WEST VIRGINIA CODE: §22-28-4

§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.

(a) Municipal utilities and public service districts have the power and authority to enter into community infrastructure investment agreements with any person for the purpose of constructing new project facilities or substantially improving or expanding project facilities.

(b) Notwithstanding any other provision in this code to the contrary, the Secretary shall have the power and the authority to review and approve all such community infrastructure investment agreements pursuant to this article.

(c) Each such agreement shall contain as a minimum the following terms and conditions to be performed by the parties thereto:

(1) The project facilities shall be engineered and constructed in accordance with the requirements for new construction established by the municipal utility or public service district;

(2) Proof or certification of the financial ability of the municipal utility or public service district to maintain and operate the public facilities;

(3) Certification that upon completion and activation of the project facility or improvements to the project facility, the title to the public facility shall be transferred without cost to the municipal utility or public service district;

(4) A finding that the construction of the new public facility, or the substantial improvement or expansion of an existing public facility, either: (i) Fosters economic growth by promoting commercial, industrial or residential development; and (ii) improves water quality or otherwise enables the affected territory to achieve compliance with any applicable state or federal health or environmental law;

(5) The municipal utility or public service district will receive or otherwise obtain without cost to the public all necessary rights-of-way for the operation of the public facility;

(6) The rates charged by the municipal utility or public service district to new customers to be served by the project facility shall be the rates in effect at the time of transfer of the project facility to the utility plus any additional cost of service borne by the municipal utility or public service district as a result of the project facility until such time as new rates may be finally enacted by the municipal utility or proposed by the public service district and approved by the Public Service Commission and the rates charged by the municipal utility or the public service district to existing customers shall not be impacted as a result of the obligation of the public service district or municipal utility pursuant to the community

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infrastructure investment agreement;

(7) Confirmation that the agreement does not violate any of the bond covenants imposed on the municipal utility or public service district;

(8) Proof that necessary permits, where applicable, have been obtained from the Division of Health and the Department of Environmental Protection;

(9) Evidence that the person responsible for the construction of or improvements to the public facility has provided funding to the municipal utility or public service district for the engagement of an engineer qualified to design and certify the structural integrity and capacity of the project facility;

(10) Proof that the person responsible for construction of or improvements to the public facility has obtained a performance bond payable to the municipal utility or public service district equal to the estimated cost of construction: Provided, That the form of the bond required by this section shall be approved by the Secretary and may include, at the option of the Secretary, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation as established by the Secretary, self-bonding or a combination of these methods; and

(11) Any other conditions that the secretary may determine to be relevant as established.

(d) Where the Secretary has found that the community infrastructure investment agreement meets the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the parties as evidence of such approval.

(e) Not later than thirty days prior to the issuance of a certificate of appropriateness for any community infrastructure investment project, the Secretary shall first submit a report of the same to the Joint Committee on Government and Finance.

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