

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 762

By Senators Smith (Mr. President) and Woelfel

(By Request of the Executive)

[Reported February 24, 2026, from the Committee on
Government Organization]

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

27 continues to properly function while the Public Service Commission identifies an
28 alternative acquiring utility; codifying the Consolidation Committee on the Water
29 Development and Infrastructure Council, which allows for considering whether voluntary
30 consolidation would improve an infrastructure project; establishing new guidelines for the
31 use of state funds, which addresses when a public water or wastewater utility seeking
32 funding is in substantial noncompliance with state regulations, and when a public water or
33 wastewater utility is not current on its financial audits or has findings in said financial audits
34 which are of concern; requiring guidelines for determining when to fund projects that
35 include line extensions and authorizing public water utilities to obtain use contracts with
36 potential new customers before obtaining funding; allowing public water and wastewater
37 utilities to seek a waiver of a preliminary engineering report prior to obtaining a
38 recommendation to seek funding; requiring the Water Development Authority to work with
39 public water and wastewater utilities to rectify any issues which may prevent the utility from
40 being eligible for state funding for infrastructure projects; and updating definitions in
41 accordance with the changes made throughout.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 36. ADMINISTRATION OF THE WEST VIRGINIA DRINKING WATER TREATMENT REVOLVING FUND.

§22-36-1.

Definitions.

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

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

5 ~~(2)~~ (1) "Capacity development" means the technical, managerial, and financial capability of

6 a public water system.

7 ~~(3)~~ (2) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property,
8 rights and easements, plans and specifications, and all other expenses necessary or incident to
9 the acquisition, construction, improvement, expansion, extension, repair, or rehabilitation of all or
10 part of a project.

11 ~~(4)~~ (3) "Disadvantaged community" means the service area of a public water system that
12 meets affordability criteria established after public review and comment by the state.

13 ~~(5)~~ (4) "Federal Safe Drinking Water Act" means the federal statute commonly known as
14 the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as enacted, amended, and as may be
15 subsequently amended.

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

18 ~~(7)~~ (6) "Instrumentality" means the Department of Environmental Protection which has the
19 primary responsibility for administering the fund and this article pursuant to requirements of the
20 federal Safe Drinking Water Act.

21 ~~(8)~~ (7) "Local entity" means any municipality, public utility, or person, including any
22 individual, firm, partnership, association, not-for-profit corporation, or other corporation organized
23 and existing under the laws of the state which may construct and operate an eligible project.

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

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

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

31 ~~(12)~~ (11) "Small system" means a public water system serving 10,000 or fewer persons.

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

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

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

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

24 (d) The ~~authority~~ Department of Environmental Protection shall propose legislative rules

25 for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to govern the
26 pledge of loans to secure bonds of the authority Department of Environmental Protection.

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

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

§22-36-4. Management of funds.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-3. Definitions.

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

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

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

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

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

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

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

21 constructing and equipping a principal office and suboffices of the authority; the cost of diverting
22 highways and interchange of highways; access roads to private property, including the cost of land
23 or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges
24 and interest prior to and during construction, and for no more than ~~eighteen~~ 18 months after
25 completion of construction; the cost of all engineering services and all expenses of research and
26 development with respect to public water facilities, stormwater systems, or wastewater facilities;
27 the cost of all legal services and expenses; the cost of all plans, specifications, surveys, and
28 estimates of cost and revenues; all working capital and other expenses necessary or incident to
29 determining the feasibility or practicability of acquiring or constructing any such project; all
30 administrative expenses and such other expenses as may be necessary or incident to the
31 acquisition or construction of the project; the financing of such acquisition or construction,
32 including the amount authorized in the resolution of the authority providing for the issuance of
33 water development revenue bonds to be paid into any special funds from the proceeds of such
34 bonds; and the financing of the placing of any such project in operation. Any obligation or
35 expenses incurred by any governmental agency, with the approval of the authority, for surveys,
36 borings, preparation of plans and specifications, and other engineering services in connection with
37 the acquisition or construction of a project are a part of the cost of such project and shall be
38 reimbursed out of the proceeds of loans or water development revenue bonds as authorized by
39 the provisions of this article.

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

44 (8) "Governmental agency" means the state government or any agency, department,
45 division, or unit thereof; counties; municipalities; watershed improvement districts; soil
46 conservation districts; sanitary districts; public service districts; drainage districts; regional

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

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

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

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

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

72 (13) "Pollution" means:

73 (a) The discharge, release, escape, deposit, or disposition, directly or indirectly, of treated
74 or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near
75 any waters of the state, in such condition, manner, or quantity, as does, will, or is likely to:

76 (1) contaminate or substantially contribute to the contamination of any of such waters; or

77 (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:

81 (i) Directly or indirectly harmful, detrimental or injurious to the public health, safety and
82 welfare; or

83 (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic, or plant life; or

84 (iii) unsuitable for present or future domestic, commercial, industrial, agricultural,
85 recreational, scenic, or other legitimate uses; and also means;

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

92 (14) "Project" or "water development project" means any public water facility, stormwater
93 system, or wastewater facility, the acquisition or construction of which is authorized, in whole or in
94 part, by the Water Development Authority or the acquisition or construction of which is financed, in
95 whole or in part, from funds made available by grant or loan by, or through, the authority as
96 provided in this article, including facilities, the acquisition or construction of which is authorized, in
97 whole or in part, by the Water Development Authority or the acquisition or construction of which is
98 financed, in whole or in part, from funds made available by grant or loan by, or through, the

99 authority as provided in this article, including all buildings and facilities which the authority deems
100 necessary for the operation of the project, together with all property, rights, easements, and
101 interest which may be required for the operation of the project, but excluding all buildings and
102 facilities used to produce electricity other than electricity for consumption by the authority in the
103 operation and maintenance of the project.

104 (15) "Private utility" means any water facility, stormwater system, or wastewater facility that
105 is owned by a privately owned entity that operates for-profit. To qualify as a "private utility" the
106 entity must have at least 100 customers.

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

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

121 ~~(16)~~ (18) "Public utility facilities" means public utility plants or installations and includes
122 tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances
123 of any public utility.

124 ~~(17)~~ (19) "Revenue" means any money or thing of value collected by, or paid to, the Water

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

131 ~~(18)~~ (20) "Sewage" means water-carried human or animal wastes from residences,
132 buildings, industrial establishments, or other places, together with such groundwater infiltration
133 and surface waters as may be present.

134 ~~(19)~~ (21) "Stormwater system" means a stormwater system in its entirety or any integral
135 part thereof used to collect, control, or dispose of stormwater and an associated stormwater
136 management program. It includes all facilities, structures, and natural water courses used for
137 collecting and conducting stormwater to, through, and from drainage areas to the points of final
138 outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets,
139 channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches,
140 streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls,
141 pipes, flood control systems, levies, and pumping stations. The term "stormwater system" does
142 not include highways, road and drainage easements, or stormwater facilities constructed, owned,
143 or operated by the ~~West Virginia~~ Division of Highways.

144 ~~(20)~~ (22) "Stormwater management program" means those activities associated with the
145 management, operation, and maintenance and control of stormwater and stormwater systems
146 and includes, but is not limited to, public education, stormwater and surface runoff water quality
147 improvement, mapping, planning, flood control, inspection, enforcement, and any other activities
148 required by state and federal law. The term "stormwater management program" does not include
149 those activities associated with the management, operation, maintenance, and control of
150 highways, road and drainage easements, or stormwater facilities constructed, owned, or operated

151 by the ~~West Virginia~~ Division of Highways without the express agreement of the Commissioner of
152 the Division of Highways.

153 ~~(21)~~ (23) "Water resources", "water", or "waters" means any and all water on or beneath
154 the surface of the ground, whether percolating, standing, diffused, or flowing, wholly or partially
155 within this state, or bordering this state and within its jurisdiction, and includes, without limiting the
156 generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks,
157 ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities),
158 impounding reservoirs, springs, wells, and watercourses.

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

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

171 ~~(24)~~ (26) "Water facility" means all facilities, land, and equipment used for the collection of
172 water, both surface and underground; and transportation of water, treatment of water, and
173 distribution of water all for the purpose of providing potable, sanitary water suitable for human
174 consumption 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~~
8 state health officer or designee are members ex officio of the board. Four members are appointed
9 by the Governor, by and with the advice and consent of the Senate, for six-year terms, which are
10 staggered in accordance with the initial appointments under prior enactment of this section. In the
11 event of a vacancy, appointments are filled in the same manner as the original appointment for the
12 remainder of the unexpired term. A member continues to serve until the appointment and
13 qualification of the successor. More than two appointed board members may not at any one time
14 belong to the same political party. Appointed board members may be reappointed to serve
15 additional terms.

16 (c) All members of the board shall be citizens of the state. Each appointed member of the
17 board, before entering upon his or her duties, shall comply with the requirements of §6-1-1 *et seq.*
18 of this code and give bond in the sum of \$25,000 in the manner provided in §6-2-1 *et seq.* of this
19 code. The Governor may remove any board member for cause as provided in §6-6-1 *et seq.* of this
20 code.

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

26 duties of the board and the authority. The person appointed as secretary-treasurer, including a
27 board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in §6-
28 2-1 *et seq.* of this code.

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

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

§22C-1-5a. Authority may construct, finance, maintain, etc., private water development projects; loans to private utilities 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. Loans to private utilities may be offered at an interest rate that is the same as the interest
6 rate offered to public utilities.

7 (b) Any loan issued to a private utility pursuant to this section will not be eligible for
8 refinancing and may not be forgiven; *Provided*, That if a private utility acquires a public utility,
9 whether voluntarily or involuntarily, then the private utility may seek refinancing for any loan
10 previously obtained by the public utility pursuant to §22C-1-5 of this code: *Provided, however*, That
11 any reduction in loan payments or in debt service experienced by the private utility as a result of
12 receiving or refinancing a loan pursuant to this section shall be used to reduce rates for customers
13 served by the project.

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

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

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

28 (2) The specific purposes for which the proceeds of the loan shall be expended, the
29 procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon

30 the private utility in regard to the construction or acquisition of the project, including engineering
31 fees and other administrative costs relating to development of the project;

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

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

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

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

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

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

50 (2) Increasing affordability to customers; and

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

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

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.

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

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

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

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

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

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

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

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

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

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

26 comply with federal laws relating to the acts.

27 (d) (c) "Instrumentality" means the Department of Environmental Protection or the agency
28 designated by an order of the Governor as having the primary responsibility for administering the
29 fund pursuant to the Clean Water Act, 33 U.S.C. §1251, *et seq.*, as amended, and the Federal
30 Safe Drinking Water Act 42 U.S.C. §300f through §300j-26, inclusive, as amended, or other
31 federal laws.

32 (e) (d) "Local entity" means any county, city, town, municipal corporation, authority, district,
33 public service district, commission, banking institution, political subdivision, regional governmental
34 authority, state government agency, interstate agency, or not-for-profit association or corporation
35 in West Virginia.

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

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

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

40 (3) Drainage facilities and projects;

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

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

45 (6) Other projects allowable under federal law.

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

1 (a) ~~Under the direction of the Division of Environmental Protection, the water development~~
2 ~~authority~~ The Department of Environmental Protection shall establish, administer, and manage a
3 permanent and perpetual fund to be known as the "West Virginia Water Pollution Control
4 Revolving Fund". The fund shall be comprised of moneys appropriated to the fund by the

5 Legislature, moneys allocated to the state by the federal government expressly for the purposes of
6 establishing and maintaining a state water pollution control revolving fund, all receipts from loans
7 made from the fund to local entities, all income from the investment of moneys held in the fund,
8 and all other sums designated for deposits to the fund from any source, public or private. Moneys
9 in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a
10 project: *Provided*, That moneys in the fund shall be utilized to defray the costs incurred by the
11 ~~authority and the~~ Division of Environmental Protection in administering the provisions of this
12 article: *Provided, however*, That moneys in the fund shall be used to make grants for projects to
13 the extent allowed or authorized by federal law.

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

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

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

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

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

30 (e) All moneys belonging to the fund shall be kept in appropriate depositories and secured

31 in conformance with this code. Disbursements from the fund shall be authorized for payment by
32 the ~~director of the authority or the director's~~ Secretary of the Department of Environmental
33 Protection or the secretary's designee. Any depository or officer of the depository to which moneys
34 of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the
35 purposes for which the moneys are provided under this article. Moneys in the fund shall not be
36 commingled with other money of the ~~authority~~ Department of Environmental Protection. If not
37 needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by
38 the ~~authority~~ Department of Environmental Protection in obligations or securities which are
39 considered lawful investments for public funds under this code.

§22C-2-4. Annual audit.

1 The ~~authority~~ Department of Environmental Protection shall cause an audit of its books
2 and accounts to be made at least once each fiscal year by certified public accountants, and the
3 cost thereof may be defrayed as a part of the cost of construction of a project or as an
4 administrative expense under the provisions of ~~subsection (a), section three~~ §22C-2-3(a) of this
5 article code.

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

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

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

10 (2) The ~~authority~~ Department of Environmental Protection may exercise, in its own name

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

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

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

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

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

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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

§24-2H-1. Short title.

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

§24-2H-3. Definitions.

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

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

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

9 ~~(B)~~(2) Fails to comply within a reasonable period of time with any final, non-appealable
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) 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) 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" means any person or persons, or association of persons, however
34 associated, whether incorporated or not, including municipalities, which is, or shall hereafter be
35 held to be, a public service. For the purposes of this article, "public utility" or "utility" shall refer only
36 to wastewater utilities and water utilities.

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

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

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

1 (a) Annual Reports. —

2 (1) Any water, or wastewater, or water and wastewater utility which operates under the
3 supervision or management of a municipal governing body must provide that municipal governing

4 body with annual operational and financial reports.

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

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

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

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

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

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

28 (c) The requirements of this section only apply to those waterworks systems which are
29 regulated pursuant to §8-19-1 *et seq.*, §8-20-1 *et seq.*, §16-13-1 *et seq.*, or §16-13A-1 *et seq.* of

30 this code. The requirements set forth in this section shall preempt any training obligation which
31 requires less training than is set forth herein, but it does not prevent a governing body from
32 requiring more training.

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

1 (a) Designation of Regions. — The Public Service Commission shall designate each part
2 of 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 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: *Provided*, That a
21 facility that is a hybrid water and wastewater utility may join the Regional Cooperative Agreement
22 of either 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 a hybrid 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 each
34 utility have its own specialized personnel may be preempted by this section and thereby permit
35 more than one utility to share such personnel. Specifically, the public water and/or wastewater
36 utilities that have entered into a Regional Cooperative Agreement may share personnel as set
37 forth in 64 CSR 04 and 64 CSR 05, provided the shared personnel is otherwise qualified. Before
38 the participating utilities may share personnel, the Bureau of Public Health and/or the Department
39 of Environmental Protection must review the proposed Regional Cooperative Agreement, in
40 writing, and confirm that the proposal will not negatively impact the functionality of any
41 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 the Bureau of Public Health may each 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 three, but no
2 more than five public water utilities, and at least three, but no more than five public wastewater
3 utilities, to participate in the Early Intervention Pilot Program. Of the utilities, the Public Service
4 Commission may select one or more hybrid public water and wastewater utilities so long as the
5 total number of utilities initially selected does not exceed 10.

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

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

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

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

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

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

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

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

35 asset management program.

36 (3) If the stakeholders and the utility cannot agree on the individualized course of action,
37 the Public Service Commission may expel the utility from the program or the utility may decide to
38 leave the program. The Public Service Commission should select a new utility to take 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 released. If, at any time, the utility believes that its participation is not worthwhile, or
43 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 24 consecutive months.

46 (d) *Stakeholders.* — The named stakeholders do not constitute a public body pursuant to
47 §6-9A-1 *et seq.* of this code, nor may the stakeholders receive compensation or reimbursement
48 from the state. The collaboration of the stakeholders is intended to provide meaningful and
49 efficient assistance to the utilities in the Early Intervention Pilot Program, and informal and
50 frequent discussions are encouraged. The stakeholders must be afforded notice of the terms of
51 an individualized course of action, and an opportunity to make suggestions. Stakeholders are
52 encouraged to act collaboratively and decisions required under this section may be made without
53 consensus, so long as at least two state agencies determine that the action is in the best interest of
54 the utility. The Rural Water Association, the Municipal Water Quality Association, and the West
55 Virginia chapter of the National Association of Water Companies may participate to the extent they
56 choose, and while voluntary participation would be beneficial, it is not necessary for completing the
57 tasks set forth herein. Nothing contained herein prohibits any state agency from otherwise
58 performing its obligations under any other provision of law. Further, nothing contained herein
59 prohibits real-time problem-solving by one or more stakeholder when a participating utility has a
60 need for immediate assistance.

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

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

69 (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. 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. An "imminent need" is present when a utility is incapable
22 of providing safe or reliable services to its customers, is unable to obtain necessary financial
23 assistance for infrastructure projects or is otherwise in need of urgent intervention. The Public
24 Service Commission may only declare an imminent need upon the agreement of the Bureau of
25 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 stakeholders described in §24-2H-3c of this code will
3 establish an individualized improvement plan for each utility. The improvement plan may include
4 any course of action which is necessary for the utility to be successfully removed from the watch
5 list, including, but not limited to, those set forth in §24-2H-3c of this code. The improvement period
6 may include any requirement of the utility which the Public Service Commission, with the
7 stakeholders, deem necessary for improvement. The Public Service Commission may further
8 mandate that a utility on an improvement period enter into a Regional Cooperative Agreement as
9 set forth in §24-2H-3b of this code, provided that the other participating utilities are willing to
10 consent to that utility's inclusion.

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

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

15 (2) if the utility is making a substantial effort to participate in the improvement period, and it
16 is likely that the utility can successfully complete the improvement period but not within 12 months,

17 then the improvement period may be extended to 18 months total.

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

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

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

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

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

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

10 (3) The opinion and advice, if any, of the Department of Environmental Protection and the
11 Bureau for Public Health as to steps that may be necessary to assure compliance with applicable

12 statutory or regulatory standards concerning the adequacy, efficiency, safety, or reasonableness
13 of utility service;

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

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

17 (6) Any other relevant matter.

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

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

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

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

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

29 (5) Any other relevant matter.

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

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

8 commission shall include, as additional parties, any capable proximate public and private utilities
9 that may be able to assist or acquire the utility.

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

13 (1) Issuance of a press release;

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

15 (A) The utility;

16 (B) The Consumer Advocate Division;

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

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

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

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

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

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

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

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

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

17 (2) Operation of the distressed utility by another public utility, or management, or service
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~~ The aggregate required contribution under the commission's extension of mains
36 rules for new customers; or

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

39 (3) ~~other~~ Other grant funds; or

40 (4) ~~any~~ Any combination of the above.

§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 Public Service Commission and the distressed or failing utility shall have 10 business
29 days upon receipt of notice to object to the monthly invoice of actual costs. Upon an objection, the
30 Public Service Commission, the controlling utility, and distressed or failing utility shall negotiate, in
31 good faith, the appropriate amount to be paid, with the Public Service Commission serving as the
32 final arbiter.

33 (6) If the income to the distressed or failing utility is insufficient to fully reimburse the
34 controlling utility for its actual costs incurred pursuant to the memorandum of understanding, the
35 county commission, governing municipal council, or board responsible for the distressed or failing
36 utility at the time the memorandum of understanding is entered shall reimburse the controlling
37 utility for any such costs that remain unpaid after the distressed or failing utility makes payment to

38 the controlling utility.

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

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

56 (e) Duration of Agreement. — A memorandum of understanding mandated by the
57 commission pursuant to this section shall remain in full force and effect for as long as the
58 commission deems necessary but shall not be considered a permanent solution for addressing a
59 distressed or failing utility and shall in no event remain in effect longer than 18 months. If the
60 controlling utility and the distressed or failing utility agree that the collaborative nature of the
61 memorandum of understanding is mutually beneficial, then the commission may allow the two
62 utilities to enter into a new memorandum of understanding outside of the control of the
63 commission. The commission may deny a voluntary memorandum of understanding if the

64 underlying cause of the utility becoming a distressed or failing utility has not been, or will not be,
65 adequately addressed, or if the commission has identified a utility which can be legally obligated to
66 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 approve
6 the purchase price of the acquisition. Where the parties are unable to agree on an acquisition
7 price, the filing may request that an evidentiary hearing be held so that the commission may
8 determine the acquisition price and any other issues related to the acquisition. ~~The~~ If the failing
9 utility is a political subdivision of the state, then the acquisition price must, at a minimum, satisfy all
10 outstanding loans, tax obligations, required grant repayment, liens, and indebtedness owed by the
11 failing utility or the acquiring utility must agree to assume the indebtednesses if legally permitted.
12 The acquiring utility shall consult with the lenders or lienholders regarding payment in full or the
13 assumption, to the extent legally permissible, of any outstanding obligations of the failing utility.

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

16 (c) As part of the proceeding, the acquiring utility may propose to the commission that it be
17 permitted for a reasonable period of time after the date of acquisition, to charge and collect rates
18 from the customers of the failing utility pursuant to a separate tariff, which may be higher or lower
19 than the existing tariff of the distressed or failing utility, or may allow a surcharge on both the
20 acquired and existing customers. A separate tariff or rate filing must be made by the acquiring
21 utility before the commission will consider any increase in rates or allow a surcharge to be placed

22 on the acquiring utility's acquired or existing ratepayers.

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

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

41 (f) If the distressed or failing utility is a public service district, then the commission shall
42 make a recommendation to the respective county commission(s) with regard to the acquisition of
43 distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing
44 utility is a municipal corporation, then the commission shall make a recommendation to the
45 respective municipal council with regard to the acquisition of distressed or failing utilities as
46 provided in §8-12-17 of this code. It shall not be necessary for the board of the failing or distressed
47 utility to approve the sale of the failing or distressed utility to a capable proximate utility, if the

48 distressed or failing utility is a public service district, and the sale is approved by the county
49 commission, or if the distressed or failing utility is a municipal utility, and the sale is approved by
50 the municipal council.

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

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
12 preparation of plans and specifications and other engineering services; the cost of acquisition of all
13 land, rights-of-way, property rights, easements, franchise rights, and any other interests required
14 for the acquisition, repair, improvement, or construction of the project; the cost of demolishing or
15 removing any buildings or structures on land so acquired, including the cost of acquiring any lands

16 to which buildings or structures may be moved; the cost of excavation, grading, shaping, or
17 treatment of earth, demolishing or removing any buildings or structures; the cost of constructing
18 any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus, and other
19 machinery, furnishings, and equipment; loan or origination fees and all finance charges and
20 interest incurred prior to and during the construction and for no more than six months after
21 completion of construction; the cost of all legal services and expenses; the cost of all plans,
22 specifications, surveys, and estimates of cost; all working capital and other expenses necessary
23 or incident to determining the feasibility or practicability of acquiring, repairing, improving, or
24 constructing any project; the cost of placing any project in operation; and all other costs and
25 expenses of any kind or nature incurred or to be incurred by the project sponsor developing the
26 project that are reasonable and necessary for carrying out all works and undertakings necessary
27 or incident to the accomplishment of any project: *Provided*, That costs shall not include any
28 amounts related to the ongoing operations of the owner or operator, depreciation thereof or any
29 other cost which the council or the water development authority has not determined to be
30 consistent with the purposes and objectives of this article;

31 (d) "Council" means the ~~West Virginia infrastructure and jobs development council~~
32 Infrastructure and Jobs Development Council created in section three of this article;

33 (e) "~~Division of environmental protection~~ Department of Environmental Protection" means
34 the ~~Division~~ Department of Environmental Protection established under §22-1-1 *et seq.* of this
35 code, or any successor to all or any substantial part of its powers and duties;

36 (f) "~~Division of health~~ Department of Health" means the ~~division of health~~ Department of
37 Health created in §16-1-1 *et seq.* of this code, or any successor to all or any substantial part of its
38 powers and duties;

39 (g) "Economic ~~development authority~~ Development Authority" means the ~~economic~~
40 ~~development authority~~ Economic Development Authority established under §31-15-1 *et seq.* of
41 this code, or any successor to all or any substantial part of its powers and duties;

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

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

50 (j) "~~Housing development fund~~ Development Fund" means the West Virginia Housing
51 Development Fund established under §31-18-1 *et seq.* of this code, or any successor to all or any
52 substantial part of its powers and duties;

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

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

63 (1) The process of acquiring, holding, operating, planning, financing, demolition,
64 construction, improving, expanding, renovation, leasing, or otherwise disposing of the project or
65 any part thereof or interest therein; and

66 (2) preparing land for construction and making, installing, or constructing improvements on
67 the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and

68 telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings,
69 docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities,
70 whether on or off the site;

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

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

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

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

85 (q) "~~Public service commission~~ Service Commission" means the Public Service
86 Commission of ~~West Virginia~~ created and established under §24-1-3 of this code, or any
87 successor to all or any substantial part of its powers and duties;

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

90 (s) "Public utility" means any person or persons, or association of persons, however
91 associated, whether incorporated or not, including, without limitation, any governmental agency
92 operating a wastewater facility or water facility as a public service which is regulated by the Public
93 Service Commission as a public utility under §24-1-1 *et seq.* of this code or which is required to file

94 its tariff with the Public Service Commission;

95 (t) "State Development Office" means the West Virginia Development Office established
96 under §5b-2-1 *et seq.* of this code, or any successor to all or any substantial part of its powers and
97 duties;

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

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

114 (w) "~~Water development authority~~ Development Authority" means the ~~West Virginia water~~
115 ~~development authority~~ Water Development Authority continued pursuant to the provisions of §22c-
116 1-1 *et seq.* of this code, or any successor to all or any substantial part of its powers and duties; and

117 (x) "Water facility" means all facilities, land, and equipment used for or in connection with
118 the collection and/or storage of water, both surface and underground, transportation of water,
119 storage of water, treatment of water, and distribution of water all for the purpose of providing

120 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, but may meet more frequently, as set forth in this section
8 of code.

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

19 (c) Capable Proximate Utilities. — The council shall include on its public website a list of all
20 project sponsors seeking project funding, which shall be posted within 30 calendar days of
21 receiving the initial application. Any capable proximate utility, as defined in §24-2H-3 of this code,
22 or any utility that believes it may qualify as a capable proximate utility, may submit to the
23 Consolidation Committee a non-binding valuation or letter of intent for the project sponsor of a

24 project.

25 (1) If, prior to the council voting on a recommendation to proceed, a capable proximate
26 utility provides a non-binding valuation indicating that acquisition or consolidation would result in a
27 lower long-term cost to the customers of the project sponsor than the proposed project, or if the
28 functionality that an acquisition or consolidation would afford would substantially alter the scope or
29 cost of the project, then the Consolidation Committee shall convene a meeting to determine
30 whether the non-binding valuation by the capable proximate utility changes the assessment of
31 whether consolidation is appropriate, and whether the project sponsor should be eligible for state
32 funding. The Consolidation Committee shall afford both the project sponsor and the capable
33 proximate utility with an opportunity to be heard.

34 (2) A capable proximate utility may withdraw a non-binding valuation at any time.

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

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

47 (1) If the Consolidation Committee determines that consolidation, regionalization, or other
48 action is necessary for the long-term functionality of a system seeking state funds, then the
49 Consolidation Committee may determine that the system is ineligible for funding from the council

50 until such action has been achieved.

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

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

59 (g) *Exceptions to Ineligibility.* —

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

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

67 (h) *Impact on Other State Funds.* — Upon a finding by the Consolidation Committee that a
68 water or wastewater system is ineligible for state funding by the council due to the fault of the
69 public utility seeking approval, the Water Development Authority shall likewise determine that the
70 public utility is ineligible for other state funded grants. Any state grants awarded prior to the
71 Consolidation Committee's determination may be honored if there is an executed contract, or if
72 state funding is necessary to maintain federal funding. An ineligible public utility may still receive
73 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 the
16 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:

27 (1) The level of rates for the users would otherwise be an unreasonable burden given the
28 users' likely ability to pay; or

29 (2) the absence of a sufficient number of users prevents funding of the project except
30 through grants. ~~Provided, That~~ No project sponsor shall receive infrastructure grant money in an

31 amount in excess of 50 percent of the total cost of the project. Therefore, the council may consider
32 the economic or financial conditions of the area to be served.

33 ~~(d)~~ (d) As a condition for receipt of a grant or loan under this ~~subsection~~ article, the council
34 may require, in addition to any other conditions, that the applicant pursue other state or federal
35 grant or loan programs. Upon a recommendation by the council, the Water Development Authority
36 ~~shall~~ may provide the grant in accordance with the recommendation. The council shall develop
37 criteria to be considered in making grants to project sponsors which shall require consideration of
38 the economic or financial conditions of the area to be served and the availability of other funding
39 sources. The council shall adopt procedural rules regarding the manner in which grants will be
40 awarded in conformity with this section. The procedural rules shall be adopted pursuant to §29A-3-
41 1 et seq. of this code.

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

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

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

57 economic feasibility of the project.

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

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

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

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

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

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

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

83 sponsors exceed, in the aggregate, \$1,300,000 annually.

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

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

93 (j) A recommendation pursuant to this section does not guarantee that the council will
94 award funding, nor does it obligate the state to expend any funds towards the project. The council
95 shall only award a state grant by a binding commitment, which may only be issued after the project
96 sponsor has obtained all other available federal, state, and private funding.

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