WEST VIRGINIA CODE CHAPTER 8 ARTICLE 20

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PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS.

§8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include 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; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping

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stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, convenient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination.

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§8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.

(a) Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system either wholly within or partly within and partly without the corporate limits thereof under the provisions of this article, and any municipality owning and operating a waterworks and sewerage system, but not a stormwater system, may acquire, construct, establish and equip the stormwater system which it does not then own and operate, and such municipality may provide by ordinance that when such stormwater system shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system, sewerage system, and stormwater system, may by ordinance combine the same into a single undertaking under the provisions of this article. However, no municipality may acquire, construct, establish and equip or thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) Any municipality which has combined its waterworks, sewerage system and stormwater systems under the provisions of this article, or pursuant to the provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to any of the systems, any combination thereof, or all of the waterworks, sewerage and stormwater systems of said combined waterworks, sewerage and stormwater system, and may finance the acquisition, construction, establishment and equipment thereof, or the construction or extensions, additions, betterments and improvements thereof by the issuance of revenue bonds under the provisions of this article.

(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer or stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Stormwater system" means a stormwater system in its entirety or any integral part

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thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater system" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(2) "Combined waterworks, sewerage and stormwater system" means a waterworks, sewerage and stormwater system which a municipality determines by ordinance to operate in combination.

(3) "Combined system" means either a combined waterworks, sewerage and stormwater system, or a combined waterworks and sewerage system.

(4) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems, and shall include and not be limited to public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

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§8-20-1b. Cooperation with other governmental units.

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the State of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof.

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§8-20-1c. Severance of combined system.

Any municipality which has combined its waterworks and sewerage systems or waterworks, sewerage and stormwater systems, under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined system into separate systems.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined system, or any part thereof, are outstanding, then the municipality must provide in said ordinance that the severance of the combined system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia Municipal Bond Commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the Municipal Bond Commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the Municipal Bond Commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of the committee, board or commission, and the creation of other committees, boards or commissions as may be required by law.

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§8-20-2. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any system within a combined system, or a combined system, or for the purpose of constructing any additions, betterments or improvements to any system within a combined system, or a combined system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any system within a combined system, or combined system, under the provisions of this article, the municipality 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 complete privately owned waterworks system may not be exercised without prior approval of the Public Service Commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of the municipality a municipal waterworks system or a combined system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined system in the municipality or within the proposed extension of the system, unless, except in the case of a stormwater system, a certificate of public convenience and necessity therefor shall have been issued by the Public Service Commission: Provided, however, That the power of eminent domain provided in this section shall not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

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§8-20-3. Ordinance describing project; contents.

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined system any existing waterworks system or any existing sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall provide that it or they be so included in the combined system and shall describe in a general way such existing waterworks or sewerage system or both, or, if applicable, any existing stormwater system, or any of them, or all of them, to be included in the combined system. The ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them. The ordinance shall determine the period of usefulness of the contemplated project.

If it is intended to acquire, construct, establish and equip a combined system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of the combined system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed.

The ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with the bonds considered advisable. The ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

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§8-20-4. Publication of abstract of ordinance and notice; hearing.

After the ordinance for any project under the provisions of this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, 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 such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body upon a certain date, which shall not be 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 of such abstract and notice, and present protests and that a certified copy of the ordinance 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 shall deem 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, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

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§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any system within a combined system, or a combined system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to any of the systems of said combined system, or all of them, any such municipality may issue revenue bonds under the provisions of this article.

All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. The bonds may be in denomination or denominations, may be in such form, either coupon or registered, may carry registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

The bonds and the interest thereon, together with all properties and facilities of the municipality owned or used in connection with the combined system, and all the moneys, revenues and other income of such municipality derived from the combined system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Bonds may be sold in such manner as the governing body shall determine.

If any bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost to the municipality of the proceeds of the bonds may not exceed thirteen percent per annum computed to maturity according to the standard table of bond values.

If the governing body of the municipality determines to sell any revenue bonds of such combined system for refunding purposes, the proceeds of the bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby.

In case any officer whose signature appears on the bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he or she had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance

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authorizing the issuance of the bonds. The bonds shall have all the qualities of negotiable instruments under the laws of this state.

Whenever a waterworks and sewerage system or stormwater system, if applicable, is included in a combined system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of the waterworks or the sewerage system or stormwater system, if applicable, or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article.

Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system, or stormwater system, if applicable, included in a combined system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier.

Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but each bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.

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§8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined system, and the bonds may not in any event constitute an indebtedness of such municipality 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 the municipality within any Constitutional or statutory provision or limitation. The ordinance 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.

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§8-20-7. Lien of bondholders.

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. However, no lien may attach to any portion of any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five hereof. Any revenue bonds so issued in payment for an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.

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§8-20-8. Covenants with bondholders.

Any ordinance 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 municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of the bonds as to:

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

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

(c) The fixing, establishing and collecting of rates, fees or charges for the use of the services and facilities of the combined system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved 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 combined system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of bonds;

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

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined system, between bonds payable from the 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 defaults may be declared cured and the acceleration of the maturity of the bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined system and restrictions and limitations upon expenditures for the purposes, and the manner of adoption,

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modification, repeal or amendment thereof, including the approval of the budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon the combined 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 undertaking 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 ordinance or trust indenture may also contain other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities 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 covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities 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.

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§8-20-9. Operating contract.

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

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§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact, and enforce all necessary rules for the repair, maintenance, operation, and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact, and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort, and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, properly collecting and controlling the stormwater as is reasonably possible to do: *Provided,* That no municipality may make, enact, or enforce any rule, regulation, or ordinance regulating any highways, road or drainage easements, or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees, or charges for such purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance, and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees, or charges shall be established, revised, and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees, or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article: *Provided,* That the notice given by the municipality 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 required for the approval of the change in rates or charges.

(3) 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. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of $100 or two twelfths of the average annual usage of the

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applicant's specific customer class, whichever is greater, to secure the payment of water and sewage 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, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to $100 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 12 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 to be set by the Public Service Commission: *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 governing body. Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20 days after they become due, 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 terminate water services to a delinquent user of either water or sewage facilities, or both, 10 days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however,* That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission requires 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) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid for a period of 20 days after they become due, the user of the services and facilities provided shall be delinquent and the municipality or governing body may apply any deposit against any delinquent fee. The user is liable until such time as all rates, fees, and charges are fully paid.

(c) All rates, fees, or charges for water service, sewer service and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, 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. The municipality has the plenary power and authority to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and reasonable attorney's fees: *Provided,* That an owner of real property may not be held liable for the delinquent rates, fees, or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees, or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to filing an action in magistrate court for collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its

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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.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees, or charges for which a lien is authorized by this section except through a civil action 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 has exhausted all other remedies for collection of debts with respect to such delinquencies prior to bringing the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency has been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

(f) Notwithstanding any other provision contained in this article, a municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines, or acts are not contrary to any rules or orders of the Public Service Commission.

(g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct violation of the municipal stormwater ordinance or regulation, the municipality may correct or have the corrections of the violation made and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees, or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

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§8-20-11. Discontinuance of water service for nonpayment of rates or charges.

Any municipality 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 service of the combined system for the nonpayment of the rates, fees or charges for said water service or sewer service, or both, or, if applicable, stormwater service, or any combination thereof, or all of them.

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§8-20-11a. Governmental entities subject to established rates.

The municipality and any county government, state government and federal government served by the services of the combined system shall be subject to the same rates, fees or charges established in this article or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity, and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be part of the revenue of the combined system as defined in this article, and be applied as provided in this article, for the application of such revenues. However, no rates, fees or charges for combined services or stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

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§8-20-12. Use of revenues; sinking fund.

All revenues derived from the operation of any combined system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any bonds are issued shall pledge the revenues derived from the combined 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 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 pursuant to which the bonds have been issued: Provided, That payments 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 directly to the United States of America or said agency or department thereof.

WV Legislature

§8-20-13. System of accounts; audit.

Any municipality operating a combined 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 the combined system and the application of the same. At least once each year the municipality shall cause the accounts to be properly audited, and a report of the audit shall be open to the public for inspection at all reasonable times.

WV Legislature

§8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system.

WV Legislature

§8-20-15. 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 seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates, fees or charges for services rendered by the combined system.

If there be default in the payment of the principal of or interest upon any of bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates, fees 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 the receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which the bonds have been issued or trust indenture, or both.

WV Legislature

§8-20-16. Grants, loans and advances.

Any municipality 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, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from 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, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality 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 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. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

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

WV Legislature

§8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for and for the issuance and sale of the bonds by this article authorized, and is 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 undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any undertaking or to the issuance or sale of such bonds is 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 bureau of public health and the Division of Environmental Protection remain unaffected by this article: Provided, however, That no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

WV Legislature

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.

(a) As an alternative to the procedure provided in this article, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined system or to construct, maintain and operate additions, betterments and improvements thereto, 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 of a portion of the governing body, or of a board or commission appointed by the 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.

However, no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) In the event that the waterworks or sewerage system or both, or if applicable, stormwater services, are in existence prior to the creation of the combined system, and the waterworks or sewerage system or both, and if applicable, stormwater services, are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this section is to be followed with respect to the supervision and control of the combined system, the governing body may by ordinance, after the creation of the combined system, provide:

(1) The manner of and procedure for transferring supervision and control from each separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined system; or

(2) The manner of and procedure for combining each separate committee, board or commission into one committee, board or commission and transferring thereto supervision and control as aforesaid.

WV Legislature

§8-20-19. 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