Association of Water Companies.

7 (b) *Statement of Intent.* – The improvement plan must contain a detailed description of
8 each deficiency, failure, or problem which the improvement plan is designed to address.

9 (c) *Course of Action.* – An improvement plan must include an individualized course of
10 action, which may include any one or more of the following:

11 (1) Rectify existing, imminent, or reasonably foreseeable threats to public health or safety;

12 (2) Work with state regulatory agencies to address any findings of noncompliance;

13 (3) Identify and develop infrastructure projects, and seek state, federal, and private
14 funding, including taking any action necessary for the utility to be deemed eligible for state funding;

15 (4) Become current on the submission of all financial audits required by the state, or
16 require additional financial audits, and to adopt any recommended findings of an audit;

17 (5) Intensive training for any manager, operator, employee, board member, governing
18 body, or political subdivision working with or responsible for the utility;

19 (6) Improve how the utility addresses service disruptions, including how it provides notices
20 to the public; or

21 (7) Take any other action necessary to rectify the circumstances that qualified the utility as
22 a struggling utility.

23 (d) *Required Provisions.* – Every improvement plan shall require the participating utility to:

24 (1) Provide the support team with full access to all records and facilities;

25 (2) Electronically submit progress reports to the support team on at least a monthly basis;

26 (3) Immediately notify the support team of any material change to personnel, finances, or
27 the facilities; and

28 (4) Participate in regular meetings between the manager, board, governing body, and
29 support team to discuss action taken to remedy deficiencies, progress made under the
30 improvement plan, problems which remain outstanding, and/or the general operations of the utility.

31 (e) Plan Approval. – The support team shall provide the participating utility with an
32 improvement plan within 30 days of the utility being selected for the program. Within 30 days of
33 receiving the improvement plan, the governing body of the utility shall convene a public meeting to
34 vote on the improvement plan.

35 (1) At the public meeting, the governing body shall, by vote:

36 (A) Accept the improvement plan by resolution, and commit to full implementation;

37 (B) Reject the improvement plan, and provide an alternative plan that meets the same
38 objectives with specific corrective actions, timelines, and funding sources; or

39 (C) Reject the plan with written explanation.

40 (2) If the utility proposes an alternative plan, then the support team shall meet with the
41 utility to discuss the alternative plan. If the support team and the utility are able to agree on the
42 terms of an improvement plan, then the governing body of the utility shall convene a meeting to
43 vote on the acceptance of the plan. If the support team and the utility cannot agree on the terms of
44 an improvement plan, then the support team shall treat the alternative plan as a denial.

45 (3) If the utility rejects the plan without an adequate alternative plan, then the support team
46 may initiate a complaint, pursuant to §24-2J-11 of this code.

47 (f) Amendments. – The support team may amend an improvement plan at any time.
48 However, the support team must provide the participating utility with written notice, and afford the
49 utility an opportunity to weigh in on the amendment. The participating utility may, at any time,
50 request an amendment to the improvement plan.

51 (g) Collaborative Improvement Plan. – While each utility must have its own improvement
52 plan with an individualized course of action, if the support team has two or more participating
53 utilities that are in the same county or are in close proximity to one another, then the support team
54 may develop a collaborative improvement plan, which addresses any similarities, differences, or
55 overlap for the participating utilities. A collaborative improvement plan may require the
56 participating utilities to enter into collaborative agreements with one another, which said

57 collaborative agreements may contain the same provisions, and garner the same benefits, as the
58 Regional Cooperative Agreements established in §24-2H-3b of this code. A collaborative
59 improvement plan may also contain any other term which the support team believes to be
60 beneficial to the participating utilities as a collective.

§24-2J-9. Improvement Period.

1 (a) *Improvement Period.* – Upon adoption or order of the improvement period, the
2 participating utility shall be afforded twelve months to complete the terms of the improvement plan.
3 The term of the improvement period may be extended by the support team, so long as it does not
4 extend beyond the term of the pilot program.

5 (b) *Responsibilities of the Utility.* – During the improvement period, the participating utility
6 shall be responsible for completing the requirements of the improvement plan.

7 (c) *Responsibilities of the Support Team.* – During the improvement period, the support
8 team shall have the following responsibilities:

9 (1) The support team shall closely monitor the progress of the participating utility.

10 (2) The support team shall act in an advisory role to the participating utility.

11 (3) The support team should provide the participating utility with training, or the means to
12 obtain training, if training is included in the improvement plan;

13 (4) The support team shall help the participating utility seek state and federal funding for
14 projects, including taking any measures necessary to allow the utility to be eligible for state
15 funding;

16 (5) The support team should take any other reasonable action that is necessary to provide
17 meaningful assistance to the utility.

§24-2J-10. Assessment of the Improvement Period.

1 (a) *Measurable Goals.* – The improvement plan shall include performance metrics,
2 milestones, progress reports, and deadlines which allow both the support team and the

3 participating utility to assess whether the participating utility is improving, declining, or remaining
4 unchanged. Measurable goals may include:

5 (1) Hiring additional staff;

6 (2) Coming into compliance with a state regulatory agency;

7 (3) Seeking project approval through the Infrastructure Development and Jobs Council;

8 (4) Reducing the frequency of consumer complaints; or

9 (5) Any other metric which appropriately addresses any deficiency, failure, or problem.

10 (b) *Progress Reports.* – The support team should provide the participating utility with a
11 performance review at least once every 90 days. The support team should go over the review with
12 the utility, and explain any negative findings. The utility should advise the support team of any
13 additional assistance that the support team could offer to better help the utility improve.

14 (c) *Revocation of Participation.* – If the support team determines that a participating utility is
15 not making a meaningful effort to comply with the terms of the improvement plan, the support team
16 may revoke the improvement period prior to the end of the 12 months. The grounds for early
17 termination shall be provided, in writing and in detail, to the participating utility. The participating
18 utility shall have 10 business days to reply, in writing. The support team shall respond by either
19 issuing a letter rescinding its revocation, or by explaining why its decision will stand. The
20 revocation of the improvement period shall remove the utility from the program, and the utility shall
21 be subject to the consequences for a utility that failed its improvement period, as set forth in
22 subsection (f) of this section. The support team may submit a written recommendation to the
23 Infrastructure Development and Jobs Council that the utility be deemed ineligible for state funding
24 for infrastructure projects.

25 (d) *Final Assessment.* – At the conclusion of the improvement period, the support team
26 shall make a final determination as to whether the utility was successful or unsuccessful in
27 completing its improvement period. In reaching its determination, the support team may seek the

28 opinions of the Department of Environmental Protection, the Bureau of Public Health, the Public
29 Service Commission, and the West Virginia Rural Water Association.

30 (e) Successful Completion. – If the support team finds that the utility has materially
31 improved, the support team shall issue a public written declaration which details the progress
32 made by the utility to becoming financially stable, competently managed, and well-maintained.

33 (f) Failure to Improve. – If the support team finds that the utility has not materially improved,
34 or that the utility had improved but not to the degree necessary to remain self-sufficient, the
35 support team shall submit a written recommendation to the Public Service Commission that the
36 utility be placed on the watch list. If the support team determines that the situation of the utility is
37 critical, then the support team may recommend that a petition be filed pursuant to §24-2H-6 of this
38 code, which may then be filed even if the utility was not on the watch list.

39 (f) Malfeasance. – If, at any time, the support team discovers evidence of criminal misuse,
40 malfeasance, embezzlement of funds, or any other criminal activity directly related to the
41 operations of the utility, the support team shall refer the evidence to the prosecuting attorney for
42 the county where the utility is located. Confidential copies of the referral shall be provided to the
43 State Auditor and the Public Service Commission. A referral of potential criminal conduct may
44 justify immediate revocation of an improvement period, regardless of whether the utility is actively
45 participating or improving.

§24-2J-11. Complaint by the Support Team.

1 (a) Verified Complaint. – If a utility rejects an improvement plan, as set forth in §24-2J-8 of
2 this code, then the support team may file a verified complaint with the Public Service Commission.
3 The verified complaint shall be served on the utility. The verified complaint shall set forth specific
4 facts, exhibits, and requested relief that the utility’s failure to participate in the pilot program:

5 (1) May imminently endanger or may continue to endanger the public health or safety;

6 (2) May result in the utility becoming insolvent within the next twelve months, or

7 (3) May have a significant impact on the economic stability of its community or a
8 neighboring utility.

9 (b) Show Cause Order. – Within 5 business days of the receipt of the verified complaint,
10 the Public Service Commission shall issue an order to the utility to show cause why it should not
11 be ordered to participate in the program. The utility shall file its response within 10 business days
12 of receipt of the order to show cause.

13 (c) Evidentiary Hearing. – Absent a finding of good cause, the Public Service Commission
14 shall conduct a hearing within 30 days of the issuance of the order to show cause and shall issue a
15 final order within 30 days after final submission upon oral argument or brief. The hearing shall be
16 held in accordance with the provisions of 24-2-10 of this code.

17 (d) Appeal. – The final order of the Public Service Commission shall be subject to appeal,
18 as set forth in §24-5-1 et seq. of this code.

§24-2J-12. Costs of an Improvement Period.

1 (a) Monthly Invoice. – Each month, the support team shall invoice the participating utility,
2 based on below-market hourly rate, for work actually performed by the support team and its staff.

3 (b) Due Date for Invoices. – All invoices shall become payable 30 days after the end of the
4 improvement period. The support team may void any invoice submitted to a participating utility, if
5 that utility is compliant with the terms of the improvement plan for that month or is determined to
6 have successfully completed its improvement period.

7 (c) Acquiring Utility. – If the participating utility becomes the subject of an order of
8 consolidation, pursuant to §24-2H-7 of this code, then any amount still due to the support team
9 shall be forgiven.

10 (d) Costs of Experts. – The support team and the participating utility may negotiate the
11 hiring of qualified consultants, engineering firms, financial advisors, utility management
12 companies and other experts to help the participating utility. Any agreement to jointly hire a
13 consultant must be reduced to writing, and must be mutually agreed to and executed by the

14 Director of the Water Development Authority, the team leader of the support team, and any person
15 or body authorized to sign for the utility.

16 (e) *Remittance of Payment.* – Payments due under this section shall be deposited into the
17 Struggling Utilities Subaccount. If payment is due or outstanding after the termination date for the
18 pilot program, then the utility shall remit payment to the Water Development Fund for deposit in the
19 Economic Enhancement Grant Fund.

§24-2J-13. Public Transparency and Accountability.

1 (a) *Open Meetings Act.* – The support team shall not be subject to the requirements of §6-
2 9A-1 *et seq.* of this code. Further, meetings between the support team and the managing boards
3 or governing bodies of participating utilities or selected utilities may be exempt from §6-9A-1 *et*
4 *seq.* of this code if confidential communication is necessary to negotiate the terms of the
5 improvement plan.

6 (b) *Confidential Documents.* – The following records are exempt from public disclosure
7 under the provisions of §29B-1-1 *et seq.* of this code:

8 (1) Communications between members or employees of the support team, and
9 communications between the support team, or its employees, and any consultant, water or
10 wastewater utility, or state official or employee, when the subject of the communication is a
11 participating utility or the selection of a utility;

12 (2) Records which contain an analysis, advice, opinion, recommendation, or assessment,
13 including factual information or data relied upon for such; and

14 (3) Other financial, managerial, and operational information which the support team
15 determines should remain confidential except that an executed contract or agreement, an
16 established improvement plan, or final documents which direct the use of public money shall be
17 subject to public disclosure under §29B-1-1 *et seq.*, of this code.

18 (c) Public Stakeholder Meetings. –The support team may hold public stakeholder meetings
19 in the county where a participating utility is located, or in the county where a utility that refuses to
20 participate is located for any of the following reasons:

21 (1) To educate the community about the pilot program and the support team;

22 (2) To inform the public about the status of a participating utility, including challenges the
23 utility is facing, action taken to improve the utility, or progress the utility has made;

24 (3) To explain the reasons why a utility was selected, and to provide the potential
25 consequences of a utility not participating in the pilot program; and/or

26 (4) To hear concerns from the customers and other members of an impacted community.

27 (d) Annual Reporting. – The support team shall provide an annual report regarding its
28 operations to the Governor, the Joint Committee on Government and Finance, and the Joint
29 Committee on Technology and Infrastructure. The annual report shall be due at the end of each
30 fiscal year.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT

COUNCIL.

§31-15A-2. Definitions.

1 For purposes of this article:

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

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

7 (c) "Cost" means, as applied to any project to be financed, in whole or in part, with
8 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,

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

31 (d) "Council" means the West Virginia infrastructure and jobs development council created
32 in ~~section three of this article~~ §31-15A-3 of this code;

33 (e) "~~Division~~ Department of environmental protection" means the ~~Division~~ Department of
34 Environmental Protection established under article one, chapter twenty-two of this code, or any

35 successor to all or any substantial part of its powers and duties;

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

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

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

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

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

52 (k) "Infrastructure fund" means the West Virginia infrastructure fund created and
53 established in §31-15A-9 of this code ~~section nine of this article~~;

54 (l) "Infrastructure project" means a project in the state which the council determines is likely
55 to foster and enhance economic growth and development in the area of the state in which the
56 project is developed, for commercial, industrial, community improvement or preservation or other
57 proper purposes, including, without limitation, tourism and recreational housing, land, air or water
58 transportation facilities and bridges, industrial or commercial projects and facilities, mail order,
59 warehouses, wholesale and retail sales facilities and other real and personal properties, including
60 facilities owned or leased by this state or any other project sponsor, and includes, without

61 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 §24-1-3 ~~section three, article one, chapter twenty-four~~ of this code,
84 or any 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-3a. Consolidation Committee continued; authority of the Consolidation Committee.

1 (a) Continuation. – The Consolidation Committee, as created by the council's bylaws, is
2 continued within the council. The composition and terms of the Consolidation Committee shall be
3 prescribed by the council, through its bylaws. Members may not receive compensation, but voting
4 members who are not state employees will be entitled to reimbursement for all necessary and
5 reasonable expenses. The bylaws of the council shall continue to control the operation of the
6 Consolidation Committee, except where the bylaws are preempted by statute. The Consolidation
7 Committee shall meet at least quarterly.

8 (b) Mission. – It is the objective of the Consolidation Committee to ensure that the council
9 does not approve state funding for projects when the costs or complexities can be eliminated or
10 reduced by voluntary consolidation or merger. Except for critical needs and bid overruns, the
11 technical reviewers for the council shall review every project which seeks state funding from the
12 council. The members of the Consolidation Committee shall be provided a written assessment by
13 the technical reviewer relating to consolidation. Any member of the Consolidation Committee
14 may, at any time, request a more detailed analysis of potential opportunities for consolidation.
15 Further, any member of the Consolidation Committee may request that the Consolidation
16 Committee convene to discuss the potential consolidation of any project, regardless of the
17 recommendation of the technical reviewer.

18 (c) Capable Proximate Utilities. –The Council shall include on its public website a list of all
19 project sponsors seeking project funding, which shall be posted within 30 calendar days of
20 receiving the initial application. Any capable proximate utility, as defined in §24-2H-3 of this code,

21 or any utility that believes it may qualify as a capable proximate utility, may submit to the
22 Consolidation Committee a non-binding valuation or letter of intent for the project sponsor of a
23 project. If, prior to the council voting on a recommendation to proceed, a capable proximate utility
24 provides a non-binding valuation indicating that acquisition or consolidation would result in a lower
25 long-term cost to the customers of the project sponsor than the proposed project, or if the
26 functionality that an acquisition or consolidation would afford would substantially alter the scope or
27 cost of the project, then the Consolidation Committee shall convene a meeting to determine
28 whether the non-binding valuation by the capable proximate utility changes the assessment of
29 whether consolidation is appropriate, and whether the project sponsor should be eligible for state
30 funding. The Consolidation Committee shall afford both the project sponsor and the capable
31 proximate utility with an opportunity to be heard. A capable proximate utility may withdraw a non-
32 binding valuation at any time.

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

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

45 (1) If the Consolidation Committee determines that consolidation, regionalization, or other
46 action is necessary for the long-term functionality of a system seeking state funds, then the

47 Consolidation Committee may determine that the system is ineligible for funding from the council
48 until such action has been achieved.

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

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

57 (g) *Exceptions to Ineligibility.* –

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

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

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

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

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

10 (b) Substantial Noncompliance. – If the project sponsor is a public utility that is in
11 substantial noncompliance with any lawful requirement of a state regulatory agency, including, but
12 not limited to, the Public Service Commission, the Department of Health, or the Department of
13 Environmental Protection, the council may only approve the issuance of a grant or loan if:

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

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

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

24 (d) Financial Audits. – If the project sponsor is required to provide the Public Service
25 Commission with an audit, pursuant to either §8-19-15 or §16-13A-11 of this code, then the Public
26 Service Commission shall provide a copy of the two most recent audits to the council, for its

27 consideration. The council should not approve the issuance of a grant or loan to an entity required
28 to submit an audit if:

29 (1) The project sponsor is not current in submitting its audits, as required by law;

30 (2) The council determines that the project sponsor is unable or unwilling to follow the
31 recommendations of the audit, and such demonstrates a meaningful failure in management; or

32 (3) The council determines that the most recent audit raises serious concerns for the
33 financial capability or responsibility of the project sponsor, the ability of the project sponsor to
34 reasonably pay off any loans received by any public or private lender, or the long-term financial
35 viability of the project sponsor.

36 (e) *Addition of New Lines.* – The council shall adopt uniform guidelines for determining
37 when it can approve a project to receive a grant or a loan under this article or under §22C-1-1 *et*
38 *seq.* of this code when the project includes an extension of water or wastewater services, including
39 the addition of new lines or new customers. These guidelines must include an assessment of the
40 total cost of state funds and whether the added customers have alternative means for safe,
41 reliable, and effective services. If the project adds new customers to a water system or a
42 combined water and wastewater system, the project sponsor is hereby authorized to enter into
43 contractual agreements with the anticipated new customers, which mandates that the new
44 customers will use the services for at least five years upon completion of the project. These
45 contractual agreements may include a temporary covenant that binds the property of the new
46 customer. The council may consider the agreements and covenants, which shall be provided to
47 the council by the applicant, in determining 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)~~ (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.