WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 739

SENATORS SWOPE, CLEMENTS, MAYNARD, AND CLINE,

original sponsors

[Passed March 7, 2020; in effect 90 days from passage]
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1 AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to
3 amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code;
4 to amend and reenact §16-13A-9 of said code; to amend and reenact §24-2-1, §24-2-4a,
5 and §24-2-11 of said code; to amend said code by adding thereto a new article, designated
6 §24-2H-1, §24-2H-2, §24-2H-3, §24-2H-4, §24-2H-5, §24-2H-6, §24-2H-7, §24-2H-8, and
7 §24-2H-9; and to amend and reenact §31-15A-9 of said code, all relating to authorizing
8 the Public Service Commission to protect the consumers of distressed and failing water
9 and wastewater utilities by ordering various corrective measures up to and including
10 acquisition of a failing utility by a capable water or wastewater utility; clarifying Public
11 Service Commission jurisdiction over water and sewer utilities owned by political
12 subdivisions; establishing uniformity in the class of publications required by municipalities
13 and public service districts for the revision in rates; providing a time period for the filing of
14 and resolution of complaints filed at the Public Service Commission regarding actions of
15 public service districts and municipalities; cleaning up language regarding reference to
16 other sections of the code regarding notice requirements for municipal utilities; regarding
17 time period pertaining to the filing of appeals and the resolution of appeals for rate and
18 construction projects decided by county commissions; adding language to allow the
19 commission to order the acquisition of failing water and wastewater utilities; and allowing
20 water and/or wastewater utilities access to public funds at below market-rates and grants
21 to repair, replace, and improve acquired failing utilities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED
RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL
OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.
§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system, or other public utility and a majority of not less than 60 percent of the members of the governing body thereof determines it for the best interest of the municipality that the utility be sold or leased, the governing body may so sell or lease the gas system, electric system, waterworks system, sewer system, or other public utility upon such terms and conditions as the governing body in its discretion considers in the best interest of the municipality: Provided, That the sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code, in a newspaper published and of general circulation in the municipality, the publication to be made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than 60 percent of the members of the governing body, shall have full power and authority to proceed to execute or effect the sale or lease in accordance with the terms and conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: Provided, however, That if at any time after the approval and before the execution of the authority under the ordinance, any person should present to the governing body an offer to buy the public utility at a price which exceeds by at least five percent the sale price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved as aforesaid, the governing body shall have the power to accept the subsequent offer, and to make the sale or the lease to the person making the offer, upon approval of the offer by a majority of not less than 60 percent of the members of the governing body; but, if a sale shall have been approved by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have
the authority to accept the same upon approval of the offer by a majority of not less than 60 percent of the members of the governing body. The person making the proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than 25 percent of the proposed bid, conditioned to carry the proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from the sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of the sale or lease may be applied in payment and discharge of any indebtedness created in respect to the public utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of firefighting equipment and buildings for housing the equipment, a municipal building, or city hall, and the necessary land upon which to locate the same, for capital investments in public works projects, vehicles and equipment and law-enforcement vehicles and equipment, for the demolition of dilapidated and abandoned buildings, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like permanent improvements, for fulfilling municipal pension and other post-employment benefit obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the payment of the indebtedness, the surplus shall be used as aforesaid.

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

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART VI. IMPOSITION OF RATES, FEES, OR CHARGES.

§8-16-18. Rates, fees, or charges for services rendered by works.

The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees, or charges for the use and
services rendered, or the improvement or protection of property, not to include highways, road
and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the
West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person
using the same, receiving the services thereof, or owning the property improved or protected
thereby, and may readjust rates, fees, or charges from time to time.

When two or more municipalities take joint action under the provisions of this article, the
rates, fees, or charges shall be established by each participating municipality, with the
concurrence of the other participating municipality or municipalities as to the amount of the rates,
fees or charges, and such rates, fees, or charges may be the same with respect to each
municipality, or they may be different.

Rates, fees, or charges heretofore or hereafter established and maintained for the
improvement or protection of property, not to include highways, road and drainage easements,
and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of
Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by
the person owning the property improved or protected thereby, shall be collectible and
enforceable from the time provided in any such ordinance, any provision of this or any other law
to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are
nearing completion and the governing body is reasonably assured that the works will be
completed and placed in operation without unreasonable delay.

All rates, fees, or charges shall be sufficient in each year for the payment of the proper
and reasonable expenses of repair (including replacements), maintenance and operation of the
works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues
collected pursuant to the provisions of this section are considered the revenues of the works. No
such rates, fees, or charges may be established until after a public hearing at which all the users
of the works and owners of the property served, or to be served thereby, and others interested,
shall have an opportunity to be heard concerning the proposed rates, fees or charges.
After introduction of the proposed ordinance fixing the rates, fees, or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publishing the same as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code, and the publication area for the publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest is required.

After such hearing the ordinance establishing rates, fees or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest.

The rates, fees, or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or adjustment of rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established as provided in this section. The aggregate of the rates, fees, or charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments.

If any rate, fee or charge so established is not paid within 30 days after the same is due, the amount thereof, together with a penalty of 10 percent and reasonable attorney’s fees, may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of rates, fees, or charges due for services rendered, such rates, fees or charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under §8-16-7 of this code, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws
relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to pay for the same when due, the board may discontinue such service without notice.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.**

§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.

ARTICLE 20. COMBINED SYSTEMS.

§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 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 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.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit;
reconnecting deposit; tenant’s deposit; change or readjustment; hearing; lien and
recovery; discontinuance of services.

A governing body has the power and duty, by ordinance, to establish and maintain just
and equitable rates, fees, or charges for the use of and the service rendered by:
(a) Sewerage works, to be paid by the owner of each lot, parcel of real estate or building that is connected with and uses the works by or through any part of the sewerage system of the municipality or that in any way uses or is served by the works; and

(b) Stormwater works, to be paid by the owner of each lot, parcel of real estate or building that in any way uses or is served by the stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust the rates, fees, or charges from time to time. However, no rates, fees, or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(d) All new applicants for service shall indicate to the 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.

(e) The governing body 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 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 at the time of disconnection or termination of service, service may not be reconnected or reinstated by the 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 governing body. After 12 months of prompt payment history, the 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 governing body is not required to return the deposit until the time the tenant discontinues service with the 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. The user is liable until all rates, fees, and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities 10 days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: 

Provided, however, That nothing contained within the rules of the Public Service Commission may require agents or employees of the governing body to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(f) The rates, fees, or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees, or charges may be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees, or charges.

(h) After introduction of the ordinance fixing the rates, fees, or charges, and before the same is finally enacted, notice of the hearing, setting forth the proposed schedule of rates, fees, or charges, shall be given by publication as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code and the publication area for the publication shall be the municipality. The first publication shall be made at least five days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees, or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees, and charges shall be kept on file in the office of the board having charge of the operation of the works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates,
fees, or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of the rates, fees, or charges may be made in the same manner as the rates, fees, or charges were originally established as hereinbefore provided: Provided, That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees, or charges shall always be sufficient for the expense of operation, repair and maintenance and for the sinking fund payments.

(k) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the premises served by the works. If any service rate, fee, or charge is not paid within 20 days after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney’s fee, may be recovered by the board in a civil action in the name of the municipality. The lien may be foreclosed against the lot, parcel of land or building in accordance with the laws relating thereto. Where both water and sewer services are furnished by any municipality to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of 20 days after they become due, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting the rates, fees, or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water, sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees, or charges for water, sewer,
and stormwater facilities, including reasonable interest and penalty charges, have been paid in full, as long as the actions are not contrary to any rules or orders of the Public Service Commission: Provided, That nothing contained within the rules of the Public Service Commission may be considered 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.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a)(1) The board may make, enact, and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection, and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees, and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation, and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article, and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees, and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial, and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B), and (C) of this subdivision; or

(E) Any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and
extent of the services and facilities furnished. However, no rates, fees, or charges for stormwater services may be assessed against highways, road, and drainage easements or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways.

(2) The board of a public service district with at least 4,500 customers and annual combined gross revenue of $3 million providing water or sewer service separately or in combination may make, enact, and enforce all needful rules in connection with the enactment or amendment of rates, fees, and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees, and charges by causing a notice of intent to effect such a change to be provided to the customers of the district for the month immediately preceding the month in which the contemplated change is to be considered at a hearing by the board. The notice shall include a statement that a change in rates, fees, and charges is being considered, the time, date, and location of the hearing of the board at which the change will be considered and that the proposed rates, fees, and charges are on file at the office of the district for review during regular business hours. The notice shall be printed on, or mailed with, the monthly billing statement, or provided in a separate mailing.

(B) Adequate prior public notice of the contemplated rates, fees, and charges by causing to be published, after the first reading and approval of a resolution of the board considering the revised rates, fees, and charges but not less than one week prior to the public hearing of the board on the resolution, as a Class I legal advertisement, of the proposed action, in compliance with the provisions of §59-3-1 et seq. of this code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall summarize the current rates, fees, and charges and the proposed changes to said rates, fees, and charges; the date, time, and place of the public hearing on the resolution approving the revised rates, fees, and charges and the place
or places within the district where the proposed resolution approving the revised rates, fees, and charges may be inspected by the public. A reasonable number of copies of the proposed resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed revised rates, fees, and charges.

(D) The resolution proposing the revised rates, fees, and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted by the board prior to, or at, the meeting at which the resolution is considered for adoption on the second reading.

(E) Rates, fees, and charges approved by resolution of the board shall be forwarded in writing to the county commission with the authority to appoint the members of the board. The county commission shall publish notice of the proposed revised rates, fees, and charges by a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event, this 45-day period shall be mandatory unless extended by the official action of both the board proposing the rates, fees, and charges, and the appointing county commission.

(F) Enactment of the proposed or modified rates, fees, and charges shall follow an affirmative vote by the county commission and shall be effective no sooner than 45 days following action. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.
(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subdivision may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: Provided, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission’s final action approving, modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall resolve the complaint: Provided, however, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered, or amended by the circuit court in an order to be followed in the future.

(3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant’s specific customer class or $50 with the district to secure the payment of service rates, fees, and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two
twelfths of the average annual usage for water service or $50 and the greater of a sum equal to
two twelfths of the average annual usage for wastewater service of the applicant’s specific
customer class or $50. In any case where a deposit is forfeited to pay service rates, fees, and
charges which were delinquent at the time of disconnection or termination of service, no
reconnection or reinstatement of service may be made by the district until another deposit equal
to the greater of a sum equal to two twelfths of the average usage for the applicant’s specific
customer class or $50 has been remitted to the district. After 12 months of prompt payment
history, the district shall return the deposit to the customer or credit the customer’s account at a
rate as the Public Service Commission may prescribe: Provided, That where the customer is a
tenant, the district is not required to return the deposit until the time the tenant discontinues service
with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished
remain unpaid for a period of 20 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 board may, under reasonable rules promulgated by the Public Service
Commission, shut off and discontinue water or gas services to all delinquent users of either water
or gas facilities, or both, 10 days after the water or gas services become delinquent: Provided,
however, That nothing contained within the rules of the Public Service Commission may be
considered to require any agents or employees of the board to accept payment at the customer’s
premises in lieu of discontinuing service for a delinquent bill.

(b) If any publicly or privately owned utility, city, incorporated town, other municipal
corporation or other public service district included within the district owns and operates separate
water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another
kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly
or privately owned utility, city, incorporated town or other municipal corporation or other public
service district shall covenant and contract with each other to shut off and discontinue the
supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer, and stormwater service has the right to terminate water service for delinquency in payment of water, sewer, or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: 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 shall be deemed to require any agents or employees of the public service districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Bureau for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses, dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment, and disposal of sewage and waste matters from the houses, dwellings, and buildings where there is gravity flow or transportation by any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,
dwellings, and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings’ exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance, and purchase of a pump or any other method approved by the Bureau for Public Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than 30 days after service of petition to the appropriate owners, tenants, or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant, or occupant of any house, dwelling, or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health from the house, dwelling, or building into the sewer facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and charges for services established under this article only after 30 days’ notice of the availability of the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner’s, tenant’s, or occupant’s specific customer class.

(e) The owner, tenant, or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district 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; (2) the
district’s authority has been properly expanded to operate and maintain a stormwater system; (3)
the district has made available a stormwater system where stormwater from the real property
affects or drains into the stormwater system; and (4) the real property is located in the Municipal
Separate Storm Sewer System’s designated service area. It is further hereby found, determined,
and declared that the mandatory use of the stormwater system is necessary and essential for the
health and welfare of the inhabitants and residents of the district and of the state. The district may
charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater
services established under this article only after 30 days’ notice of the availability of the
stormwater system has been received by the owner. 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.

(f) All delinquent fees, rates, and charges of the district for either water facilities, sewer
facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
the premises served of equal dignity, rank, and priority with the lien on the premises of state,
county, school, and municipal taxes. Nothing contained within the rules of the Public Service
Commission may require agents or employees of the public service districts to accept payment
at the customer’s premises in lieu of discontinuing service for a delinquent bill. In addition to the
other remedies provided in this section, public service districts are 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 delinquent water, sewer, stormwater, or gas bills. If the district collects the
delinquent account, plus reasonable costs, from its customer or other responsible party, the
district shall pay to the magistrate the normal filing fee and reasonable costs which were
previously deferred. In addition, each public service district may exchange with other public
service districts a list of delinquent accounts: 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 may any
lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of this code, is exempt from the provisions of this section.

(h) Notwithstanding any code provision to the contrary, a public service district may accept payment for all fees and charges due, in the form of a payment by a credit or check card transaction or a direct withdrawal from a bank account. The public service district may set a fee to be added to each transaction equal to the charge paid by the public service district for use of the credit or check card or direct withdrawal by the payor. The amount of the fee shall be disclosed to the payor prior to the transaction and no other fees for the use of a credit or check card or direct withdrawal may be imposed upon the payor and the whole of the charge or convenience fee shall be borne by the payor: Provided, That to the extent a public service district desires to accept payments in the forms described in this subsection and does not have access to the equipment or receive the services necessary to do so, the public service district shall first obtain three bids for services and equipment necessary to affect the forms of transactions described in this subsection and use the lowest qualified bid received. Acceptance of a credit or check card or direct withdrawal as a form of payment shall comport with the rules and requirements set forth by the credit or check card provider or banking institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:
Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1 et seq. of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, however, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: Provided further, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates, and charges of the producer and for such length of time as the commission may consider to be proper.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of $3 million or more that are political subdivisions of the state is limited to:
(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas and contested utility combinations: Provided, That any request for an investigation related to such a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary is filed: Provided, however, That the disputed rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered or, amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission’s exercise of the powers enumerated in this section and the commission shall resolve these complaints: Provided, That
any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: Provided, however, That whenever the commission finds any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable: Provided further, That if the matter complained of would affect rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set aside, altered or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;
(2) The area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: Provided, That the owner or operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
electric generating facility as is described in this subdivision for which a siting certificate has been
issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not
otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
respect to the facility except for the making or constructing of a material modification thereof as
provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall,
before making or constructing a material modification of the facility that is not within the terms of
any certificate of public convenience and necessity or siting certificate previously issued for the
facility or an earlier material modification thereof, obtain a siting certificate for the modification
from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the
jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience
and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
described in this subsection or to make or construct a material modification of the electric
generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
application for the certificate of public convenience and necessity was filed with the commission
prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of
the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
by and described in this subsection do not affect or limit the commission’s jurisdiction over
contracts or arrangements between the owner or operator of the facility and any affiliated public
utility subject to the provisions of this chapter.

(e) The commission does not have jurisdiction of Internet protocol-enabled service or
voice-over Internet protocol-enabled service. As used in this subsection:
(1) “Internet protocol-enabled service” means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) “Voice-over Internet protocol service” means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user’s location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user’s location.

(3) The term “voice-over Internet protocol service” includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission has jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission has jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.


(a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least 4,500 customers and annual gross revenue of $3 million or more from its separate or combined services, shall change, suspend, or annul any rate, joint rate, charge, rental, or classification except after 30 days’ notice to the commission and the public, which notice
shall plainly state the changes proposed to be made in the schedule then in force and the time
when the changed rates or charges shall go into effect; but the commission may enter an order
suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by
printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and
kept open to public inspection: Provided, That the commission may, in its discretion, and for good
cause shown, allow changes upon less time than the notice herein specified, or may modify the
requirements of this section in respect to publishing, posting and filing of tariffs, either by particular
instructions or by general order.

(b) Whenever there is filed with the commission any schedule stating a change in the rates
or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint
classification or any new individual or joint regulation or practice affecting any rate or charge, the
commission may, either upon complaint or upon its own initiative without complaint, enter upon a
hearing concerning the propriety of the rate, charge, classification, regulation, or practice; and, if
the commission so orders, it may proceed without answer or other form of pleading by the
interested parties, but upon reasonable notice, and, pending the hearing and the decisions
thereon, the commission, upon filing with the schedule and delivering to the public utility affected
thereby a statement in writing of its reasons for the suspension, may suspend the operation of
the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not
for a longer period than 270 days beyond the time when the rate, charge, classification, regulation,
or practice would otherwise go into effect; and after full hearing, whether completed before or
after the rate, charge, classification, regulation, or practice goes into effect, the commission may
make the order in reference to the rate, charge, classification, regulation, or practice as would be
proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had
become effective: Provided, That in the case of a public utility having 2,500 customers or less and
which is not a political subdivision and which is not principally owned by any other public utility
corporation or public utility holding corporation, the commission may suspend the operation of the
schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 120 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and in the case of a public utility having more than 2,500 customers, but not more than 5,000 customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 150 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and in the case of a public utility having more than 5,000 customers, but not more than 7,500 customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a longer period than 180 days beyond the time when the rate, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the commission may make the order in reference to the rate, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had become effective. Provided, however, That, in the case of rates established or proposed that increase by less than 25 percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to §16-13A-9 of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than 25 percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission.
Notwithstanding the provisions of subsection (e) of this section, the public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least 14 days prior to the effective date of the increased rates. Any refund determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer’s account for a period of up to six months after entry of the commission’s final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission’s final order shall be directly refunded to the customer by check: Provided further, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, the rate, charge, classification, regulation, or practice shall go into effect at the end of the period not subject to refund: And provided further, That if any such rate, charge, classification, regulation, or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce, or modify any such proposed rate, charge, classification, regulation, or practice, in whole or in part, but any such disapproval, reduction, or modification shall not be deemed to require a refund to the customers of the utility as to any rate, charge, classification, regulation, or practice so disapproved, reduced, or modified. The fact of any rate, charge, classification, regulation, or practice going into effect by reason of the commission’s failure to act thereon does not affect the commission’s power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation, or practice. Any rate, charge, classification, regulation, or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified, or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations, or
practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation, or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation, or practice shall be upon the public utility making application for the change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for the increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design, and conservation as reported by the commission under §24-1-1(c) of this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in the case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation, or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Other than as provided in subsection (b) of this section relating to public service districts, where more than 20 members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if the notice is published as a Class II legal advertisement in compliance with §59-3-1 et seq. of this code and the publication area for the publication shall be the community where the majority of the resident
members of the public affected by the change reside or, in case of nonresidents, have their
principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the
discretion of the commission, in cases in which the commission determines that a temporary or
interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
upon which these rates are based are subject to modification by the commission or another
regulatory commission and to refund to the public utility. In that case the commission may require
the public utility to enter into a bond in an amount deemed by the commission to be reasonable
and conditioned upon the refund to the persons or parties entitled thereto of the amount of the
excess if the rates so put into effect are subsequently determined to be higher than those finally
fixed for the utility.

(g) No utility regulated under the provisions of this section may make application for a
general rate increase while another general rate application is pending before the commission
and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
provisions of this subsection shall not be construed so as to prohibit any such rate application
from being made while a previous application which has been finally acted upon by the
commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person or corporation other than a political subdivision of the state
providing water or sewer services and having at least 4,500 customers and annual gross
combined revenues of $3 million dollars or more may not begin the construction of any plant,
equipment, property or facility for furnishing to the public any of the services enumerated in section
one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any
municipality or other governmental agency, except ordinary extensions of existing systems in the
usual course of business, unless and until it shall obtain from the Public Service Commission a
certificate of public convenience and necessity authorizing the construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no substantial protest is received within 30 days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within 30 days, to the application. The notice shall be published as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least 4,500 customers and combined annual gross revenue of $3 million dollars or more shall give the commission at least 30 days’ notice of the filing of any application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or §24-2-11a of this code within 270 days of the filing of the application and within 90 days after final submission of any such application for decision following a hearing: Provided, That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the commission shall render its final decision within 225 days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to §31-15A-1 et seq. of this code within 180 days after filing of the application.
application: Provided, That if a substantial protest is received within 30 days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within 270 days or 225 days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or §24-2-11a of this code is greater than $50 million, the commission shall render its final decision on any such application filed under the provisions of this section or §24-2-11a of this code within 400 days of the filing of the application and within 90 days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules it considers proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

1. Natural gas sold by a producer, pipeline, or other seller to the person; or
2. Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.
(k) Any public utility, person, or corporation proposing any electric power project that requires a certificate under this section is not required to obtain the certificate before applying for or obtaining any franchise, license, or permit from any municipality or other governmental agency.

(I) Water or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and combined gross revenues of $3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide adequate prior public notice of the contemplated construction and proposed changes to rates, fees and charges, if any, as a result of the construction to both current customers and those persons who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month immediately preceding the month in which an ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, is to be before the governing body for the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, in compliance with §59-3-1 et seq. of this code. The publication area for publication shall be all territory served by the political subdivision. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction; a summary of the current rates, fees, and charges, and proposed changes to said rates, fees, and charges, if any; the date, time and place of the public hearing on the ordinance
or resolution approving the proposed construction and proposed changes to rates, fees, and
charges, if any; and the place or places within the political subdivision where the ordinance or
resolution approving the proposed construction and proposed changes to rates, fees, and
charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance
or resolution shall be kept at the place or places and be made available for public inspection. The
notice shall also advise that interested parties may appear at the public hearing before the political
subdivision and be heard with respect to the proposed construction and the proposed rates, fees,
and charges, if any.

(4) The ordinance or resolution on the proposed construction and the proposed rates,
fees, and charges shall be read at two meetings of the governing body with at least two weeks
intervening between each meeting. The public hearing may be conducted prior to, or at, the
meeting of the governing body at which the ordinance or resolution approving the proposed
construction is considered on second reading.

(5) Enactment or adoption of the ordinance or resolution approving the proposed
construction and the proposed rates, fees, and charges shall follow an affirmative vote of the
governing body and the approved rates shall go into effect no sooner than 45 days following the
action of the governing body. If the political subdivision proposes rates that will go into effect prior
to the completion of construction of the proposed project, the 45-day waiting period may be waived
by public vote of the governing body only if the political subdivision finds and declares the political
subdivision to be in financial distress such that the 45-day waiting period would be detrimental to
the ability of the political subdivision to deliver continued and compliant public services: Provided,
That, if the political subdivision is a public service district, in no event may the rate become
effective prior to the date that the county commission has entered an order approving or modifying
the action of the public service district board.

(6) Rates, fees, and charges approved by an affirmative vote of the public service district
board shall be forwarded in writing to the county commission with the authority to appoint the
members of the public service board of the public service district. The county commission shall, within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, the proposed rates, fees, and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees, and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with §59-3-1 et seq. of this code, of the meeting where it shall consider the proposed increases in rates, fees, and charges no later than one week prior to the meeting date.

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by 25 percent of the customers served by the public service district when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subsection may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: Provided, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission’s final action approving, modifying or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject the rates, fees, and charges, and the circuit court shall resolve said complaint: Provided, however, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to
act, shall remain in full force and effect, until set aside, altered, or amended by the circuit court in an order to be followed in the future.

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

§24-2H-1. Short title.

This article shall be known and cited as the Distressed and Failing Utilities Improvement Act.

§24-2H-2. Legislative findings.

(a) The provision of safe drinking water and the collection and treatment of wastewater has resulted in a drastic reduction in the incidence of disease, increase in life expectancy, and other major public health advancements.

(b) Development of water and wastewater infrastructure has advanced economic development through increased production and productivity within West Virginia’s economic sectors and commercial expansion geographically throughout the state.

(c) A number of water and wastewater utilities face substantial capital investment needs to maintain and replace aging infrastructure with limited financial resources.

(d) For some water and wastewater utilities, adequately addressing infrastructure needs may adversely affect their ability to maintain reasonable rates and ability to borrow funds to address such needs.

(e) Many water and wastewater utilities have experienced a loss of customers resulting from decline in populations served which has created an additional rate burden on the remaining population.

(f) Failure to timely address infrastructure needs has resulted in the inability of water and wastewater utilities to adequately serve customers and maintain regulatory compliance, thereby threatening human health and hindering economic growth.
(g) West Virginia needs a comprehensive plan to confront the financial, organizational, and regulatory challenges faced by water and wastewater utilities in the state to ensure that all citizens of West Virginia have access to safe drinking water and adequate and safe wastewater treatment.


A “distressed utility” is a water or wastewater utility, that for financial, operational or managerial reasons:

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

(B) Fails to comply within a reasonable period of time with any final, nonappealable order of the Department of Environmental Protection, Bureau for Public Health or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure and the collection and treatment of wastewater;

(2) Is no longer able to provide adequate, efficient, safe and reasonable utility services; or

(3) Fails to timely pay some or all of its financial obligations, including, but not limited to, its federal and state tax obligations and its bond payments to the West Virginia Water Development Authority, the United States Department of Agriculture (USDA) or other bondholders; fails to maintain its debt service reserve; or fails to submit an audit as required by its bond or loan documents or state law.

“Failing water or wastewater utility” means a public utility that:

(1) Meets the definition of a distressed water or wastewater utility; and either:

(2) Has not, after a reasonable time period, been stabilized and improved by corrective measures put in place under §24-2H-4 of this code; or
(3) Has had the requirements of §24-2H-4 of this code suspended for good cause shown by an order of the commission.

"Capable proximate water or wastewater utility" means a public utility which regularly provides adequate, safe and reasonable service of the same type as the distressed utility and is situated close enough to the facilities of a distressed utility that operational management is reasonable, financially viable, and nonadverse to the interests of the current customers of the nondistressed utility.


Annually, the commission shall prepare a list of water and wastewater utilities that appear to be financially unstable by reviewing annual reports, rate case filings and other financial data available to it. Commission staff shall contact each utility placed on the list and provide advice and assistance in resolving any financial instability or managerial or operational issues that are contributing to the utility’s financial instability.

§24-2H-5. Determination of whether a utility qualifies as a “distressed utility”, “failing utility”, or a “capable proximate utility”.

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

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

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

(3) The opinion and advice, if any, of the Department of Environmental Protection and the Bureau for Public Health as to steps that may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service;
(4) The status of the utility’s bond payments and other financial obligations;
(5) The status and result of any corrective measures previously put into place under §24-2H-4 of this code; and
(6) Any other relevant matter.

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

(1) The financial, managerial and technical ability of all proximate public utilities providing the same type of service;
(2) Expansion of the franchise or operating area of the acquiring utility to include the service area of the distressed utility;
(3) The financial, managerial, operational and rate demands that may result from the current proceeding and the cumulative impact of other demands where the utility has been identified as a capable proximate utility; and
(4) Any other relevant matter.

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

(a) A proceeding under this article may be initiated by the commission on its own motion, or by the staff of the commission, or any other person or entity having a legal interest in the financial, managerial or operational condition of the utility, by filing a petition with the commission. In any such petition, the utility shall be named as the respondent. The commission shall include as additional parties any capable proximate public and private utilities that may be able to acquire the utility.

(b) The commission shall hold an evidentiary and public hearing(s) in the utility’s service area. The commission shall give notice of the time, place and subject matter of the hearing as follows:
(1) A Class I legal publication in a qualified newspaper pursuant to §59-3-2(a) of this code in the county or counties where the utility is located to take place no more than 10 days before the date of the hearing;

(2) Issuance of a press release;

(3) Written notice by certified mail or registered mail to:

(A) The utility;

(B) The Consumer Advocate Division;

(C) Capable proximate public or private utility(s) that were made parties to the proceeding;

and

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

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

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

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

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

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

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

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

(2) Operation of the distressed utility by another public utility or management or service
company under a mutually agreed arms-length contract;

(3) Appointment of a receiver to assure the provision of adequate, efficient, safe and
reasonable service and facilities to the public pursuant to §24-2-7(b) of this code;

(4) Merger of the water or wastewater utility with one or more other public utilities, subject
to the approval of the applicable county commission(s) or municipal government;

(5) The acquisition of the distressed utility through a mutual agreement made at arms-
length; and

(6) Any viable alternative other than an ordered acquisition by a capable proximate utility.

(c) The commission shall provide a list of utilities designated by a final order of the
commission as a distressed or failing utility to the Legislature as part of its annual Management
Summary Report beginning in the 2021 reporting period and annually thereafter. The commission shall provide the same list to the Water Development Authority and the Infrastructure and Jobs Development Council on or before January 31 of each year beginning in 2021.

§24-2H-8. Commission approval of operating agreement, acquisition price; rates for distressed and failing utilities; improvement plan; debt obligations; cost recovery.

(a) After an order has been entered pursuant to §24-2H-4 of this code, the distressed utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code to approve the necessary operating agreement if such alternative is directed by the commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to approve the purchase price of the acquisition. Where the parties are unable to agree on an acquisition price, the filing may request that an evidentiary hearing be held so that the commission may determine the acquisition price and any other issues related to the acquisition. The acquisition price must, at a minimum, satisfy all outstanding loans, tax obligations, required grant repayment, liens and indebtedness owed by the failing utility or the acquiring utility must agree to assume the indebtednesses if legally permitted. The acquiring utility shall consult with the lenders or lienholders regarding payment in full or the assumption, to the extent legally permissible, of any outstanding obligations of the failing utility.

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

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

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

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

(f) If the distressed or failing utility is a public service district, then the commission shall make a recommendation to the respective county commission(s) with regard to the acquisition of distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing utility is a municipal corporation, then the commission shall make a recommendation to the
respective municipal council with regard to the acquisition of distressed or failing utilities as
provided in §8-12-17 of this code.

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

§24-2H-9. Recovery of costs for acquisition, operation, repairs and improvements to
distressed or failing utility facilities.

The commission may approve an appropriate and reasonable cost recovery mechanism
to allow the capable proximate utility to recover its acquisition costs and projected cost of service
of operating, maintaining and improving the facilities of the failing water or wastewater utility or its
net costs incurred for operating, maintaining and improving the distressed utility under an
operating agreement. The cost recovery mechanism may include a surcharge or surcharges on
both acquired and existing customers if approved by the commission in a separate rate or tariff
proceeding which shall be considered by the commission on an expedited basis without the need
for a full base rate proceeding. Rate increments and surcharges established pursuant to this
section shall be subject to adjustment on an annual basis to reflect changes in costs, additional
projected capital and operating costs and true-up of any over or under recoveries of costs. Cost
recovery mechanisms may also include:

(1) A surcharge above existing rates that allows recovery of additional incremental cost
increases, net of contributions necessary to operate, maintain and improve the failing utility’s
service level to an acceptable level and into compliance with all applicable regulatory standards;

(2) An acquisition adjustment to private for-profit utilities as an incentive to acquire a failing
utility;

(3) An increased return on investment as an incentive to acquire a failing utility; or
(4) Any other incentive method proposed by the acquiring utility if the method is determined by the commission to be appropriate, reasonable and in the public interest.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements; West Virginia Infrastructure Lottery Revenue Debt Service Fund; use of funds for projects.

(a) The Water Development Authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the West Virginia Infrastructure Fund. This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the Water Development Authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the Water Development Authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the Water Development Authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds, or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the Water Development Authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the Water Development Authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with §31-15B-4 of this code; and (7) all proceeds derived from the sale of bonds issued pursuant to §31-15B-1 et seq. of this code.
Any money collected pursuant to this section shall be paid into the West Virginia Infrastructure Fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or §31-15B-1 et seq. of this code.

Amounts in the infrastructure fund shall be segregated and administered by the Water Development Authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the Water Development Authority, except that the Water Development Authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the Water Development Authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the Water Development Authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the Water Development Authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the Water Development Authority shall invest and reinvest the moneys subject to the limitations set forth in §31-18-1 et seq. of this code.

(c) To further accomplish the purposes and intent of this article and §31-15B-1 et seq. of this code, the Water Development Authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the Water Development Authority may not deposit into the restricted accounts more than 20 percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article.
unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the Water Development Authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the Water Development Authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceed shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement, or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Water Development Authority or other state, federal, or local bodies regarding the acquisition, construction, improvement, or operation of the infrastructure project or project and granting the Water Development Authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the Water Development Authority approving loan, loan guarantee, grant, or other assistance shall include a finding and determination that the requirements of this section have been met.
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(f) The interest rate on any loan to governmental, quasi-governmental, or not-for-profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not-for-profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The Water Development Authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts, and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants, and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the Commissioner of Finance and Administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature’s Joint Committee on Government and Finance.

(h) There is hereby created in the Water Development Authority a separate, special account which shall be designated and known as the West Virginia Infrastructure Lottery Revenue Debt Service Fund, into which shall be deposited annually for the fiscal year beginning July 1, 2011, and each fiscal year thereafter, the first $6 million transferred pursuant to §29-22-18d of this code and any other funds provided therefor: Provided, That such deposits and transfers are not subject to the reservations of funds or requirements for distributions of funds established by §31-15A-10 and §31-15A-11 of this code. Moneys in the West Virginia Infrastructure Lottery Revenue Debt Service Fund shall be used to pay debt service on bonds or notes issued by the Water Development Authority for watershed compliance projects as provided in §31-15A-17b of
this code, and to the extent not needed to pay debt service, for the design or construction of
improvements for watershed compliance projects. Moneys in the West Virginia Infrastructure
Lottery Revenue Debt Service Fund not expended at the close of the fiscal year do not lapse or
revert to the General Fund but are carried forward to the next fiscal year.

(i) The Water Development Authority shall establish a separate restricted account within
the infrastructure fund to be expended for the repair and improvement of failing water and
wastewater systems by nonprofit public utilities from grants approved by the council and
supported by recommendations from the Public Service Commission in accordance with the plan
developed under §24-2H-1 et seq. of this code. The restricted account shall be known as the
Distressed Utilities Account. Annually, the council may request the Water Development Authority
to transfer from the uncommitted loan balances for each year a total amount not to exceed $5
million to the restricted account to fund the grants approved by the council during that fiscal year.
Notwithstanding the provisions of §31-15A-10(b) of this code, the council may approve grants
from this account for up to 100 percent of the cost of failing utility repairs, replacements and
improvements and such grant along with other grants awarded by the council may exceed 50
percent of the total project cost: Provided, That at no time may the balance of the restricted
account exceed $5 million.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th Day of March, 2020.

Governor