

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]

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
2 system, a sewer system, or other public utility and a majority of not less than 60 percent of the
3 members of the governing body thereof determines it for the best interest of the municipality that
4 the utility be sold or leased, the governing body may so sell or lease the gas system, electric
5 system, waterworks system, sewer system, or other public utility upon such terms and conditions
6 as the governing body in its discretion considers in the best interest of the municipality: *Provided*,
7 That the sale or lease may be made only upon: (1) The publication of notice of a hearing before
8 the governing body of the municipality, as a Class I legal advertisement in compliance with §59-
9 3-1 *et seq.* of this code, in a newspaper published and of general circulation in the municipality,
10 the publication to be made not earlier than 20 days and not later than seven days prior to the
11 hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing
12 body, upon the approval of the sale or lease by a majority of its members of not less than 60
13 percent of the members of the governing body, shall have full power and authority to proceed to
14 execute or effect the sale or lease in accordance with the terms and conditions prescribed in the
15 ordinance approved as aforesaid, and shall have power to do any and all things necessary or
16 incident thereto: *Provided, however*, That if at any time after the approval and before the execution
17 of the authority under the ordinance, any person should present to the governing body an offer to
18 buy the public utility at a price which exceeds by at least five percent the sale price which shall
19 have been so approved and authorized or to lease the same upon terms which the governing
20 body, in its discretion, shall consider more advantageous to the municipality than the terms of the
21 lease which shall have been previously approved as aforesaid, the governing body shall have the
22 power to accept the subsequent offer, and to make the sale or the lease to the person making the
23 offer, upon approval of the offer by a majority of not less than 60 percent of the members of the
24 governing body; but, if a sale shall have been approved by the governing body as aforesaid, and
25 the subsequent proposition be for a lease, or, if a lease shall have been approved by the
26 governing body, and the subsequent proposition shall be for a sale, the governing body shall have

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

45 The requirements of this section shall not apply to the sale or lease of any part of the
46 properties of any such public utility determined by the governing body to be unnecessary for the
47 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.

1 The governing body shall have plenary power and authority and it shall be its duty, by
2 ordinance, to establish and maintain just and equitable rates, fees, or charges for the use and

3 services rendered, or the improvement or protection of property, not to include highways, road
4 and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the
5 West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person
6 using the same, receiving the services thereof, or owning the property improved or protected
7 thereby, and may readjust rates, fees, or charges from time to time.

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

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

22 All rates, fees, or charges shall be sufficient in each year for the payment of the proper
23 and reasonable expenses of repair (including replacements), maintenance and operation of the
24 works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues
25 collected pursuant to the provisions of this section are considered the revenues of the works. No
26 such rates, fees, or charges may be established until after a public hearing at which all the users
27 of the works and owners of the property served, or to be served thereby, and others interested,
28 shall have an opportunity to be heard concerning the proposed rates, fees or charges.

29 After introduction of the proposed ordinance fixing the rates, fees, or charges and before
30 the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such
31 rates, fees or charges, shall be given by publishing the same as a Class I legal advertisement in
32 compliance with §59-3-1 *et seq.* of this code, and the publication area for the publication shall be
33 such municipality or each such municipality, as the case may be. Said notice shall be published
34 at least five days before the date fixed in such notice for the hearing, which hearing may be
35 adjourned from time to time. No other or further notice to parties in interest is required.

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

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

48 If any rate, fee or charge so established is not paid within 30 days after the same is due,
49 the amount thereof, together with a penalty of 10 percent and reasonable attorney's fees, may be
50 recovered by the board in a civil action in the name of the municipality or municipalities, and in
51 the case of rates, fees, or charges due for services rendered, such rates, fees or charges, if not
52 paid when due, may, if the governing body so provide in the ordinance provided for under §8-16-
53 7 of this code, constitute a lien upon the premises served by such works, which lien may be
54 foreclosed against such lot, parcel of land or building so served, in accordance with the laws

55 relating to the foreclosure of liens on real property. Upon failure of any person receiving any such
56 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.**

1 Whenever a municipality or county commission, under the provisions of this article,
2 decides to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks
3 system or an electric power system, or to construct any additions, betterments, or improvements
4 to any waterworks or electric power system, it shall cause an estimate to be made of the cost
5 thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the
6 provisions of this article, which ordinance or order shall set forth a brief description of the
7 contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the
8 time and place of payment and other details in connection with the issuance of the bonds. The
9 bonds shall be in such form and shall be negotiated and sold in such manner and upon such
10 terms as the governing body of such municipality or county commission may, by ordinance or
11 order, specify. All the bonds and the interest thereon shall be exempt from all taxation by this
12 state, or any county, municipality or county commission, political subdivision or agency thereof.
13 Notwithstanding any other provision of this code to the contrary, the real and personal property
14 which a municipality or county has acquired and constructed according to the provisions of this
15 article, and any leasehold interest therein held by other persons, shall be considered public
16 property and shall be exempt from taxation by the state, or any county, municipality or other
17 levying body, so long as the same is owned by the municipality or county: *Provided*, That with
18 respect to electric power systems, this exemption for real and personal property shall be
19 applicable only for the real and personal property: (1) Physically situate within the municipal or

20 county boundaries of the municipality or county which acquired or constructed the electric power
21 system and there was in place prior to the effective date of the amendments to this section made
22 in the year 1992 an agreement between the municipality and the county commission for payments
23 in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board,
24 county commission, and any municipal authority within whose jurisdiction the electric power
25 system is or is to be physically situate. Notwithstanding anything contained in this statute to the
26 contrary, this exemption shall be applicable to any leasehold or similar interest held by persons
27 other than a municipality or county only if acquired or constructed with the written agreement of
28 the county school board, county commission and any municipal authority within whose jurisdiction
29 the electric power system is or is to be physically situate: *Provided, however,* That payments
30 made to any county commission, county school board or municipality in lieu of tax pursuant to
31 such an agreement shall be distributed as if the payments resulted from *ad valorem* property
32 taxation. The bonds shall bear interest at a rate per annum set by the municipality or county
33 commission, payable at such times, and shall be payable as to principal at such times, not
34 exceeding 50 years from their date, and at such place or places, within or without the state, as
35 shall be prescribed in the ordinance or order providing for their issuance. Unless the governing
36 body of the municipality or county commission shall otherwise determine, the ordinance or order
37 shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired,
38 constructed, established, extended or equipped, fix minimum rates or charges for water or
39 electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues
40 derived from the waterworks or electric power system for the purpose of paying the bonds and
41 interest thereon, which pledge shall definitely fix and determine the amount of revenues which
42 shall be necessary to be set apart and applied to the payment of the principal of and interest upon
43 the bonds and the proportion of the balance of the revenues, which are to be set aside as a proper
44 and adequate depreciation account, and the remainder shall be set aside for the reasonable and
45 proper maintenance and operation thereof. The rates or charges to be charged for the services

46 from the waterworks or electric power system shall be sufficient at all times to provide for the
47 payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and
48 when the same become due, and reasonable reserves therefor, and to provide for the repair,
49 maintenance and operation of the waterworks or electric power system, and to provide an
50 adequate depreciation fund, and to make any other payments which shall be required or provided
51 for in the ordinance or order authorizing the issuance of said bonds: *Provided further*, That the
52 notice given by the municipality or county commission for a change in rates or charges to be
53 charged for the services from the waterworks or electric power system shall be provided by Class
54 I legal advertisement in a newspaper of general circulation in its service territory not less than one
55 week prior to the public hearing of the governing body of the municipality or the county
56 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.

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
2 shall have plenary power and authority to make, enact, and enforce all necessary rules for the
3 repair, maintenance, operation, and management of the combined system of the municipality and
4 for the use thereof. The governing body of a municipality also has the plenary power and authority
5 to make, enact, and enforce all necessary rules and ordinances for the care and protection of any
6 such system for the health, comfort, and convenience of the public, to provide a clean water
7 supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if
8 applicable, properly collecting and controlling the stormwater as is reasonably possible to do:

9 *Provided*, That no municipality may make, enact, or enforce any rule, regulation, or ordinance
10 regulating any highways, road or drainage easements, or storm water facilities constructed,
11 owned or operated by the West Virginia Division of Highways.

12 (2) A municipality has the plenary power and authority to charge the users for the use and
13 service of a combined system and to establish required deposits, rates, fees, or charges for such
14 purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer services
15 respectively and, if applicable, the stormwater services, or combined rates, fees or for the
16 combined water and sewer services, and, if applicable, the storm water services. Such deposits,
17 rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the
18 cost of repair, maintenance, and operation of the combined system, provide an adequate reserve
19 fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds
20 issued under this article. Deposits, rates, fees, or charges shall be established, revised, and
21 maintained by ordinance and become payable as the governing body may determine by
22 ordinance. The rates, fees, or charges shall be changed, from time to time, as necessary,
23 consistent with the provisions of this article: *Provided*, That the notice given by the municipality
24 for a change in rates or charges to be charged for the services from the waterworks or electric
25 power system, shall be provided by Class I legal advertisement in a newspaper of general
26 circulation in its service territory not less than one week prior to the public hearing of the governing
27 body of the municipality required for the approval of the change in rates or charges.

28 (3) All new applicants for service shall indicate to the municipality or governing body
29 whether they are an owner or tenant with respect to the service location. An entity providing
30 stormwater service shall provide a tenant a report of the stormwater fee charged for the entire
31 property and, if appropriate, that portion of the fee to be assessed to the tenant.

32 (4) The municipality or governing body, but only one of them, may collect from all new
33 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
34 applicant's specific customer class, whichever is greater, to secure the payment of water and

35 sewage service rates, fees and charges in the event they become delinquent as provided in this
36 section. In any case where a deposit is forfeited to pay service rates, fees and charges which
37 were delinquent and the user's service is disconnected or terminated, service may not be
38 reconnected or reinstated by the municipality or governing body until another deposit equal to
39 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
40 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
41 prompt payment history, the municipality or governing body shall return the deposit to the
42 customer or credit the customer's account with interest at a rate to be set by the Public Service
43 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body
44 is not required to return the deposit until the time the tenant discontinues service with the
45 municipality governing body. Whenever any rates, fees, rentals, or charges for services or
46 facilities furnished remain unpaid for a period of 20 days after they become due, the user of the
47 services and facilities provided is delinquent and the user is liable at law until all rates, fees and
48 charges are fully paid. The municipality or governing body may terminate water services to a
49 delinquent user of either water or sewage facilities, or both, 10 days after the water or sewage
50 services become delinquent regardless of whether the governing body utilizes the security deposit
51 to satisfy any delinquent payments: *Provided, however*, That any termination of water service
52 must comply with all rules and orders of the Public Service Commission: *Provided further*, That
53 nothing contained within the rules of the Public Service Commission requires agents or
54 employees of the municipality or governing body to accept payment at the customer's premises
55 in lieu of discontinuing service for a delinquent bill.

56 (b) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid
57 for a period of 20 days after they become due, the user of the services and facilities provided shall
58 be delinquent and the municipality or governing body may apply any deposit against any
59 delinquent fee. The user is liable until such time as all rates, fees and charges are fully paid.

60 (c) All rates, fees, or charges for water service, sewer service and, if applicable,
61 stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be
62 liens of equal dignity, rank, and priority with the lien on such premises of state, county, school,
63 and municipal taxes for the amount thereof upon the real property served. The municipality has
64 the plenary power and authority to enforce such lien in a civil action to recover the money due for
65 services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an
66 owner of real property may not be held liable for the delinquent rates, fees, or charges for services
67 or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates,
68 fees, or charges for services or facilities of a tenant of the real property, unless the owner has
69 contracted directly with the municipality to purchase such services or facilities.

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

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

83 (f) Notwithstanding any other provision contained in this article, a municipality which has
84 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
85 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to

86 enact ordinances or regulations which allow for the issuance of orders, the right to enter properties
87 and the right to impose reasonable fines and penalties regarding correction of violations of
88 municipal stormwater ordinances or regulations within the municipal watershed served by the
89 municipal stormwater system, as long as such rules, regulations, fines, or acts are not contrary to
90 any rules or orders of the Public Service Commission.

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

100 (h) A municipality which has been designated by the Environmental Protection Agency as
101 an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an
102 annual report detailing the collection and expenditure of rates, fees, or charges and make it
103 available for public review at the place of business of the governing body and the stormwater
104 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.**

1 A governing body has the power and duty, by ordinance, to establish and maintain just
2 and equitable rates, fees, or charges for the use of and the service rendered by:

3 (a) Sewerage works, to be paid by the owner of each lot, parcel of real estate or building
4 that is connected with and uses the works by or through any part of the sewerage system of the
5 municipality or that in any way uses or is served by the works; and

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

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

13 (d) All new applicants for service shall indicate to the governing body whether they are an
14 owner or tenant with respect to the service location. An entity providing stormwater service shall
15 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
16 that portion of the fee to be assessed to the tenant.

17 (e) The governing body may collect from all new applicants for service a deposit of \$50 or
18 two twelfths of the average annual usage of the applicant's specific customer class, whichever is
19 greater, to secure the payment of service rates, fees, and charges in the event they become
20 delinquent as provided in this section. In any case where a deposit is forfeited to pay service
21 rates, fees, and charges which were delinquent at the time of disconnection or termination of
22 service, service may not be reconnected or reinstated by the governing body until another deposit
23 equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific
24 customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt
25 payment history, the governing body shall return the deposit to the customer or credit the
26 customer's account with interest at a rate as the Public Service Commission may prescribe:
27 *Provided*, That where the customer is a tenant, the governing body is not required to return the
28 deposit until the time the tenant discontinues service with the governing body. Whenever any

29 rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20
30 days after they become due, the user of the services and facilities provided is delinquent. The
31 user is liable until all rates, fees, and charges are fully paid. The governing body may, under
32 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water
33 services to a delinquent user of sewer facilities 10 days after the sewer services become
34 delinquent regardless of whether the governing body utilizes the security deposit to satisfy any
35 delinquent payments: *Provided, however,* That nothing contained within the rules of the Public
36 Service Commission may require agents or employees of the governing body to accept payment
37 at the customer's premises in lieu of discontinuing service for a delinquent bill.

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

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

45 (h) After introduction of the ordinance fixing the rates, fees, or charges, and before the
46 same is finally enacted, notice of the hearing, setting forth the proposed schedule of rates, fees,
47 or charges, shall be given by publication as a Class I legal advertisement in compliance with §59-
48 3-1 *et seq.* of this code and the publication area for the publication shall be the municipality. The
49 first publication shall be made at least five days before the date fixed in the notice for the hearing.

50 (i) After the hearing, which may be adjourned, from time to time, the ordinance establishing
51 rates, fees, or charges, either as originally introduced or as modified and amended, shall be
52 passed and put into effect. A copy of the schedule of the rates, fees, and charges shall be kept
53 on file in the office of the board having charge of the operation of the works, and also in the office
54 of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates,

55 fees, or charges established for any class of users or property served shall be extended to cover
56 any additional premises thereafter served which fall within the same class, without the necessity
57 of any hearing or notice.

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

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

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

77 (m) The board collecting the rates, fees, or charges shall be obligated under reasonable
78 rules to shut off and discontinue both water and sewer services to all delinquent users of water,
79 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any
80 delinquent user of any such facilities until all delinquent rates, fees, or charges for water, sewer,

81 and stormwater facilities, including reasonable interest and penalty charges, have been paid in
82 full, as long as the actions are not contrary to any rules or orders of the Public Service
83 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission
84 may be considered to require any agents or employees of the municipality or governing body to
85 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.**

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

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

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

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

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

17 (E) Any other basis or classification which the board may determine to be fair and
18 reasonable, taking into consideration the location of the premises served and the nature and

19 extent of the services and facilities furnished. However, no rates, fees, or charges for stormwater
20 services may be assessed against highways, road, and drainage easements or stormwater
21 facilities constructed, owned, or operated by the West Virginia Division of Highways.

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

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

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

42 (C) The public notice of the proposed action shall summarize the current rates, fees, and
43 charges and the proposed changes to said rates, fees, and charges; the date, time, and place of
44 the public hearing on the resolution approving the revised rates, fees, and charges and the place

45 or places within the district where the proposed resolution approving the revised rates, fees, and
46 charges may be inspected by the public. A reasonable number of copies of the proposed
47 resolution shall be kept at the place or places and be made available for public inspection. The
48 notice shall also advise that interested parties may appear at the public hearing before the board
49 and be heard with respect to the proposed revised rates, fees, and charges.

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

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

65 (F) Enactment of the proposed or modified rates, fees, and charges shall follow an
66 affirmative vote by the county commission and shall be effective no sooner than 45 days following
67 action. The 45-day waiting period may be waived by public vote of the county commission only if
68 the commission finds and declares the district to be in financial distress such that the 45-day
69 waiting period would be detrimental to the ability of the district to deliver continued and compliant
70 public services.

71 (G) The public service district, or a customer aggrieved by the changed rates or charges
72 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the
73 customers served by the public service district, whichever is fewer, when dissatisfied by the
74 approval, modification, or rejection by the county commission of the proposed rates, fees, and
75 charges under the provisions of this subdivision may file a complaint regarding the rates, fees,
76 and charges resulting from the action of, or failure to act by, the county commission in the circuit
77 court of the county in which the county commission sits: *Provided*, That any complaint or petition
78 filed hereunder shall be filed within 30 days of the county commission's final action approving,
79 modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from
80 the receipt by the county commission, in writing, of the rates, fees, and charges approved by
81 resolution of the board, without final action by the county commission to approve, modify, or reject
82 the rates, fees, and charges, and the circuit court shall resolve the complaint: *Provided, however*,
83 That the rates, fees, and charges so fixed by the county commission, or those adopted by the
84 district upon which the county commission failed to act, shall remain in full force and effect, until
85 set aside, altered, or amended by the circuit court in an order to be followed in the future.

86 (3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all
87 furnished to any premises, the schedule of charges may be billed as a single amount for the
88 aggregate of the charges. The board shall require all users of services and facilities furnished by
89 the district to designate on every application for service whether the applicant is a tenant or an
90 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name
91 and address of the owner or owners of the premises to be served by the district. Notwithstanding
92 the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit
93 the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
94 customer class or \$50 with the district to secure the payment of service rates, fees, and charges
95 in the event they become delinquent as provided in this section. If a district provides both water
96 and sewer service, all new applicants for service shall deposit the greater of a sum equal to two

97 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to
98 two twelfths of the average annual usage for wastewater service of the applicant's specific
99 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees, and
100 charges which were delinquent at the time of disconnection or termination of service, no
101 reconnection or reinstatement of service may be made by the district until another deposit equal
102 to the greater of a sum equal to two twelfths of the average usage for the applicant's specific
103 customer class or \$50 has been remitted to the district. After 12 months of prompt payment
104 history, the district shall return the deposit to the customer or credit the customer's account at a
105 rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a
106 tenant, the district is not required to return the deposit until the time the tenant discontinues service
107 with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished
108 remain unpaid for a period of 20 days after the same become due and payable, the user of the
109 services and facilities provided is delinquent and the user is liable at law until all rates, fees, and
110 charges are fully paid. The board may, under reasonable rules promulgated by the Public Service
111 Commission, shut off and discontinue water or gas services to all delinquent users of either water
112 or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided*,
113 *however*, That nothing contained within the rules of the Public Service Commission may be
114 considered to require any agents or employees of the board to accept payment at the customer's
115 premises in lieu of discontinuing service for a delinquent bill.

116 (b) If any publicly or privately owned utility, city, incorporated town, other municipal
117 corporation or other public service district included within the district owns and operates separate
118 water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another
119 kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly
120 or privately owned utility, city, incorporated town or other municipal corporation or other public
121 service district shall covenant and contract with each other to shut off and discontinue the
122 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:

123 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
124 be submitted to the Public Service Commission for approval. Any public service district which
125 provides water and sewer service, water and stormwater service or water, sewer, and stormwater
126 service has the right to terminate water service for delinquency in payment of water, sewer, or
127 stormwater bills. Where one public service district is providing sewer service and another public
128 service district or a municipality included within the boundaries of the sewer or stormwater district
129 is providing water service and the district providing sewer or stormwater service experiences a
130 delinquency in payment, the district or the municipality included within the boundaries of the sewer
131 or stormwater district that is providing water service, upon the request of the district providing
132 sewer or stormwater service to the delinquent account, shall terminate its water service to the
133 customer having the delinquent sewer or stormwater account: *Provided, however*, That any
134 termination of water service must comply with all rules and orders of the Public Service
135 Commission: *Provided further*, That nothing contained within the rules of the Public Service
136 Commission shall be deemed to require any agents or employees of the public service districts
137 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

138 (c) Any district furnishing sewer facilities within the district may require or may, by petition
139 to the circuit court of the county in which the property is located, compel or may require the Bureau
140 for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and
141 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
142 other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
143 and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
144 dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to
145 cease the use of all other means for the collection, treatment, and disposal of sewage and waste
146 matters from the houses, dwellings, and buildings where there is gravity flow or transportation by
147 any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
148 and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,

149 dwellings, and buildings can be adequately served by the sewer facilities of the district and it is
150 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary
151 and essential for the health and welfare of the inhabitants and residents of the districts and of the
152 state. If the public service district requires the property owner to connect with the sewer facilities
153 even when sewage from dwellings may not flow to the main line by gravity and the property owner
154 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the
155 main sewer line, the public service district board shall authorize the district to pay all reasonable
156 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,
157 maintenance, and purchase of a pump or any other method approved by the Bureau for Public
158 Health. Maintenance and operation costs for the extra installation should be reflected in the users
159 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
160 of the petition by summary hearing to be held not later than 30 days after service of petition to the
161 appropriate owners, tenants, or occupants.

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

172 (e) The owner, tenant, or occupant of any real property may be determined and declared
173 to be served by a stormwater system only after each of the following conditions is met: (1) The
174 district has been designated by the Environmental Protection Agency as an entity to serve a West

175 Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the
176 district's authority has been properly expanded to operate and maintain a stormwater system; (3)
177 the district has made available a stormwater system where stormwater from the real property
178 affects or drains into the stormwater system; and (4) the real property is located in the Municipal
179 Separate Storm Sewer System's designated service area. It is further hereby found, determined,
180 and declared that the mandatory use of the stormwater system is necessary and essential for the
181 health and welfare of the inhabitants and residents of the district and of the state. The district may
182 charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater
183 services established under this article only after 30 days' notice of the availability of the
184 stormwater system has been received by the owner. An entity providing stormwater service shall
185 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
186 that portion of the fee to be assessed to the tenant.

187 (f) All delinquent fees, rates, and charges of the district for either water facilities, sewer
188 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
189 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
190 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
191 Commission may require agents or employees of the public service districts to accept payment
192 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
193 other remedies provided in this section, public service districts are granted a deferral of filing fees
194 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
195 for the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the
196 delinquent account, plus reasonable costs, from its customer or other responsible party, the
197 district shall pay to the magistrate the normal filing fee and reasonable costs which were
198 previously deferred. In addition, each public service district may exchange with other public
199 service districts a list of delinquent accounts: *Provided*, That an owner of real property may not
200 be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any

201 lien attach to real property for the reason of delinquent rates or charges for services or facilities
202 of a tenant of the real property unless the owner has contracted directly with the public service
203 district to purchase the services or facilities.

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

208 (h) Notwithstanding any code provision to the contrary, a public service district may accept
209 payment for all fees and charges due, in the form of a payment by a credit or check card
210 transaction or a direct withdrawal from a bank account. The public service district may set a fee
211 to be added to each transaction equal to the charge paid by the public service district for use of
212 the credit or check card or direct withdrawal by the payor. The amount of the fee shall be disclosed
213 to the payor prior to the transaction and no other fees for the use of a credit or check card or direct
214 withdrawal may be imposed upon the payor and the whole of the charge or convenience fee shall
215 be borne by the payor: *Provided*, That to the extent a public service district desires to accept
216 payments in the forms described in this subsection and does not have access to the equipment
217 or receive the services necessary to do so, the public service district shall first obtain three bids
218 for services and equipment necessary to affect the forms of transactions described in this
219 subsection and use the lowest qualified bid received. Acceptance of a credit or check card or
220 direct withdrawal as a form of payment shall comport with the rules and requirements set forth by
221 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.

1 (a) The jurisdiction of the commission shall extend to all public utilities in this state and
2 shall include any utility engaged in any of the following public services:

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

25 (b) The jurisdiction of the commission over political subdivisions of this state providing
26 separate or combined water and/or sewer services and having at least 4,500 customers and
27 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
28 is limited to:

29 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

30 (2) Regulation of measurements, practices, acts, or services, as granted and described in
31 §24-2-7 of this code;

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

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

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

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

52 (7) Customers of water and sewer utilities operated by a political subdivision of the state
53 may bring formal or informal complaints regarding the commission's exercise of the powers
54 enumerated in this section and the commission shall resolve these complaints: *Provided*, That

55 any formal complaint filed under this section that is based on the act or omission of the political
56 subdivision shall be filed within 30 days of the act or omission complained of and the commission
57 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
58 dispute may be tolled by the commission until the necessary information showing the basis of the
59 matter complained of is filed by the political subdivision: *Provided, however,* That whenever the
60 commission finds any regulations, measurements, practices, acts or service to be unjust,
61 unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of
62 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
63 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
64 measurement, regulations, acts, practices or services, to be furnished, imposed, observed and
65 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
66 inadequate or otherwise in violation of this chapter, and shall make such other order respecting
67 the same as shall be just and reasonable: *Provided further,* That if the matter complained of would
68 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined
69 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until
70 set aside, altered or amended by the commission in an order to be followed in the future.

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

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

78 (1) An area of West Virginia cannot be practicably and economically served by a utility
79 licensed to operate within the State of West Virginia;

80 (2) The area can be provided with utility service by a utility which operates in a state
81 adjoining West Virginia;

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

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

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

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

98 (2) Any person, corporation, or other entity that intends to construct or construct and
99 operate an electric generating facility to be located in this state that has been designated as an
100 exempt wholesale generator under applicable federal law, or will be so designated prior to
101 commercial operation of the facility, and for which facility the owner or operator does not hold a
102 certificate of public convenience and necessity issued by the commission on or before July 1,
103 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
104 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
105 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or

106 operator of an electric generating facility as is described in this subdivision for which a siting
107 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of
108 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of
109 this chapter with respect to the facility except for the making or constructing of a material
110 modification thereof as provided in §24-2-1(d)(5) of this code.

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

122 (4) Any person, corporation, or other entity that intends to construct or construct and
123 operate an electric generating facility to be located in this state that has not been or will not be
124 designated as an exempt wholesale generator under applicable federal law prior to commercial
125 operation of the facility that will generate electric energy solely for sale at retail outside this state
126 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
127 law or solely for both sales at retail and sales at wholesale and that had not been constructed and
128 had not been engaged in commercial operation on or before July 1, 2003, shall, prior to
129 commencement of construction of the facility, obtain a siting certificate from the commission
130 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
131 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an

132 electric generating facility as is described in this subdivision for which a siting certificate has been
133 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not
134 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
135 respect to the facility except for the making or constructing of a material modification thereof as
136 provided in §24-2-1(d)(5) of this code.

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

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

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

156 (e) The commission does not have jurisdiction of Internet protocol-enabled service or
157 voice-over Internet protocol-enabled service. As used in this subsection:

158 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
159 application provided using Internet protocol, or any successor protocol, that enables an end user
160 to send or receive a communication in Internet protocol format, or any successor format,
161 regardless of whether the communication is voice, data, or video.

162 (2) "Voice-over Internet protocol service" means any service that:

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

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

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

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

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

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 (a) After June 30, 1981, no public utility subject to this chapter, except for water and/or
2 sewer utilities that are political subdivisions of the state providing separate or combined services
3 and having at least 4,500 customers and annual gross revenue of \$3 million or more from its
4 separate or combined services, shall change, suspend, or annul any rate, joint rate, charge,
5 rental, or classification except after 30 days' notice to the commission and the public, which notice

6 shall plainly state the changes proposed to be made in the schedule then in force and the time
7 when the changed rates or charges shall go into effect; but the commission may enter an order
8 suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by
9 printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and
10 kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good
11 cause shown, allow changes upon less time than the notice herein specified, or may modify the
12 requirements of this section in respect to publishing, posting and filing of tariffs, either by particular
13 instructions or by general order.

14 (b) Whenever there is filed with the commission any schedule stating a change in the rates
15 or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint
16 classification or any new individual or joint regulation or practice affecting any rate or charge, the
17 commission may, either upon complaint or upon its own initiative without complaint, enter upon a
18 hearing concerning the propriety of the rate, charge, classification, regulation, or practice; and, if
19 the commission so orders, it may proceed without answer or other form of pleading by the
20 interested parties, but upon reasonable notice, and, pending the hearing and the decisions
21 thereon, the commission, upon filing with the schedule and delivering to the public utility affected
22 thereby a statement in writing of its reasons for the suspension, may suspend the operation of
23 the schedule and defer the use of the rate, charge, classification, regulation, or practice, but not
24 for a longer period than 270 days beyond the time when the rate, charge, classification, regulation,
25 or practice would otherwise go into effect; and after full hearing, whether completed before or
26 after the rate, charge, classification, regulation, or practice goes into effect, the commission may
27 make the order in reference to the rate, charge, classification, regulation, or practice as would be
28 proper in a proceeding initiated after the rate, charge, classification, regulation, or practice had
29 become effective: *Provided*, That in the case of a public utility having 2,500 customers or less and
30 which is not a political subdivision and which is not principally owned by any other public utility
31 corporation or public utility holding corporation, the commission may suspend the operation of the

32 schedule and defer the use of the rate, charge, classification, regulation, or practice, but not for a
33 longer period than 120 days beyond the time when the rate, charge, classification, regulation, or
34 practice would otherwise go into effect; and in the case of a public utility having more than 2,500
35 customers, but not more than 5,000 customers, and which is not a political subdivision and which
36 is not principally owned by any other public utility corporation or public utility holding corporation,
37 the commission may suspend the operation of the schedule and defer the use of the rate, charge,
38 classification, regulation, or practice, but not for a longer period than 150 days beyond the time
39 when the rate, charge, classification, regulation, or practice would otherwise go into effect; and in
40 the case of a public utility having more than 5,000 customers, but not more than 7,500 customers,
41 and which is not a political subdivision and which is not principally owned by any other public
42 utility corporation or public utility holding corporation, the commission may suspend the operation
43 of the schedule and defer the use of the rate, charge, classification, regulation, or practice, but
44 not for a longer period than 180 days beyond the time when the rate, charge, classification,
45 regulation, or practice would otherwise go into effect; and after full hearing, whether completed
46 before or after the rate, charge, classification, regulation, or practice goes into effect, the
47 commission may make the order in reference to the rate, charge, classification, regulation, or
48 practice as would be proper in a proceeding initiated after the rate, charge, classification,
49 regulation, or practice had become effective: *Provided, however,* That, in the case of rates
50 established or proposed that increase by less than 25 percent of the gross revenue of the
51 regulated public service district, there shall be no suspension period in the case of rates
52 established by a public service district pursuant to §16-13A-9 of this code and the proposed rates
53 of public service districts shall go into effect upon the date of filing with the commission, subject
54 to refund modification at the conclusion of the commission proceeding. In the case of rates
55 established or proposed that increase by more than 25 percent of the gross revenue of the public
56 service district, the district may apply for, and the commission may grant, a waiver of the
57 suspension period and allow rates to be effective upon the date of filing with the commission.

58 Notwithstanding the provisions of subsection (e) of this section, the public service district shall
59 provide notice by Class I legal advertisement in a newspaper of general circulation in its service
60 territory of the percentage increase in rates at least 14 days prior to the effective date of the
61 increased rates. Any refund determined to be due and owing as a result of any difference between
62 any final rates approved by the commission and the rates placed into effect subject to refund shall
63 be refunded by the public service district as a credit against each customer's account for a period
64 of up to six months after entry of the commission's final order. Any remaining balance which is
65 not fully credited by credit within six months after entry of the commission's final order shall be
66 directly refunded to the customer by check: *Provided further*, That if any such hearing and decision
67 thereon is not concluded within the periods of suspension, as above stated, the rate, charge,
68 classification, regulation, or practice shall go into effect at the end of the period not subject to
69 refund: *And provided further*, That if any such rate, charge, classification, regulation, or practice
70 goes into effect because of the failure of the commission to reach a decision, the same shall not
71 preclude the commission from rendering a decision with respect thereto which would disapprove,
72 reduce, or modify any such proposed rate, charge, classification, regulation, or practice, in whole
73 or in part, but any such disapproval, reduction, or modification shall not be deemed to require a
74 refund to the customers of the utility as to any rate, charge, classification, regulation, or practice
75 so disapproved, reduced, or modified. The fact of any rate, charge, classification, regulation, or
76 practice going into effect by reason of the commission's failure to act thereon does not affect the
77 commission's power and authority to subsequently act with respect to any such application or
78 change in any rate, charge, classification, regulation, or practice. Any rate, charge, classification,
79 regulation, or practice which shall be approved, disapproved, modified or changed, in whole or in
80 part, by decision of the commission shall remain in effect as so approved, disapproved, modified,
81 or changed during the period or pendency of any subsequent hearing thereon or appeal
82 therefrom. Orders of the commission affecting rates, charges, classifications, regulations, or

83 practices which have gone into effect automatically at the end of the of the suspension period are
84 prospective in effect.

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

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

104 (e) Other than as provided in subsection (b) of this section relating to public service
105 districts, where more than 20 members of the public are affected by a proposed change in rates,
106 it shall be a sufficient notice to the public within the meaning of this section if the notice is published
107 as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code and the
108 publication area for the publication shall be the community where the majority of the resident

109 members of the public affected by the change reside or, in case of nonresidents, have their
110 principal place of business within this state.

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

120 (g) No utility regulated under the provisions of this section may make application for a
121 general rate increase while another general rate application is pending before the commission
122 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
123 provisions of this subsection shall not be construed so as to prohibit any such rate application
124 from being made while a previous application which has been finally acted upon by the
125 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.

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

8 certificate of public convenience and necessity authorizing the construction franchise, license or
9 permit.

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

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

25 (d) The commission shall render its final decision on any application filed under the
26 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application
27 and within 90 days after final submission of any such application for decision following a hearing:
28 *Provided*, That if the application is for authority to construct a water and sewer project and the
29 projected total cost is less than \$10 million, the commission shall render its final decision within
30 225 days of the filing of the application.

31 (e) The commission shall render its final decision on any application filed under the
32 provisions of this section that has received the approval of the Infrastructure and Jobs
33 Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the

34 application: *Provided*, That if a substantial protest is received within 30 days after the notice is
35 provided pursuant to subsection (b) of this section, the commission shall render its final decision
36 within 270 days or 225 days of the filing of the application, whichever is applicable as determined
37 in subsection (d) of this section.

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

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

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

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

52 (1) Natural gas sold by a producer, pipeline, or other seller to the person; or

53 (2) Natural gas produced by the person.

54 (j) A public utility, including a public service district, which has received a certificate of
55 public convenience and necessity after July 8, 2005, from the commission and has been approved
56 by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled
57 to, reopen the proceeding if the cost of the project changes but the change does not affect the
58 rates established for the project.

59 (k) Any public utility, person, or corporation proposing any electric power project that
60 requires a certificate under this section is not required to obtain the certificate before applying for
61 or obtaining any franchise, license, or permit from any municipality or other governmental agency.

62 (l) Water or sewer utilities that are political subdivisions of the state and having at least
63 4,500 customers and combined gross revenues of \$3 million dollars or more desiring to pursue
64 construction projects that are not in the ordinary course of business shall provide adequate prior
65 public notice of the contemplated construction and proposed changes to rates, fees and charges,
66 if any, as a result of the construction to both current customers and those persons who will be
67 affected by the proposed construction as follows:

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

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

82 (3) The public notice of the proposed construction shall state the scope of the proposed
83 construction; a summary of the current rates, fees, and charges, and proposed changes to said
84 rates, fees, and charges, if any; the date, time and place of the public hearing on the ordinance

85 or resolution approving the proposed construction and proposed changes to rates, fees, and
86 charges, if any; and the place or places within the political subdivision where the ordinance or
87 resolution approving the proposed construction and proposed changes to rates, fees, and
88 charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance
89 or resolution shall be kept at the place or places and be made available for public inspection. The
90 notice shall also advise that interested parties may appear at the public hearing before the political
91 subdivision and be heard with respect to the proposed construction and the proposed rates, fees,
92 and charges, if any.

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

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

109 (6) Rates, fees, and charges approved by an affirmative vote of the public service district
110 board shall be forwarded in writing to the county commission with the authority to appoint the

111 members of the public service board of the public service district. The county commission shall,
112 within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify,
113 or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county
114 commission has not taken final action to approve, modify, or reject the proposed rates, fees, and
115 charges, the proposed rates, fees, and charges, as presented to the county commission, shall be
116 effective with no further action by the board or county commission. In any event this 45-day period
117 may be extended by official action of both the board proposing the rates, fees, and charges and
118 the appointing county commission.

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

123 (8) A public service district, or a customer aggrieved by the changed rates or charges who
124 presents to the circuit court a petition signed by 25 percent of the customers served by the public
125 service district when dissatisfied by the approval, modification, or rejection by the county
126 commission of the proposed rates, fees, and charges under the provisions of this subsection may
127 file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act
128 by, the county commission in the circuit court of the county in which the county commission sits:
129 *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county
130 commission's final action approving, modifying or rejecting the rates, fees, and charges, or the
131 expiration of the 45-day period from the receipt by the county commission, in writing, of the rates,
132 fees, and charges approved by resolution of the board, without final action by the county
133 commission to approve, modify or reject the rates, fees, and charges, and the circuit court shall
134 resolve said complaint: *Provided, however*, That the rates, fees, and charges so fixed by the
135 county commission, or those adopted by the district upon which the county commission failed to

136 act, shall remain in full force and effect, until set aside, altered, or amended by the circuit court in
137 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.

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

§24-2H-2. Legislative findings.

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

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

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

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

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

15 (f) Failure to timely address infrastructure needs has resulted in the inability of water and
16 wastewater utilities to adequately serve customers and maintain regulatory compliance, thereby
17 threatening human health and hindering economic growth.

18 (g) West Virginia needs a comprehensive plan to confront the financial, organizational,
19 and regulatory challenges faced by water and wastewater utilities in the state to ensure that all
20 citizens of West Virginia have access to safe drinking water and adequate and safe wastewater
21 treatment.

§24-2H-3. Definitions.

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

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

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

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

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

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

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

20 (2) Has not, after a reasonable time period, been stabilized and improved by corrective
21 measures put in place under §24-2H-4 of this code; or

22 (3) Has had the requirements of §24-2H-4 of this code suspended for good cause shown
23 by an order of the commission.

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

§24-2H-4. Preparation of list of potentially unstable water and wastewater utilities.

1 Annually, the commission shall prepare a list of water and wastewater utilities that appear
2 to be financially unstable by reviewing annual reports, rate case filings and other financial data
3 available to it. Commission staff shall contact each utility placed on the list and provide advice
4 and assistance in resolving any financial instability or managerial or operational issues that are
5 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”.

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

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

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

8 (3) The opinion and advice, if any, of the Department of Environmental Protection and the
9 Bureau for Public Health as to steps that may be necessary to assure compliance with applicable
10 statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness
11 of utility service;

12 (4) The status of the utility's bond payments and other financial obligations;

13 (5) The status and result of any corrective measures previously put into place under §24-
14 2H-4 of this code; and

15 (6) Any other relevant matter.

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

18 (1) The financial, managerial and technical ability of all proximate public utilities providing
19 the same type of service;

20 (2) Expansion of the franchise or operating area of the acquiring utility to include the
21 service area of the distressed utility;

22 (3) The financial, managerial, operational and rate demands that may result from the
23 current proceeding and the cumulative impact of other demands where the utility has been
24 identified as a capable proximate utility; and

25 (4) Any other relevant matter.

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

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

7 (b) The commission shall hold an evidentiary and public hearing(s) in the utility's service
8 area. The commission shall give notice of the time, place and subject matter of the hearing as
9 follows:

10 (1) A Class I legal publication in a qualified newspaper pursuant to §59-3-2(a) of this code
11 in the county or counties where the utility is located to take place no more than 10 days before
12 the date of the hearing;

13 (2) Issuance of a press release;

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

15 (A) The utility;

16 (B) The Consumer Advocate Division;

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

18 and

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

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

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

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

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

1 (a) Following the evidentiary hearing, the commission shall enter a final order stating
2 whether the utility is a distressed or failing utility and identifying the capable proximate utilities, if

3 any, as defined in §24-2H-3 of this code. If the commission determines that a utility is a distressed
4 utility, then the commission may make an order consistent with subsection (b) of this section. If
5 the commission determines that the utility is a failing utility, then the commission may order the
6 acquisition of the failing utility by the most suitable capable proximate water or wastewater utility,
7 if there is more than one.

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

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

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

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

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

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

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

26 (c) The commission shall provide a list of utilities designated by a final order of the
27 commission as a distressed or failing utility to the Legislature as part of its annual Management

28 Summary Report beginning in the 2021 reporting period and annually thereafter. The commission
29 shall provide the same list to the Water Development Authority and the Infrastructure and Jobs
30 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.

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

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

16 (c) As part of the proceeding, the acquiring utility may propose to the commission that it
17 be permitted for a reasonable period of time after the date of acquisition, to charge and collect
18 rates from the customers of the failing utility pursuant to a separate tariff which may be higher or
19 lower than the existing tariff of the distressed or failing utility or may allow a surcharge on both
20 the acquired and existing customers. A separate tariff or rate filing must be made by the acquiring

21 utility before the commission will consider any increase in rates or allow a surcharge to be placed
22 on the acquiring utility's acquired or existing ratepayers.

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

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

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

45 respective municipal council with regard to the acquisition of distressed or failing utilities as
46 provided in §8-12-17 of this code.

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

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

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

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

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

17 (3) An increased return on investment as an incentive to acquire a failing utility; or

18 (4) Any other incentive method proposed by the acquiring utility if the method is
19 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.

1 (a) The Water Development Authority shall create and establish a special revolving fund
2 of moneys made available by appropriation, grant, contribution or loan to be known as the West
3 Virginia Infrastructure Fund. This fund shall be governed, administered and accounted for by the
4 directors, officers and managerial staff of the Water Development Authority as a special purpose
5 account separate and distinct from any other moneys, funds or funds owned and managed by the
6 Water Development Authority. The infrastructure fund shall consist of sub-accounts, as deemed
7 necessary by the council or the Water Development Authority, for the deposit of: (1) Infrastructure
8 revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds, or other revenues
9 received by the infrastructure fund from any source, public or private; (3) amounts received as
10 payments on any loans made by the Water Development Authority to pay for the cost of a project
11 or infrastructure project; (4) insurance proceeds payable to the Water Development Authority or
12 the infrastructure fund in connection with any infrastructure project or project; (5) all income
13 earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with §31-
14 15B-4 of this code; and (7) all proceeds derived from the sale of bonds issued pursuant to §31-
15 15B-1 *et seq.* of this code.

16 Any money collected pursuant to this section shall be paid into the West Virginia
17 Infrastructure Fund by the state agent or entity charged with the collection of the same, credited
18 to the infrastructure fund, and used only for purposes set forth in this article or §31-15B-1 *et seq.*
19 of this code.

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

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

35 (c) To further accomplish the purposes and intent of this article and §31-15B-1 *et seq.* of
36 this code, the Water Development Authority may pledge infrastructure revenues and from time to
37 time establish one or more restricted accounts within the infrastructure fund for the purpose of
38 providing funds to guarantee loans for infrastructure projects or projects: *Provided*, That for any
39 fiscal year the Water Development Authority may not deposit into the restricted accounts more
40 than 20 percent of the aggregate amount of infrastructure revenues deposited into the
41 infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article

42 unless recourse under the loan guarantee is limited solely to amounts in the restricted account or
43 accounts. No person shall have any recourse to any restricted accounts established pursuant to
44 this subsection other than those persons to whom the loan guarantee or guarantees have been
45 made.

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

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

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

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

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

65 (e) Any resolution of the Water Development Authority approving loan, loan guarantee,
66 grant, or other assistance shall include a finding and determination that the requirements of this
67 section have been met.

68 (f) The interest rate on any loan to governmental, quasi-governmental, or not-for-profit
69 project sponsors for projects made pursuant to this article shall not exceed three percent per
70 annum. Due to the limited availability of funds available for loans for projects, it is the public policy
71 of this state to prioritize funding needs to first meet the needs of governmental, quasi-
72 governmental and not-for-profit project sponsors and to require that loans made to for-profit
73 entities shall bear interest at the current market rates. Therefore, no loan may be made by the
74 council to a for-profit entity at an interest rate which is less than the current market rate at the time
75 of the loan agreement.

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

85 (h) There is hereby created in the Water Development Authority a separate, special
86 account which shall be designated and known as the West Virginia Infrastructure Lottery Revenue
87 Debt Service Fund, into which shall be deposited annually for the fiscal year beginning July 1,
88 2011, and each fiscal year thereafter, the first \$6 million transferred pursuant to §29-22-18d of
89 this code and any other funds provided therefor: *Provided*, That such deposits and transfers are
90 not subject to the reservations of funds or requirements for distributions of funds established by
91 §31-15A-10 and §31-15A-11 of this code. Moneys in the West Virginia Infrastructure Lottery
92 Revenue Debt Service Fund shall be used to pay debt service on bonds or notes issued by the
93 Water Development Authority for watershed compliance projects as provided in §31-15A-17b of

94 this code, and to the extent not needed to pay debt service, for the design or construction of
95 improvements for watershed compliance projects. Moneys in the West Virginia Infrastructure
96 Lottery Revenue Debt Service Fund not expended at the close of the fiscal year do not lapse or
97 revert to the General Fund but are carried forward to the next fiscal year.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor