

WEST VIRGINIA CODE: §8-12-17

§8-12-17. Sale or lease of municipal public utility.

NOTE: West Virginia Code §8-12-17 was amended by two bills passed during the 2020 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

Senate Bill 551 (passed last on March 7, 2020) amended West Virginia Code §8-12-17 to read as follows:

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system, or other public utility and a majority of not less than 60 percent of the members of the governing body thereof shall deem it for the best interest of such municipality that such utility be sold or leased, the governing body may so sell or lease such gas system, electric system, waterworks system, sewer system, or other public utility upon such terms and conditions as said governing body in its discretion considers in the best interest of the municipality: *Provided*, That such sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than 60 percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided, however*, That if at any time after such approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved as aforesaid, the governing body shall have the power to accept such subsequent offer, and to make such sale or such lease to the person making the offer, upon approval of the offer by a majority of not less than 60 percent of the members of the governing body; but, if a sale shall have been approved by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than 60 percent of the members of the governing body. The person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than 25 percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved by the governing body. In any case where any such

public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any indebtedness created in respect to such public utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, for capital investments in public works projects, vehicles and equipment, including without limitation law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers, stormwater systems, floodwalls, and other like permanent improvements, for fulfilling municipal pension and other post-employment benefit obligations, for reducing taxes, and for no other purposes. In case there be a surplus after the payment of such indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility

Senate Bill 739 (passed first on March 7, 2020) amended West Virginia Code §8-12-17 to read as follows:

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system, or other public utility and a majority of not less than 60 percent of the members of the governing body thereof determines it for the best interest of the municipality that the utility be sold or leased, the governing body may so sell or lease the gas system, electric system, waterworks system, sewer system, or other public utility upon such terms and conditions as the governing body in its discretion considers in the best interest of the municipality: *Provided*, That the sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code, in a newspaper published and of general circulation in the municipality, the publication to be made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than 60 percent of the members of the governing body, shall have full power and authority to proceed to execute or effect the sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided, however*, That if at any time after the approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy the public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved as aforesaid, the governing body shall have the power to accept the subsequent offer, and to make the sale or

the lease to the person making the offer, upon approval of the offer by a majority of not less than 60 percent of the members of the governing body; but, if a sale shall have been approved by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than 60 percent of the members of the governing body. The person making the proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than 25 percent of the proposed bid, conditioned to carry the proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from the sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of the sale or lease may be applied in payment and discharge of any indebtedness created in respect to the public utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing the equipment, a municipal building, or city hall, and the necessary land upon which to locate the same, for capital investments in public works projects, vehicles and equipment and law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like permanent improvements, for fulfilling municipal pension and other post-employment benefit obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the payment of the indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of the utility.