
WEST VIRGINIA CODE CHAPTER 8
ARTICLE 19

WV Legislature

PART I. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER

SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal and county waterworks and electric power systems; construction of improvements to municipal and county electric power systems; extension beyond corporate limits; definitions.

(a) Subject to and in accordance with the provisions of this article, any municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system or an electric power system or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality or county commission shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality or county commission without the consent of the governing body of such other municipality or county commission.

(b) Any municipality or county commission which intends to file an application with the federal energy regulatory commission for a license to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system, shall give written notice by certified mail, return receipt requested, and shall give public notice by Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the municipality or county in which the system is to be located to the governing body of the municipality or the county commission in which such system is or shall be located or, if such system is or shall be located outside of a municipality or county, to the county commission of the county in which such system is or shall be located, at least sixty days prior to the filing of such application: Provided, That the provisions of this subsection shall not apply to any municipality or county commission which, on the date of the passage of this act, has obtained a license from the federal energy regulatory commission to acquire, construct, establish, extend, maintain and operate, or lease to others for operation, an electric power system. If the municipality or county commission receiving such notice does not respond to the notice within sixty days of receipt of such notice, then such other municipality or the county commission shall be deemed to have consented to the application for the proposed electric power system. If such other municipality or the county commission notifies the municipality or county commission that it objects to the proposed electric power system, such other municipality or the county commission shall hold a public hearing on the proposed system within sixty days of receipt of such notice from the municipality or county commission.

(c) As used in this article:

(1) "Waterworks system" means a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks,

pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

(2) "Electric power system" means a system or facility which produces electric power in its entirety or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof, or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

(a) For the purposes of this section:

(1) "Contract" means an agreement entered into by a municipality with any other party for the purchase of electric output, capacity, or energy from a project as defined herein;

(2) "Any other party" means any other legal entity, including, but not limited to, another municipality, political subdivision, public authority, agency, or instrumentality of any state or the United States, a partnership, a limited partnership, a limited liability company, a corporation, an electric cooperative or an investor-owned utility existing under the laws of any state; and

(3) "Project" or "projects" means systems or facilities owned by another party and used for the generation, transmission, transformation, or supply of electric power, or any interest in them, whether an undivided interest as a tenant in common or otherwise, or any right to the output, capacity, or services thereof.

(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provides that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entity's obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under §8-19-2(b) of this code may extend for more than 50 years or 50 years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency, commission, instrumentality, or political subdivision thereof except as otherwise specifically required by law.

(d) A contract §8-19-2(b) of this code may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating

expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of the municipality's electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of §8-19-2(b) of this code is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services it sells, furnishes, or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: Provided, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of §8-19-2a of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.

§8-19-2a. Procedure for changing rates of municipal electric power systems; legislative findings.

All rates, fees, and charges set by municipal electric power systems shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer, and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable slant-in-service depreciation expense. The rates and charges shall be adopted by the power system's governing board by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress, such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective, and the governing body shall give its customers other reasonable notices as will allow filing of timely objections to the proposed rate change and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. Notwithstanding the exclusion of municipal power systems' rates, fees, charges, and rate-making process from the jurisdiction of the Public Service Commission, municipal power systems shall submit information regarding their rates, fees, and charges to the commission as set forth in §24-2-9 of this code.

§8-19-2b. Right of appeal by customers.

Customers may appeal a rate increase to the circuit court of the county in which the municipality is located on the grounds that the rate ordinance or its passage does not comply with the provisions of this article by filing a petition, signed by at least 750 customers or 25 percent of the customers served by the municipal electric utility, whichever is fewer. Any petition challenging the ordinance must be filed within 30 days following the adoption of the rate ordinance.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any waterworks system or electric power system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality or county commission shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a privately owned waterworks system, or electric power system, or any part thereof, shall not be exercised without prior approval of the Public Service Commission, and in no event shall any municipality or county commission construct, establish or extend beyond the corporate limits of said municipality or county line a municipal or county waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally or county owned waterworks or electric power system in such municipality or county or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the Public Service Commission: Provided, however, That a municipality or county commission may not exercise such right of eminent domain over a privately owned electric power system or any part thereof for the purpose of acquiring, constructing, establishing or extending an electric power system.

Subject to the provisions of this article and notwithstanding the provisions of section nineteen, article twelve of this chapter to the contrary, a municipality or county commission may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, electric generators or electric generating systems or electric transmission systems more than one mile beyond the corporate limits of such municipality or county line and said electric generation systems shall not be under the jurisdiction of the Public Service Commission.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

Whenever a municipality or county commission, under the provisions of this article, decides to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments, or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or order, specify. All the bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be considered public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by the municipality or county: *Provided*, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission, and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: *Provided, however*, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from *ad valorem* property taxation. The bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding 50 years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived

from the waterworks or electric power system for the purpose of paying the bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of the revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from the waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds: *Provided further*, That the notice given by the municipality or county commission for a change in rates or charges to be charged for the services from the waterworks or electric power system shall be provided by Class I legal advertisement in a newspaper of general circulation in its service territory not less than one week prior to the public hearing of the governing body of the municipality or the county commission required for the approval of the change in rates or charges.

§8-19-5. Publication of abstract of ordinance or order and notice; hearing.

After the ordinance or order for any project under this article has been adopted, an abstract of the ordinance or order, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance or order, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality or county. The notice to be published with said abstract of the ordinance or order shall state that said ordinance or order has been adopted, that the municipality or county commission contemplates the issuance of the bonds described in the ordinance or order, that any person interested may appear before the governing body, upon a certain date, which shall be not less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication by such abstract and notice, and present protests, and that a certified copy of the ordinance or order is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it considers proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality or county, then the governing body of said municipality or county shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

§8-19-6. Amount, negotiability and execution of bonds.

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same shall be executed by the proper legally constituted authorities of the municipality or county commission, and be sealed with the corporate seal of the municipality or certified by the county commission, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance or order authorizing the issuance of the bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal or county indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality or county within the meaning of any Constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality or county within Constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve of this article, the ordinance or order authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

§8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.

Unless the governing body shall otherwise determine in the ordinance or order authorizing the issuance of bonds under this article, there shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality or county commission in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six of this article. Any revenue bonds so issued to provide financing for such existing waterworks or electric power system or for any improvements to an existing waterworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality or county commission in property related thereto as determined by the municipality or county commission in the ordinance or order authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality or county were obligated to pay the full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged.

§8-19-9. Covenants with bondholders.

Any ordinance or order authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality or county commission is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks or electric power system may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such waterworks or electric power system, including any part thereof heretofore or hereafter acquired, constructed, established, extended or equipped or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks or electric power system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks or electric power system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks or electric power system, and all reserve and other funds required by the terms of the ordinance or order authorizing the issuance of such bonds;

(d) The transfer from the General Funds of the municipality or county commission to the account or accounts of the waterworks or electric power system of an amount equal to the cost of furnishing the municipality or county commission or any of its departments, boards or agencies or the county commission with the services and facilities of such waterworks or electric power system;

(e) Subject to the provisions of subsection (b), section twelve of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks or electric power system, and the rank or priority, as to lien and source and security for payment from the revenues of such waterworks or electric power system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement

with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such waterworks or electric power system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such waterworks or electric power system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any such ordinance, order or trust indenture may also contain such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities or county commissions plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities and counties full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the Constitution of this state.

§8-19-10. Operating contract.

Any such municipality or county commission may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality or county commission and such persons. Any such municipality or county commission shall have plenary power and authority to provide in the ordinance or order authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality and county commission as long as any of said bonds, or interest thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.

Rates or charges for water or electric power fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality or county commission shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and, if any surplus shall exist in the bond and interest redemption account, the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality or county commission issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance or order pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia Municipal Bond Commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued: Provided, That payment of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality or county commission directly to the United States of America or said agency or department thereof. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon.

§8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of \$50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of water facilities ten days after the water services become delinquent regardless of whether the municipality or governing body utilizes the security deposit to satisfy any delinquent payments: Provided further, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) All rates or charges for water service whenever delinquent shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to

recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.

Any such municipality or county commission shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water or electric power service of said waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service.

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§8-19-14. Bonds for additions, betterments and improvements.

Whenever any municipality or county commission shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided for the issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system or electric power system in a municipality or county which has not heretofore owned and operated a waterworks or electric power system: Provided, That nothing in this article shall be construed as authorizing any municipality or county commission to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting aside and segregation of such revenues for the construction of such additions, betterments or improvements only where and to the extent consistent with outstanding obligations of such municipality or county commission, and in accordance with the provisions of this article.

§8-19-15. System of accounts; audit.

Any municipality or county commission operating a waterworks or electric power system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the Public Service Commission, showing the amount of revenues received from such waterworks or electric power system and the application of the same. At least once each year such municipality or county commission shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times.

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§8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section eight of this article, protect and enforce any and all rights granted hereunder or under any such ordinance, order or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance, order or trust indenture to be performed by the municipality or county commission, or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the waterworks or electric power system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said waterworks or electric power system on behalf of the municipality or county commission, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance or order pursuant to which such bonds have been issued or any trust indenture, or both.

**PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS;
CUMULATIVE AUTHORITY.**

§8-19-17. Grants, loans, advances and agreements.

As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality or county commission is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreement, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for the purpose of financing part or all of, the cost of acquisition, construction, establishment, extension or equipment of waterworks or electric power systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from or with any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, or the municipality's or county's financial obligations contained in such other agreements, which need not bear interest, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of or proceeds from the said waterworks system or electric power system or grants to the municipality or county commission from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and may be secured in the manner provided in sections eight, nine and sixteen of this article to secure bonds issued under the provisions of this article, but shall not otherwise be subject to the requirements of sections eleven and twelve of this article, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality or county and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources specified in this section.

§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks or electric power system or for the construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an existing electric power system as herein provided and for the issuance and sale of the bonds or the alternative methods of financing by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, order, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or the alternative methods of financing shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state division of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

As an alternative to the procedures hereinabove provided, any municipality or county commission is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks or an electric power system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

§8-19-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

WV Legislature

§8-19-21. Specifications for water mains and water service pipes.

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs or constructs water mains, shall ensure that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective July 1, 2007, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the 2008 regular session of the Legislature. A permit or other written approval shall be obtained from the Department of Health for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia Code as amended: *Provided, however*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility: *Provided further*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health.

§8-19-22. Identification requirement for fire hydrants that are inoperable or unavailable for use in emergency situations.

(a) The owner or operator of a fire hydrant or any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located, shall mark the fire hydrant or device, as set out in subsection (b) of this section, if the owner or operator has actual knowledge that the fire hydrant or device is inoperable or is unavailable for use by an entity providing fire suppression services in a fire emergency.

(b) To mark the fire hydrant or device, the owner or operator of the fire hydrant or device shall:

(1) Paint the fire hydrant or device black if the fire hydrant or device is inoperable or unavailable for use; or

(2) Place a black tarp over the fire hydrant or device if the device is temporarily inoperable or temporarily unavailable for use in a fire emergency, for a period not to exceed fourteen days.

(c) For the purposes of this section, the word "inoperable" means a fire hydrant that does not produce water flow when activated.