

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5642

FISCAL
NOTE

By Delegate Green

[Introduced February 17, 2026; referred to the
Committee on Energy and Public Works then
Finance]

1 A BILL to amend and reenact §22C-1-4, §24-2H-4, §24-2H-7, §31-15A-9 of the Code of West
2 Virginia, 1931, as amended; and to amend said code by adding a new article, designated,
3 §24-2J-1, §24-2J-2, §24-2J-3, §24-2J-4, §24-2J-4a, §24-2J-4b, §24-2J-4c, §24-2J-5, §24-
4 2J-6, §24-2J-6a, §24-2J-7, §24-2J-7a, §24-2J-7b, §24-2J-8, §24-2J-9, §24-2J-9a, §24-2J-
5 10, and §24-2J-11, relating to creating the State Utility Accountability and Improvement
6 Program; establishing proactive intervention for water and wastewater utilities; creating the
7 State Utility Management Corps; authorizing utility conservatorships; establishing a
8 Priority Utility Docket for expedited Public Service Commission proceedings; providing for
9 rate case appeals; establishing a tier reclassification and de-escalation pathway; providing
10 for phased program implementation; expanding the Distressed Utilities Account;
11 establishing transparency and accountability requirements; coordinating annual utility
12 assessments; authorizing the Water Development Authority to house and support the
13 State Utility Management Corps; permitting rule making; and declaring an emergency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. 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. Each of the seven board members is reimbursed for all

32 reasonable and necessary expenses actually incurred in the performance of duties as a member
33 of the board in a manner consistent with guidelines of the Travel Management Office of the
34 Department of Administration. All expenses incurred by the board are payable solely from funds of
35 the authority or from funds appropriated for that purpose by the Legislature. Liability or obligation is
36 not incurred by the authority beyond the extent to which moneys are available from funds of the
37 authority or from such appropriations.

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

43 (g) State Utility Management Corps. – Notwithstanding any other provision of this article,
44 the Authority is hereby authorized to house, employ, and support the State Utility Management
45 Corps established under §24-2J-3 of this code. The Authority may hire personnel, enter into
46 contracts, expend funds, and take all actions necessary to enable the team to perform its functions
47 under §24-2J-1 *et seq.* of this code, including but not limited to administering the State Utility
48 Accountability and Improvement Program, managing the Distressed Utilities Account, maintaining
49 the pre-qualified consultant roster, serving as or appointing conservators, providing technical
50 assistance to utilities, and carrying out all other duties assigned to the team under said article. The
51 Authority shall provide administrative support to the team, including office space, information
52 technology, procurement services, human resources, and accounting services

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2J. STATE UTILITY ACCOUNTABILITY AND IMPROVEMENT PROGRAM

§24-2J-1. Legislative findings and intent.

1 (a) The Legislature finds that many small water and wastewater utilities in West Virginia

2 face significant challenges in maintaining adequate service due to limited resources, aging
3 infrastructure, and difficulty attracting qualified personnel. Many utility officials are dedicated public
4 servants working to serve their communities but are overwhelmed by the technical, financial, and
5 regulatory demands of modern utility management. Early intervention and proactive state
6 assistance can protect public health, preserve local utility independence where viable, and reduce
7 long-term costs to ratepayers and taxpayers.

8 (b) It is the intent of the Legislature to:

9 (1) Establish a proactive system of early identification and intervention for struggling
10 utilities;

11 (2) Create state capacity, supplemented by qualified private-sector entities, to provide
12 expert assistance;

13 (3) Ensure swift intervention when public health is threatened;

14 (4) Provide a clear pathway for utilities to improve and return to full local control;

15 (5) Preserve local utility independence where viable;

16 (6) Balance respect for local governance with the state's obligation to protect public health
17 and safety; and

18 (7) Implement this program in phases, beginning with targeted pilot interventions before
19 expanding statewide.

§24-2J-2. Definitions.

1 As used in this article:

2 "Commission" or "PSC" means the Public Service Commission of West Virginia.

3 "Conservator" means a person or entity appointed by the commission under this article to
4 exercise temporary operational control over a water or wastewater utility for purposes of
5 implementing an improvement plan and restoring the utility to adequate performance.

6 "Due process" means the right to notice, hearing, presentation of evidence, cross-
7 examination of witnesses, representation by counsel, and appeal as provided by law and the rules

8 of the commission.

9 "Improvement plan" means a written plan developed by the team that identifies specific
10 deficiencies in a utility's operations, finances, or management; prescribes corrective actions;
11 establishes timelines for completion; estimates costs; identifies available funding sources; and
12 specifies consequences for non-compliance.

13 "Priority Utility Docket" means the expedited docket established under §24-2J-7a of this
14 code for regulatory proceedings involving Tier 3, Tier 4, or conservator utilities.

15 "Program" means the State Utility Accountability and Improvement Program established
16 under this article.

17 "Team" means the State Utility Management Corps established under §24-2J-3 of this
18 code.

19 "Tier classification" means the categorization of a water or wastewater utility's operational
20 status as Tier 1, Tier 2, Tier 3, or Tier 4 as determined under §24-2J-4 of this code.

21 "Utility" means a water or wastewater utility subject to the jurisdiction of the commission
22 under this chapter, including public service districts, municipal utilities, and privately owned
23 utilities: *Provided*, That "utility" as used in this article does not include political subdivisions of the
24 state providing separate or combined water and sewer services that have at least 4,500 customers
25 and annual combined gross revenues of \$3 million or more, as described in §24-2-1(b) of this
26 code. Such political subdivisions remain subject only to the limited jurisdiction described in §24-2-
27 1(b) of this code and are not subject to the provisions of this article.

28 "Water Development Authority" or "Authority" means the West Virginia Water Development
29 Authority established under §22C-1-1 *et seq.* of this code.

§24-2J-3. State Utility Management Corps established; composition; powers and duties.

1 (a) *Establishment.* – There is hereby created within the Water Development Authority the
2 State Utility Management Corps, which shall administer the State Utility Accountability and
3 Improvement Program.

4 (b) Composition. –

5 (1) The team shall consist of not fewer than three core members employed by the state,
6 who shall possess, in the aggregate, expertise in water and wastewater engineering, utility finance
7 and accounting, utility operations and management, and regulatory compliance.

8 (2) At least one core member shall be a licensed professional engineer with a minimum of
9 ten years' experience in water or wastewater systems.

10 (3) At least one core member shall be a certified public accountant, certified financial
11 analyst, or individual with equivalent credentials and a minimum of seven years' experience in
12 utility finance.

13 (4) At least one core member shall have a minimum of ten years' experience in water or
14 wastewater utility management or operations.

15 (5) The members shall collectively possess a minimum of twenty-five years of combined
16 relevant experience.

17 (c) Appointment. – Core team members shall be hired by the Water Development Authority
18 as full-time state employees. The Authority shall designate one core member as Team Director.

19 (d) Supplemental expertise. – The team may contract with qualified consultants,
20 engineering firms, financial advisors, utility management companies, and other experts as
21 necessary to fulfill its duties under this article. The team shall establish and maintain a pre-
22 qualified roster of consultants through a competitive qualification process conducted in
23 accordance with state procurement requirements. The roster shall include firms with
24 demonstrated capability to provide emergency operational support for distressed utility systems.
25 Consultant costs may be paid from the Distressed Utilities Account, utility revenues during
26 conservatorship, or other available state or federal funds.

27 (e) Powers and duties. – The team shall have the following powers and duties:

28 (1) Conduct annual risk assessments of water and wastewater utilities and assign tier
29 classifications;

- 30 (2) Develop improvement plans for utilities;
- 31 (3) Provide technical assistance and support to utilities;
- 32 (4) Serve as conservators or recommend conservator appointments, including
33 recommending qualified private-sector firms from the pre-qualified roster;
- 34 (5) Monitor utility compliance with improvement plans and conservatorship objectives;
- 35 (6) File complaints with the commission regarding utilities meeting criteria for emergency
36 intervention;
- 37 (7) Administer grants and loans from the Distressed Utilities Account;
- 38 (8) Maintain the pre-qualified consultant roster;
- 39 (9) Publish reports on utility performance, tier classifications, and program outcomes;
- 40 (10) Coordinate with the Bureau for Public Health, Department of Environmental
41 Protection, commission, and other state agencies;
- 42 (11) Provide training and educational resources to utility personnel and governing bodies;
- 43 (12) Contract with the West Virginia Rural Water Association and other nonprofit technical
44 assistance providers to deliver training, circuit rider services, peer support programs, and other
45 assistance to utilities;
- 46 (13) Collaborate with existing utility assistance programs to maximize effectiveness and
47 avoid duplication; and
- 48 (14) Perform such other duties as necessary to fulfill the purposes of this article.
- 49 (f) Confidentiality. – Financial, managerial, and operational information obtained by the
50 team shall be confidential and exempt from disclosure under §29B-1-1 et seq. of this code, except
51 that tier classifications and improvement plans shall be public documents, information may be
52 shared with state agencies and pursuant to court order, and information regarding utilities under
53 conservatorship shall be publicly disclosed.
- 54 (g) Immunity. – Team members and consultants acting under this article shall have the
55 same immunity from liability as state officers and employees under §29-12A-1 et seq. of this code

56 when acting within the scope of their duties.

§24-2J-4. Annual utility risk assessment and tier classification system.

1 (a) Annual risk assessment. – The team shall conduct an annual risk assessment of water
2 and wastewater utilities subject to this article, using data including annual financial reports,
3 compliance data from regulatory agencies, customer complaints, infrastructure condition,
4 management capacity indicators, and other relevant information. The assessment shall be
5 completed by November 1 of each year.

6 (b) Tier classification system. – Based on the annual risk assessment, the team shall
7 classify each utility into one of four tiers:

8 (1) Tier 1 — Stable: The utility demonstrates adequate financial, managerial, and technical
9 capacity; maintains compliance with health and safety regulations; and does not require state
10 intervention.

11 (2) Tier 2 — At Risk: The utility exhibits one or more warning indicators that could lead to
12 future problems but is not currently in violation of health, safety, or financial standards. The utility
13 would benefit from technical assistance and monitoring.

14 (3) Tier 3 — Declining: The utility meets one or more of the following criteria:

15 (A) Repeated or ongoing violations of health or safety regulations;

16 (B) Financial instability, including inability to maintain operating reserves, operating deficits
17 in two or more of the preceding three fiscal years, debt service coverage ratio below 1.25 for two
18 consecutive years, inability to fund depreciation or capital replacement, deferred maintenance
19 exceeding 20 percent of annual budget, failure to make debt payments when due, current ratio
20 below 1.0 for two consecutive years, negative net position, or other indicators of financial
21 instability;

22 (C) Significant deferred maintenance or aging infrastructure presenting reliability or safety
23 concerns;

24 (D) Management deficiencies including absence of certified operators, inability to maintain

25 quorum, excessive turnover, failure to conduct audits or address findings, lack of written
26 procedures, or other indicators of inadequate management capacity;

27 (E) High water loss or system inefficiencies, including unaccounted-for water exceeding 20
28 percent for two consecutive years;

29 (F) Customer service problems or high complaint rates;

30 (G) Inability to comply with regulatory orders within required timeframes; or

31 (H) Other indicators that the utility would benefit from intervention to prevent further
32 deterioration or threats to public health and safety.

33 (4) Tier 4 — Critical: The utility poses an imminent threat to public health or safety, has
34 experienced complete financial or governance failure, or meets the definition of a failing water or
35 wastewater utility under §24-2H-3 of this code.

36 (c) *Criteria and methodology.* – The team shall develop and publish detailed criteria and
37 scoring methodology for tier classifications, which shall be objective, transparent, and consistently
38 applied. The criteria shall be adopted as rules pursuant to §29A-3-1 *et seq.* of this code.

39 (d) *Publication and notice.* – By November 1 of each year, the team shall publish on the
40 Water Development Authority website a list of all utilities assessed and their tier classifications,
41 publish a statewide map showing geographic distribution, provide written notice to each utility of its
42 tier classification and the factual basis, and provide the list to the commission, Legislature,
43 Governor, Bureau for Public Health, Department of Environmental Protection, and West Virginia
44 Rural Water Association. The commission shall incorporate the team’s tier classifications into the
45 annual list required under §24-2H-4 of this code.

46 (e) *Appeal.* – A utility may appeal its tier classification by filing a written appeal with the
47 team within 30 days of receiving notice. The team shall review the appeal and issue a written
48 decision within 30 days. The team’s decision shall be final for purposes of this article.

49 (f) *Tier-specific actions.* –

50 (1) Tier 1 utilities: Continued monitoring only.

51 (2) Tier 2 utilities: The team shall offer voluntary technical assistance and monitor
52 performance annually. The utility remains eligible for all state grant and loan programs.

53 (3) Tier 3 utilities: Subject to mandatory improvement plan process under §24-2J-5 of this
54 code when selected for active intervention based on available team capacity and prioritization
55 criteria.

56 (4) Tier 4 utilities: Subject to conservatorship under §24-2J-6 of this code or commission
57 proceedings under §24-2J-7 of this code. Emergency intervention for Tier 4 utilities presenting
58 imminent threats to public health or safety is not subject to capacity limitations.

59 (5) Prioritization when capacity is limited. The team shall prioritize utilities for intervention
60 based on:

61 (A) Severity of threat to public health or safety;

62 (B) Size of affected population;

63 (C) Immediacy of failure risk;

64 (D) Utility's willingness to cooperate;

65 (E) Likelihood of successful intervention;

66 (F) Geographic distribution; and

67 (G) Equity and environmental justice considerations.

68 (6) Timeline trigger. Mandatory improvement plan and conservatorship timelines
69 commence only upon written notice to the utility that intervention is beginning.

70 (g) Effect on other proceedings. Tier classification does not preclude or delay enforcement
71 actions by regulatory agencies, commission proceedings under §24-2H-1 *et seq.* of this code,
72 emergency actions to protect public health or safety, or citizen complaints or legal actions.

§24-2J-4a. Tier reclassification and de-escalation pathway.

1 (a) Purpose. – This section establishes a clear pathway for utilities to improve their tier
2 classification and return to full local control. The Legislature intends that intervention under this
3 article be temporary and that utilities be supported in achieving sustainable independent

4 operation.

5 (b) Reclassification from Tier 4 to Tier 3. – A Tier 4 utility may be reclassified to Tier 3 when
6 the team or conservator certifies that:

7 (1) All immediate threats to public health and safety have been resolved;

8 (2) The utility is operational with adequate staffing and licensed operators;

9 (3) Financial losses have been stabilized and a sustainable operating budget is in place;

10 (4) Governance is functional with a quorum-capable governing body; and

11 (5) An improvement plan is in place and being implemented.

12 Conservatorship may continue at Tier 3 if necessary, or the utility may transition to a
13 mandatory improvement plan under §24-2I-5 of this code.

14 (c) Reclassification from Tier 3 to Tier 2. – A Tier 3 utility may be reclassified to Tier 2 when
15 the team certifies that:

16 (1) All improvement plan milestones have been completed or substantially completed with
17 remaining items on track;

18 (2) No outstanding health or safety violations have existed for at least six consecutive
19 months;

20 (3) Financial indicators are trending toward stability, including positive operating margins
21 and current debt service coverage; and

22 (4) Management capacity has been demonstrated through compliance with training
23 requirements, maintenance of certified operators, and consistent regulatory reporting.

24 Upon reclassification to Tier 2, the team shall continue monitoring the utility for at least 12
25 months.

26 (d) Reclassification from Tier 2 to Tier 1. – A Tier 2 utility may be reclassified to Tier 1 when
27 the team certifies that:

28 (1) The utility has maintained full compliance with all health, safety, and financial standards
29 for at least twelve consecutive months following reclassification to Tier 2;

30 (2) Financial indicators meet Tier 1 criteria, including adequate operating reserves, positive
31 debt service coverage ratio, and funded depreciation; and

32 (3) Management capacity is fully demonstrated.

33 Upon reclassification to Tier 1, the utility transitions to standard annual monitoring.

34 (e) *Written determination required.* – Each reclassification shall require a written
35 determination by the team, published on the Water Development Authority website, that specifies
36 the factual basis for the reclassification. The determination shall be provided to the utility, the
37 commission, and the public.

38 (f) *Backslide provision.* – If a utility that has been reclassified to a higher tier subsequently
39 meets the criteria for a lower tier, the team shall reclassify the utility accordingly. In such cases,
40 intervention timelines shall be accelerated because the team already possesses knowledge of the
41 system.

42 (g) *Annual assessment governs.* – Notwithstanding the specific reclassification criteria in
43 this section, the annual risk assessment under §24-2J-4 of this code shall govern tier
44 classifications. A utility that meets the criteria for a different tier at the time of the annual
45 assessment shall be reclassified regardless of whether it has completed the benchmarks in this
46 section.

**§24-2J-4b. Mandatory training for governing bodies and senior management of public
water and wastewater utilities.**

1 (a) *Training requirement.* – Any municipal governing body or county commission that
2 operates or oversees a public water or wastewater utility regulated under §8-19-1 *et seq.*, §8-20-1
3 *et seq.*, §16-13-1 *et seq.*, or §16-13A-1 *et seq.* of this code, and any member of the board of a
4 public service district established under §16-13A-1 *et seq.* of this code, shall ensure that each
5 member of the governing body, each board member, and each senior manager of the water or
6 wastewater utility receives at least six hours of initial training within six months of taking office,
7 election, appointment, or employment on matters related to the operation and oversight of water

8 and wastewater utilities. Continuing education of at least six hours shall be completed every two
9 years thereafter.

10 (b) *Training content and providers.* – The commission shall provide or approve training
11 programs that satisfy the requirements of this section. Training shall address financial
12 management, regulatory compliance, operational best practices, and governing body
13 responsibilities. Training may be provided by the commission, the West Virginia Rural Water
14 Association, the West Virginia Municipal Water Quality Association, community and technical
15 colleges, the team, or other qualified providers approved by the commission. The commission
16 may approve online or virtual training programs.

17 (c) *Compliance verification.* – Each utility subject to this section shall submit a verified
18 certificate to the commission annually confirming compliance with training requirements.

19 (d) *Integration with team intervention.* – When the team develops an improvement plan for
20 a utility, the team may require additional training beyond the minimums in this section as part of the
21 improvement plan.

22 (e) *Non-compliance.* – Failure to comply with training requirements may be considered by
23 the commission in determining utility status, by the team in developing improvement plans, and by
24 the Water Development and Infrastructure Council in making funding decisions.

25 (f) *Effective date.* – This section applies to governing body members, board members, and
26 senior managers taking office on or after January 1, 2027. For those serving as of January 1, 2027,
27 initial training shall be completed by June 30, 2027.

§24-2J-4c. Regional cooperative agreements for water and wastewater utilities.

28 (a) *Legislative findings.* – The Legislature finds that regional cooperation and resource
29 sharing can improve operational capacity, regulatory compliance, and financial sustainability of
30 small utilities, and can prevent utility failures and reduce the need for more intensive state
31 intervention.

32 (b) *Regional designations.* – The commission, in consultation with the team, the

33 Department of Environmental Protection, and the Bureau for Public Health, shall designate water
34 and wastewater regions statewide, considering geographic proximity, infrastructure compatibility,
35 service area characteristics, and opportunities for resource sharing.

36 (c) *Voluntary regional cooperative agreements.* – Water and wastewater utilities within a
37 designated region may voluntarily enter into written Regional Cooperative Agreements to share
38 employees, including licensed operators; share resources, including equipment and supplies; and
39 share facilities where feasible. Agreements shall be executed in writing, filed with the commission,
40 include only like facilities, and specify the nature, financial arrangements, governance, duration,
41 and dispute resolution procedures.

42 (d) *Regulatory relief.* – Utilities participating in a Regional Cooperative Agreement may
43 share specialized personnel, including licensed operators, provided the Department of
44 Environmental Protection and Bureau for Public Health confirm in writing that the arrangement will
45 not negatively impact system functionality or public health, ensures adequate supervision and
46 coverage, and complies with all applicable licensing requirements. Personnel shared under an
47 agreement remain subject to all professional licensing and continuing education requirements.
48 Regulatory relief does not exempt utilities from compliance with water quality standards or other
49 substantive regulatory obligations.

50 (e) *Required participation for distressed utilities.* – The commission may require a
51 distressed or failing utility to enter into an existing Regional Cooperative Agreement as part of an
52 improvement plan if the other participating utilities consent and the commission determines
53 participation would substantially improve the distressed utility's capacity without imposing
54 unreasonable burdens on other participants.

55 (f) *Withdrawal protections.* – A utility may not withdraw from a Regional Cooperative
56 Agreement without prior approval of the commission. The commission shall not approve
57 withdrawal if it would leave remaining utilities unable to comply with regulatory requirements or
58 create threats to public health or safety.

59 (g) Team role. – The team shall identify opportunities for regional cooperation in its annual
60 assessments, facilitate formation of agreements, provide ongoing technical support, and consider
61 participation in regional cooperation as a positive factor in tier classification and funding
62 recommendations.

63 (h) Rulemaking. – The commission shall promulgate rules, pursuant to §29A-3-1 *et seq.*, of
64 this code, to implement this section, including procedures for agreement approval, regulatory
65 reporting, financial arrangements, rate-making treatment, and oversight.

§24-2J-5. Mandatory improvement plans.

1 (a) Improvement plan required. – Within 30 days of a utility being selected for active
2 intervention, the team shall develop a preliminary improvement plan for that utility.

3 (b) Plan development. – The team shall conduct a detailed assessment of the utility's
4 operations, finances, infrastructure, and management; consult with utility personnel, governing
5 body members, and stakeholders; review available studies, audits, and compliance orders;
6 identify specific deficiencies; and develop corrective action recommendations. The team may
7 engage consultants from the pre-qualified roster to assist with specialized assessments.

8 (c) Plan contents. – The improvement plan shall include: a detailed description of each
9 deficiency identified; specific corrective actions required; a timeline for completion with milestones
10 and deadlines not exceeding 24 months unless extraordinary circumstances require additional
11 time; estimated costs and identification of funding sources; technical assistance the state will
12 provide; performance metrics and reporting requirements; and consequences for failure to accept
13 or implement the plan.

14 (d) Public meeting required. – Within 60 days of completing the preliminary plan, the team
15 shall conduct a public meeting in the utility's service area with at least 14 days' advance notice.
16 The team shall present the plan, answer questions, receive public comment, and provide
17 information about available state assistance. The utility's governing body shall be given an
18 opportunity to present its perspective and alternative proposals.

19 (e) Final improvement plan. – Within 90 days of the utility being selected for active
20 intervention, the team shall issue a final improvement plan, which may incorporate modifications
21 based on public input and utility feedback.

22 (f) Utility response required. – Within 30 days of receiving the final improvement plan, the
23 utility’s governing body shall, at a public meeting:

24 (1) Accept the plan by resolution committing to full implementation;

25 (2) Reject the plan and provide an alternative plan that meets the same objectives with
26 specific corrective actions, timelines, and funding sources; or

27 (3) Reject the plan with written explanation.

28 (g) Evaluation of utility response. –

29 (1) If the utility accepts the plan, the team shall provide technical assistance, facilitate
30 access to funding, monitor compliance, and issue quarterly progress reports.

31 (2) If the utility proposes an alternative plan, the team shall conduct a preliminary review
32 and refer the alternative plan to a neutral arbiter designated from a list maintained by the Water
33 Development Authority for evaluation. The arbiter shall approve or reject the alternative plan within
34 thirty days. If approved, the alternative plan becomes the improvement plan for purposes of this
35 article.

36 (3) If the utility rejects the plan without an adequate alternative, the team shall initiate the
37 public transparency process under §24-2J-8 of this code and may recommend conservatorship or
38 file a complaint with the commission.

39 (h) Monitoring and compliance. – Utilities with accepted improvement plans shall submit
40 monthly progress reports, provide access to all records and facilities, meet all plan deadlines or
41 request modifications at least 30 days in advance with good cause, and attend quarterly meetings
42 with the team. If a utility fails to meet a plan deadline, the team shall provide written notice of non-
43 compliance and allow a 60-day cure period unless the violation poses an immediate threat to
44 public health or safety. If the utility does not cure within 60 days, the team may recommend

45 conservatorship, file a complaint with the commission, or take other appropriate action. The utility
46 shall be ineligible for additional state grants or loans until compliance is achieved.

47 (i) *Completion and reclassification.* – Upon successful completion of all improvement plan
48 requirements, the team shall conduct a final assessment to verify sustained compliance and
49 reclassify the utility pursuant to the de-escalation pathway in §24-2J-4a of this code.

50 (j) *Funding priority.* – Utilities with accepted improvement plans shall receive priority for
51 grants and loans from the Distressed Utilities Account and other state funding programs.

§24-2J-6. Utility conservatorship.

1 (a) *Grounds for conservatorship.* – The commission may appoint a conservator for a water
2 or wastewater utility upon petition by the team, upon petition by the utility itself, or on the
3 commission’s own motion when:

4 (1) The utility is classified as Tier 4;

5 (2) The utility is classified as Tier 3 and rejects an improvement plan without providing an
6 adequate alternative or fails to achieve compliance within the cure period;

7 (3) The utility meets any criteria in §24-2J-7(a) of this code justifying an emergency
8 complaint; or

9 (4) The utility otherwise meets the definition of a failing water or wastewater utility under
10 §24-2H-3 of this code.

11 (b) *Petition for conservatorship.* – The team or a utility may file a petition with the
12 commission requesting appointment of a conservator. The petition shall include detailed factual
13 allegations, documentation of tier classification, description of threats to public health or safety, the
14 team’s assessment, recommended conservator and qualifications, proposed scope of authority,
15 estimated duration and costs, and proposed improvement objectives and timeline.

16 (c) *Expedited hearing.* – Upon filing of a conservatorship petition, the commission shall
17 issue a show cause order within seven days, schedule an evidentiary hearing within 21 days of the
18 show cause order, and issue a final order within thirty days of the hearing. The hearing must be

19 conducted in or within 25 miles of the utility's service area. The utility shall receive due process as
20 defined in §24-2J-2(j) of this code.

21 (d) *Interim relief.* – If the petition alleges an imminent threat to public health or safety, the
22 commission may appoint an interim conservator on an emergency basis without prior notice,
23 subject to confirmation at the show cause hearing. An emergency conservator shall have limited
24 authority to take immediate actions necessary to protect public health and safety.

25 (e) *Conservator appointment and qualifications.* – If the commission finds grounds for
26 conservatorship exist and conservatorship is necessary, it shall appoint a conservator by written
27 order. The conservator may be a member of the team, a qualified firm or individual from the pre-
28 qualified roster, a capable proximate utility willing to serve, or any other qualified person or entity.
29 The conservator must possess demonstrated expertise in water or wastewater utility
30 management, finance, and operations, and must not have a conflict of interest.

31 (f) *Conservator powers.* – Upon appointment, the conservator shall have full operational
32 authority over the utility, including but not limited to:

33 (1) Management and operations: hire, supervise, discipline, and terminate employees; set
34 compensation; establish policies and procedures; direct day-to-day operations; enter into
35 contracts; purchase equipment; authorize emergency repairs; require compliance with mandatory
36 training requirements; and take any actions necessary to ensure safe and adequate service.

37 (2) Financial management: establish a conservator-controlled utility operating account;
38 receive and deposit all utility revenues; pay operating expenses and debt service; approve
39 expenditures; prepare budgets; apply for grants, loans, and financing; refinance existing debt with
40 commission approval; establish financial controls; and conduct audits.

41 (3) Rate and regulatory matters: file rate cases with the commission under the Priority
42 Utility Docket established in §24-2J-7a of this code; modify rate structures and billing practices;
43 implement collection policies; and respond to regulatory inquiries and compliance orders.

44 (4) Infrastructure and capital improvements: develop and implement capital improvement

45 plans; solicit bids and award contracts; oversee design and construction; and manage grant and
46 loan funding.

47 (5) Governance and legal: attend meetings of the utility's governing body as a non-voting
48 participant; provide reports to the governing body; and defend or file legal actions on behalf of the
49 utility.

50 (g) Role of local officials during conservatorship. –

51 (1) During conservatorship, local officials shall not exercise operational authority over the
52 utility but shall receive regular reports from the conservator, provide input and recommendations,
53 participate in public meetings and planning sessions, cooperate with information requests, and
54 communicate with the commission regarding progress.

55 (2) Local officials retain ownership rights and may participate in decisions regarding long-
56 term planning, acquisition, or other matters beyond day-to-day operations.

57 (3) Local officials may not interfere with conservator operations by countermanding
58 decisions, directing utility personnel contrary to conservator instructions, controlling utility funds,
59 or obstructing access to facilities or records.

60 (4) If local officials interfere with conservator operations, the conservator shall first attempt
61 resolution through communication. If interference continues, the conservator may report to the
62 commission. The commission may issue orders directing cooperation. Willful, continued
63 interference after commission order may be subject to contempt proceedings.

64 (h) Conservator duties. – The conservator shall implement the improvement plan or
65 develop and implement a plan if none exists; operate the utility in accordance with all applicable
66 laws; maintain adequate service; protect public health and safety; manage utility funds solely for
67 the benefit of the utility and its customers; exercise fiduciary duties of loyalty and care; avoid
68 conflicts of interest; maintain accurate records; file reports as required; and work toward
69 successful completion of conservatorship objectives and, where viable, return of the utility to local
70 control.

71 (i) Financial management during conservatorship. – The conservator shall establish a
72 separate bank account for all utility revenues. Revenues shall be applied in the following order of
73 priority:

74 (1) Operating expenses necessary to maintain adequate service, including personnel
75 costs, utilities, chemicals, maintenance, insurance, and other necessary operating costs;

76 (2) Existing debt service obligations;

77 (3) Conservator costs, including compensation, consultant fees, and administrative
78 expenses;

79 (4) Capital improvements identified in the improvement plan;

80 (5) Replenishment of operating reserves;

81 (6) Reimbursement to the state for grants designated as repayable and other state costs;

82 and

83 (7) Any remaining funds held in reserve.

84 The conservator shall comply with existing bond covenants and indenture requirements to
85 the extent practicable, and the revenue priority in this subsection is subject to prior existing bond
86 obligations. The conservator is authorized to negotiate with bond trustees regarding modification
87 of covenants during the conservatorship period and to refinance existing debt with commission
88 approval, provided that any refinancing shall not increase the total debt obligation of the utility
89 without a finding by the commission that the increase is necessary to protect public health or
90 restore the utility to financial viability. If revenues are insufficient, the conservator shall seek grant
91 funding, file for rate increases under the Priority Utility Docket, pursue federal funding, and if
92 necessary recommend acquisition proceedings.

93 (j) Conservator compensation. – If the conservator is a state employee, compensation
94 shall be the regular salary and benefits. If the conservator is a private entity, compensation shall be
95 established by contract at reasonable market rates and paid from utility revenues, or from the
96 Distressed Utilities Account if revenues are insufficient.

97 (k) Reporting requirements. – The conservator shall file monthly operational and financial
98 reports, quarterly progress reports on plan implementation, and annual comprehensive reports
99 with the commission. All reports shall be provided to the commission, the team, the utility's
100 governing body, and the public via website publication. For conservatorships designated for
101 legislative oversight by statute or resolution, monthly reports shall also be provided to the Speaker
102 of the House of Delegates, President of the Senate, and the Joint Committee on Technology and
103 Infrastructure.

104 (l) Duration and termination. –

105 (1) The initial conservatorship term shall not exceed 36 months. The commission may
106 extend for additional periods upon showing of good cause.

107 (2) Conservatorship shall terminate when: The improvement plan is complete; the utility
108 has demonstrated sustained compliance for at least twelve consecutive months; adequate
109 management and governance is in place; the commission determines the utility can operate
110 independently; the utility is acquired; or the commission determines for other good cause that
111 conservatorship should end.

112 (3) At least 90 days before anticipated termination, the conservator shall file a transition
113 plan including assessment of readiness, remaining challenges, financial status, transition timeline,
114 and training plan for local personnel.

115 (4) Upon termination, the conservator shall transfer all records, accounts, and assets,
116 provide final accounting, and file a final report.

117 (5) The commission may impose conditions on return to local control, including continued
118 technical assistance, reporting requirements, and management reforms.

119 (m) Acquisition alternative. – If the conservator determines the utility cannot be
120 successfully rehabilitated or that acquisition would better serve the public interest, the conservator
121 shall report this finding to the commission. The commission may then initiate acquisition
122 proceedings under §24-2H-1 *et seq.* of this code.

123 (n) Rebuttable presumption for Tier 4 utilities. – When a utility is classified as Tier 4 or
124 specifically designated for emergency intervention by statute or resolution, there shall be a
125 rebuttable presumption that conservatorship is necessary. The burden shifts to the utility to
126 present substantial evidence that deficiencies do not exist or have been corrected and that
127 conservatorship is not necessary. The utility must present a detailed, credible remediation plan.
128 This subsection does not eliminate the utility’s due process rights.

129 (o) Transfer to acquiring utility. – When a utility under conservatorship is ordered for
130 acquisition, actual transfer shall not occur until both:

131 (1) The conservator determines the utility has been stabilized to a degree that transfer will
132 not cause undue hardship to the acquiring utility; and

133 (2) The acquiring utility agrees in writing that it is prepared to assume control.

134 The conservator shall consult regularly with the acquiring utility and ensure transfer will not
135 jeopardize the acquiring utility’s ability to serve its customers. If the acquiring utility declines, the
136 conservator shall address concerns, continue improvements, or recommend alternative solutions.
137 The conservator may assign team members or consultants to assist the acquiring utility during and
138 after transfer.

139 (p) Property rights. – Conservatorship is a temporary regulatory measure and does not
140 transfer ownership or constitute a taking requiring compensation.

141 (q) Voluntary conservatorship. – A utility may petition the commission for conservatorship
142 without waiting for tier classification. The commission may grant the petition on an expedited basis
143 if the governing body approves by majority vote at a public meeting and the team recommends
144 approval.

145 (r) Relationship to receivership. – Conservatorship under this article supersedes
146 receivership under §24-2-7(b) of this code for any utility subject to this article. If a receiver has
147 been appointed under §24-2-7(b) of this code for a utility that subsequently becomes subject to
148 conservatorship proceedings under this article, the commission may convert the receivership to a

149 conservatorship on motion of the team without requiring a separate petition, provided the utility
150 receives notice and opportunity to be heard. Nothing in this subsection limits the commission's
151 authority to appoint a receiver under §24-2-7(b) of this code for a utility not subject to
152 conservatorship proceedings under this article.

§24-2J-6a. Memorandum of understanding for operational support by capable proximate utilities.

1 (a) Authority. – When the commission has determined that a utility is distressed or failing,
2 and a capable proximate utility has been identified but cannot reasonably be required to acquire
3 the distressed utility, the commission may order the capable proximate utility to enter into a
4 Memorandum of Understanding to provide operational support, including technical advice,
5 personnel assignment, accounting services, emergency response, and other support necessary
6 to ensure adequate service.

7 (b) Limitations. – The controlling utility shall not be required to assume ownership, existing
8 debt obligations, or major capital infrastructure costs of the distressed utility, except as specifically
9 ordered by the commission based on findings that such assumption is necessary to protect public
10 health, will not impose unreasonable burden, and will not result in rate increases for customers of
11 the controlling utility.

12 (c) Reimbursement. – The controlling utility shall submit monthly itemized invoices
13 documenting actual costs. The distressed utility's revenues shall be applied first to existing debt
14 service, second to reimbursement of the controlling utility, and third to other operational expenses.
15 If revenues are insufficient, the team shall seek grant funding, rate increases, or other revenue
16 measures. The commission may not require uncompensated services except on a temporary
17 emergency basis.

18 (d) Governance. – The distressed utility retains its legal identity and governing body. The
19 commission may void decisions contrary to the Memorandum of Understanding or applicable law.

20 (e) Appeals. – The controlling utility may seek a final hearing on the order, which is not

21 stayed pending hearing unless the commission specifically orders a stay. The distressed utility
22 may appeal but may not obtain a stay except upon showing public health will not be harmed and
23 the utility is likely to prevail.

24 (f) *Duration.* – A Memorandum of Understanding shall remain in effect as long as
25 necessary but is not intended as a permanent solution. The commission shall review annually and
26 work with the team toward long-term solutions including infrastructure funding, voluntary
27 consolidation, conservatorship, or sustainable independent operation.

28 (g) *Rulemaking.* – The commission shall promulgate rules, pursuant to §29A-3-1 *et seq.* to
29 implement this section, including procedures for financial arrangements, dispute resolution, and
30 oversight.

§24-2J-7. State-initiated emergency commission proceedings.

1 (a) *Grounds for emergency complaint.* – The team may file an emergency complaint with
2 the commission when a utility:

3 (1) *Violates health or safety standards for 180 or more consecutive days without achieving*
4 *compliance;*

5 (2) *Becomes insolvent;*

6 (3) *Experiences governance breakdown including inability to achieve quorum for 90 or*
7 *more consecutive days or absence of a utility manager or chief operator for 90 or more*
8 *consecutive days, or gross mismanagement;*

9 (4) *Refuses a Tier 3 improvement plan without adequate alternative and the refusal poses*
10 *a threat to public health or utility viability;*

11 (5) *Uses utility funds for non-utility purposes in violation of law; or*

12 (6) *Otherwise meets the criteria for designation as a failing utility under §24-2H-3 of this*
13 *code.*

14 (b) *Procedure.* – The team shall file a verified complaint setting forth specific facts,
15 evidence, threats to public health, and requested relief. The complaint shall be served on the utility

16 and docketed as an emergency matter.

17 (c) Show cause order. – Within seven days of filing, the commission shall issue a show
18 cause order.

19 (d) Interim monitor. – Upon filing, the commission shall appoint an interim monitor with
20 authority to access all records, facilities, and personnel, observe operations, and report findings.
21 The utility shall fully cooperate.

22 (e) Emergency conservator. – If the complaint alleges imminent threat, the commission
23 may appoint an emergency conservator immediately, subject to confirmation at the evidentiary
24 hearing.

25 (f) Expedited hearing. – The commission shall conduct an evidentiary hearing within 21
26 days of the show cause order, in or within 25 miles of the utility’s service area. The utility shall
27 receive due process.

28 (g) Discovery and continuances. – Discovery shall be limited to thirty days and may be
29 further limited. Continuances may be granted only for extraordinary circumstances and shall not
30 exceed 14 days.

31 (h) Burden of proof. – The team bears the burden by preponderance of evidence. If met,
32 the burden shifts to the utility to prove it can correct deficiencies within a reasonable time without
33 state intervention.

34 (i) Final order. – The commission shall issue a final written order within 30 days of the
35 hearing. Total timeline from filing to final order shall not exceed 58 days except in extraordinary
36 circumstances.

37 (j) Remedies. – The commission may order conservatorship, receivership, mandatory
38 operating agreement, acquisition proceedings, mandatory improvement plan, financial controls,
39 governance reforms, appointment of a special master, civil penalties, or any other remedy to
40 protect public health and restore adequate service.

41 (k) Appeal. – Orders are subject to judicial review pursuant to §24-5-1 et seq. of this code.

42 The filing of an appeal does not stay the order unless the reviewing court specifically orders a stay.

43 (l) *Criminal referral.* – If the team or conservator discovers evidence of criminal misuse or
44 embezzlement of utility funds, the team shall refer such evidence to the appropriate prosecuting
45 attorney.

§24-2J-7a. Priority Utility Docket; expedited rate proceedings.

1 (a) *Establishment.* – There is hereby established within the commission a Priority Utility
2 Docket for expedited processing of regulatory proceedings involving Tier 3, Tier 4, or conservator
3 utilities.

4 (b) *Automatic docketing.* – Any rate case, tariff modification, or regulatory filing made by or
5 on behalf of a utility classified as Tier 3 or Tier 4, or a utility under conservatorship, shall be
6 automatically placed on the Priority Utility Docket.

7 (c) *Timeline for action.* – The commission shall act on any matter placed on the Priority
8 Utility Docket within 150 days of filing. This timeline supersedes any longer timeline otherwise
9 applicable under this chapter.

10 (d) *Failure to act.* – If the commission does not act within the 150-day period:

11 (1) The commission shall issue a written explanation to the team, the utility, and the Joint
12 Committee on Technology and Infrastructure stating the reasons for delay and a projected timeline
13 for resolution;

14 (2) The rates or tariffs as filed shall take effect on an interim basis, subject to refund, until
15 the commission issues a final order; and

16 (3) The interim rate mechanism shall operate in the same manner as rates subject to
17 refund under §24-2-4a of this code.

18 (e) *No additional staffing required.* – This section does not require the commission to hire
19 additional staff or create new positions. The Priority Utility Docket establishes scheduling priority
20 for proceedings involving distressed utilities within the commission’s existing resources and
21 workload.

§24-2J-7b. Rate case appeal mechanism for conservator utilities.

1 (a) Conservator certification. – When a rate case is filed on behalf of a utility under
2 conservatorship, the team or conservator may certify in writing that the requested rates are
3 necessary to implement the improvement plan and restore the utility to financial viability.

4 (b) Commission obligation. – Upon receiving a certified rate filing under subsection (a), the
5 commission shall either:

6 (1) Approve rates sufficient to fund implementation of the improvement plan; or

7 (2) Issue a written finding explaining specifically what alternative funding mechanism or
8 combination of revenue sources will achieve the same objectives within the improvement plan
9 timeline.

10 (c) Appeal. – If the commission neither approves sufficient rates nor identifies an adequate
11 alternative funding mechanism, the team may appeal directly to the Supreme Court of Appeals
12 pursuant to §24-5-1 *et seq.* of this code on an expedited basis. Interim rates established under
13 §24-2J-7a of this code shall remain in effect during the appeal.

14 (d) Standard of review. – The reviewing court shall determine whether the commission's
15 decision was reasonable and supported by substantial evidence, giving due weight to the team's
16 professional assessment of the utility's financial needs.

17 (e) Preservation of authority. – This section does not transfer rate-setting authority from the
18 commission. The commission retains full authority to evaluate rate requests and set just and
19 reasonable rates. This section requires the commission to either fund the improvement plan
20 through rates or identify an alternative path to financial viability.

§24-2J-8. Public transparency and accountability.

1 (a) Improvement plan rejection. – When a utility's governing body rejects a state
2 improvement plan, the governing body shall within 30 days hold a public meeting in the utility's
3 service area with at least 14 days' published notice; present the state improvement plan,
4 estimated costs, specific reasons for rejection, any alternative plan, and consequences of

5 rejection; allow public comment; take a recorded vote with each member's vote recorded
6 individually; and prepare written minutes.

7 (b) State response to rejection. – Within 15 days of rejection, the team shall publish on the
8 Water Development Authority website all relevant materials and determine that the utility is
9 ineligible for state financial assistance until corrective action is taken. The team shall issue a public
10 notice for inclusion in the next billing cycle and provide copies to the commission, Legislature,
11 Bureau for Public Health, Department of Environmental Protection, and news media.

12 (c) Duration of funding ineligibility. A utility that rejects an improvement plan without
13 adequate alternative shall remain ineligible for state grants, loans, and financial assistance until
14 the utility accepts the plan, an alternative is approved, or the utility is placed under conservatorship
15 or acquired. Ineligibility does not affect federal funds, private financing, low-income assistance
16 programs, or emergency actions.

17 (d) Customer petition rights. – If a utility rejects an improvement plan and service
18 deteriorates or violations occur, customers may petition the commission for emergency review. A
19 petition shall be signed by at least 750 customers or 25 percent of customers, whichever is fewer.
20 The commission shall conduct an expedited hearing within 30 days.

21 (e) Annual public reporting. – The team shall publish an annual report by December 31
22 including all tier classifications, improvement plan outcomes, conservatorship status, program
23 metrics, Distressed Utilities Account expenditures, and recommendations for legislative or
24 regulatory changes. The report shall be provided to the Legislature, Governor, commission, Joint
25 Committee on Technology and Infrastructure, and the public.

§24-2J-9. Funding provisions.

1 (a) Expansion of Distressed Utilities Account. – The Distressed Utilities Account
2 established under §31-15A-9(i) of this code is hereby expanded from \$5 million dollars to \$15
3 million dollars.

4 (b) Uses. – In addition to uses specified in §31-15A-9(i), funds may be used for: Grants to

5 utilities with approved improvement plans; loans at below-market rates; payment of consultant
6 costs; payment of conservator costs when utility revenues are insufficient; and administrative
7 costs of the team, not to exceed five percent of annual account expenditures.

8 (c) *Grant and loan priorities.* – Priorities shall be:

9 (1) Utilities under conservatorship or with imminent public health threats;

10 (2) Tier 4 utilities;

11 (3) Tier 3 utilities with accepted improvement plans or utilities in Regional Cooperative
12 Agreements;

13 (4) Tier 2 utilities undertaking preventive improvements; and

14 (5) Other eligible utilities.

15 Within each priority, preference shall be given to projects addressing health violations,
16 utilities serving disadvantaged communities, and projects with the greatest cost-benefit ratio.

17 (d) *Repayment and revolving fund.* – Grants to conservator utilities may be designated
18 repayable or non-repayable based on financial capacity. Repayments shall be deposited back into
19 the Distressed Utilities Account.

20 (e) *Federal funds.* – The team and Authority shall actively pursue federal infrastructure
21 grants and loans. Federal funds shall supplement, not replace, state funding.

22 (f) *Appropriation.* – Subject to appropriation by the Legislature, there is authorized from the
23 General Revenue Fund to the Water Development Authority for fiscal year 2027:

24 (1) Ten million dollars to increase the Distressed Utilities Account to the amount specified
25 in subsection (a); and

26 (2) Five hundred thousand dollars for initial team operations.

27 Funds appropriated for these purposes shall be non-expiring.

28 (g) *Capacity-based expansion.* – The Authority may expand the team and increase
29 interventions as resources and capacity allow, consistent with the phased implementation in §24-
30 2J-9a of this code.

§24-2J-9a. Phased implementation.

1 (a) Purpose. – The Legislature intends that this program be implemented in phases to
2 ensure responsible use of limited resources, allow evaluation of program effectiveness, and build
3 capacity before expanding statewide.

4 (b) Phase 1 — Pilot. – During the first two years following the effective date of this article,
5 the team shall:

6 (1) Focus active intervention on utilities specifically designated by the Legislature through
7 joint resolution and any utilities requesting voluntary conservatorship;

8 (2) Conduct statewide assessments and publish tier classifications for all utilities;

9 (3) Offer voluntary technical assistance to Tier 2 and Tier 3 utilities;

10 (4) Build the pre-qualified consultant roster and establish relationships with private-sector
11 firms capable of serving as conservators;

12 (5) Respond to true public health emergencies regardless of phase limitations; and

13 (6) Develop lessons learned and program procedures based on pilot experience.

14 (c) Evaluation gate. – At the 18-month mark following the effective date, the team shall
15 submit a comprehensive evaluation report to the Legislature and the Joint Committee on
16 Technology and Infrastructure covering:

17 (1) Outcomes of pilot interventions, including operational, financial, and compliance
18 improvements;

19 (2) Lessons learned and recommended program modifications;

20 (3) Cost analysis comparing actual expenditures to projections;

21 (4) Capacity assessment for expansion, including team staffing and consultant roster
22 readiness; and

23 (5) Recommended scope and timeline for Phase 2 expansion.

24 The Joint Committee on Technology and Infrastructure may hold hearings on the
25 evaluation report.

26 (d) Phase 2 — Controlled expansion. — After the evaluation report is submitted, the team
27 may begin initiating mandatory improvement plans and conservatorships for non-designated
28 utilities, prioritized by severity of public health threat. The team shall present an annual expansion
29 plan to the Joint Committee on Technology and Infrastructure showing how many interventions it
30 can handle with current resources before taking on new ones. The team may utilize qualified
31 private-sector firms from the pre-qualified roster as conservators to expand capacity beyond what
32 the core team can directly manage.

33 (e) Phase 3 — Full operation. — Once the team has demonstrated capacity and the
34 Legislature has had opportunity to review outcomes and adjust funding, the full program operates
35 without phase limitations. The Legislature may make additional appropriations to the Distressed
36 Utilities Account as necessary.

37 (f) No affirmative action required. — Progression from Phase 1 to Phase 2 does not require
38 affirmative legislative action. The evaluation report shall be submitted and the Joint Committee on
39 Technology and Infrastructure shall have opportunity to review and hold hearings. Expansion
40 proceeds unless the Legislature acts to modify or pause the program.

§24-2J-10. Rules.

1 (a) Emergency rules. — The Water Development Authority and the commission may
2 promulgate emergency rules pursuant to §29A-3-15 of this code as necessary to implement this
3 article. Emergency rules promulgated under this section shall remain in effect until superseded by
4 legislative rules adopted pursuant to subsection (b), notwithstanding the time limitations of §29A-
5 3-15 of this code.

6 (b) Legislative rules. — Within 12 months of the effective date of this act, the Water
7 Development Authority shall propose rules for legislative approval including detailed criteria and
8 methodology for tier classifications, improvement plan standards, procedures for team operations,
9 grant and loan procedures, pre-qualification standards, and reporting requirements. Within 12
10 months, the commission shall propose rules including procedures for conservatorship petitions

11 and hearings, Priority Utility Docket procedures, conservator standards, and expedited scheduling
12 procedures.

13 (c) Coordination. – The Authority and commission shall coordinate rule development to
14 ensure consistency.

§24-2J-11. Severability.

1 If any provision of this article or its application to any person or circumstance is held invalid,
2 the invalidity does not affect other provisions or applications which can be given effect without the
3 invalid provision, and to this end the provisions of this article are severable.

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

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

1 Annually, at least by November 1, the commission shall prepare a list of water and
2 wastewater utilities that appear to be financially unstable by reviewing annual reports, rate case
3 filings and other financial data available to it. The commission shall incorporate the tier
4 classifications published by the State Utility Management Corps under §24-2I-4 of this code into
5 the annual list, and the list shall identify each utility's tier classification alongside the commission's
6 own assessment. Where the commission's assessment differs from the team's tier classification,
7 the commission shall note the discrepancy and the basis for the difference. Commission staff shall
8 contact each utility placed on the list and provide advice and assistance in resolving any financial
9 instability or managerial or operational issues that are contributing to the utility's financial
10 instability. The commission shall provide the list of potentially unstable water and wastewater
11 utilities to the West Virginia Rural Water Association and to the State Utility Management Corps.
12 Commission staff shall publish annually, by hyperlink, the list of potentially unstable water and
13 wastewater utilities on the commission's homepage no later than November 1.

§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 to acquire a distressed or failing utility if the aggregate cost of necessary capital
33 improvements for the distressed or failing utility which will be borne by the acquiring utility
34 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 (e) The procedures of §24-2J-1 et seq. of this code supplement, but do not replace, the
42 provisions of this article. The team established under §24-2J-3 of this code may initiate
43 proceedings under this article or §24-2J-1 et seq. of this code, as appropriate. When expedited
44 proceedings are available under §24-2J-1 et seq. of this code, the commission should utilize those
45 procedures when practicable. Nothing in §24-2J-1 et seq. of this code limits the commission's
46 authority under this article.

CHAPTER 31. CORPORATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74 council to a for-profit entity at an interest rate which is less than the current market rate at the time
75 of the loan agreement.

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

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

98 (i) The Water Development Authority shall establish a separate restricted account within
99 the infrastructure fund to be expended for the repair and improvement of failing water and

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

111 (j) Distressed Utilities Account. –

112 (1) There is continued within the fund the Distressed Utilities Account consisting of fifteen
113 million dollars, which shall be used for grants and loans to nonprofit public utilities which the Public
114 Service Commission has directed to acquire or rehabilitate utility facilities owned by distressed or
115 failing utilities pursuant to §24-2H-7 and §24-2J-6 of this code.

116 (2) Consolidation Committee.

117 (A) There is hereby established within the Water Development and Infrastructure Council a
118 Consolidation Committee to review applications for state grants to ensure that consolidation,
119 regionalization, or resource-sharing opportunities are appropriately considered before standalone
120 infrastructure projects are funded.

121 (B) The Committee shall consist of the Director of the Water Development Authority or
122 designee (chair), one representative each from the Public Service Commission, Department of
123 Environmental Protection, Bureau for Public Health, and the State Utility Management Corps, and
124 one water and wastewater utility industry representative appointed by the Council.

125 (C) The Committee shall review any project seeking \$100,000 or more in state grant

126 funding, except projects addressing critical health and safety needs requiring immediate action or
127 projects experiencing construction bid overruns on previously approved funding.

128 (D) The Committee may determine a project ineligible for state grant funding if the project
129 sponsor can connect or share facilities with another system and doing so would render the project
130 unnecessary, substantially reduce scope or cost, or better serve long-term affordability. The
131 Committee shall set reasonable requirements for regaining eligibility and provide technical
132 assistance.

133 (E) The Committee shall recommend approval even if otherwise ineligible if failure to fund
134 would endanger public health or safety or have significant negative economic impact. The
135 Committee may recommend approval if failure to consolidate is solely due to unwillingness of the
136 other utility, emergency circumstances exist, or the team determines consolidation is not feasible.

137 (F) The Committee shall complete review within 30 days, or 60 days for complex cases.
138 Project sponsors may appeal determinations to the full Council.

139 (G) The Council shall promulgate rules to implement this subdivision, including the
140 consolidation assessment process, coordination with stakeholder agencies, and procedures for
141 determining eligibility.

142 (3) In addition to the uses specified in subdivision (1), the account may be used for grants
143 and loans to utilities with approved improvement plans under §24-2J-5 of this code; payment of
144 consultant and conservator costs; administrative costs of the team not to exceed five percent of
145 annual account expenditures; and other uses authorized by §24-2J-1 *et seq.* of this code.

146 (4) The account shall operate as a revolving fund, with repayments deposited back into the
147 account.

148 (5) The Water Development Authority shall establish grant and loan priorities as specified
149 in §24-2J-9(c) of this code.

NOTE: The purpose of this bill is to create the State Utility Accountability and Improvement

Program to proactively identify and assist struggling water and wastewater utilities; establish the State Utility Management Corps within the Water Development Authority; provide for expedited Public Service Commission proceedings through a Priority Utility Docket; establish a rate case appeal mechanism for conservator utilities; create a clear tier reclassification and de-escalation pathway; provide for phased program implementation; expand the Distressed Utilities Account from \$5 million to \$15 million; coordinate annual utility assessments between the team and the commission; clarify the relationship between conservatorship and existing receivership authority; protect existing bond covenants during conservatorship; require training for public service district board members; authorize the Water Development Authority to house and support the team; establish transparency and accountability requirements; and declare an emergency.

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