

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5005

By Delegate Linville

[Introduced January 23, 2024; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §24-2H-6 and §24-2H-7 of the Code of West Virginia, 1931, as
 2 amended, all relating to the authority of the Public Service Commission to order a capable
 3 proximate utility to operate a distressed or failing utility pursuant to a contract approved by
 4 the commission; establishing that if a capable proximate utility and a distressed or failing
 5 utility cannot reach agreement on such a contract then the commission may specify the
 6 terms and conditions of the contract and require the parties to enter into the contract;
 7 requiring that a hearing in a proceeding under this article be held within the county where
 8 the majority of the customers of the potentially distressed or failing utility reside, 25 miles of
 9 the utility’s service area or at the Commission’s headquarters; establishing that the
 10 Commission has discretion whether to hold an evidentiary hearing; and establishing that if
 11 an evidentiary hearing is held, the parties are to present evidence to the commission on
 12 whether a utility is distressed or failing, whether a capable proximate utility should acquire
 13 the distressed or failing utility or operate the utility under a commission approved contract,
 14 and which of two or more capable proximate utilities should acquire the distressed or failing
 15 utility or operate the utility under a commission approved contract.

Be it enacted by the Legislature of West Virginia:

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

4 **§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, or
 2 by the staff of the commission, or any other person or entity having a legal interest in the financial,
 3 managerial, or operational condition of the utility, by filing a petition with the commission that
 4 includes all of the factual data supporting the justification for the utility to be considered as a
 5 distressed or failing utility that the petitioner has available to them at the time of filing: Provided,
 6 That high water loss or unaccounted for water shall not be considered the sole evidence of a

7 distressed or failing utility. In any such petition, the utility shall be named as the respondent. The
8 commission shall include, as additional parties, any capable proximate public and private utilities
9 that may be able to acquire the utility or operate the utility under a contract approved by the
10 commission.

11 (b) The commission shall hold evidentiary and public comment hearing(s) in a location in or
12 within the county in which a majority of the customers of the potentially distressed or failing utility
13 reside, within 25 miles of the utility's service area, or at the discretion of the Commission, its
14 headquarters. The commission shall give reasonable notice of the time, place, and subject matter
15 of the hearing as follows:

16 (1) Issuance of a press release;

17 (2) Written notice by certified mail or registered mail to:

18 (A) The utility;

19 (B) The Consumer Advocate Division;

20 (C) Capable proximate public or private utility or utilities that were made parties to the
21 proceeding; and

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

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

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

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

33 commission to determine the appropriate capable proximate utility to acquire the distressed or
34 failing utility.

35 (d) At a separate the evidentiary hearing, if such hearing is required by the commission, the
36 commission shall receive evidence to determine if the utility is a distressed or failing utility and
37 whether a capable proximate utility should acquire the utility. The commission may cancel an
38 evidentiary hearing if the parties enter into a joint stipulation and settlement agreement acceptable
39 to the commission that adequately resolves the commission's concerns. If there is more than one
40 capable proximate utility, then sufficient evidence should be presented to allow the commission to
41 determine the appropriate capable proximate utility to acquire the distressed or failing utility or to
42 operate the utility under a contract to be approved by the commission.

43 **§24-2H-7. Commission order for acquisition of, or operations agreement for, failing**
44 **utility; list of distressed and failing utilities to Legislature.**

1 (a) Following the evidentiary hearing hearings required by this article, the commission shall
2 enter a final order stating whether the utility is a distressed or failing utility and identifying the
3 capable proximate utilities, if any, as defined in §24-2H-3 of this code. If the commission
4 determines that a utility is a distressed utility, then the commission may make an order consistent
5 with subsection (b) of this section. If the commission determines that the utility is a failing utility,
6 then the commission may order the acquisition of the failing utility by the most suitable capable
7 proximate water or wastewater utility, 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 an
10 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. Alternatives
14 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 which must be filed for prior commission
19 consent and approval. If the commission orders a distressed or failing utility to enter into an
20 operation contract with a capable proximate utility and the utilities are unable to arrive at a mutually
21 agreed contract, the commission may specify the terms and conditions of the contract and order
22 the utilities to enter into the contract;

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

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

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

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

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

NOTE: The purpose of this bill is to amend existing law to establish the authority of the commission to order a capable proximate utility to operate a distressed or failing utility pursuant to a contract approved by the commission. The purpose of the bill is also to authorize the commission to specify the terms and conditions of the contract if the parties are unable to mutually agree on the terms. The bill expands the permissible locations of a hearing under this article to within the county where the majority of the customers of the potentially distressed or failing utility reside, 25 miles of the utility's service area or the Commission's headquarters. Finally, the bill establishes that the commission has discretion whether to hold an evidentiary hearing (a public comment hearing is mandatory) and, if an evidentiary hearing is held, the bill specifies the evidence that the parties are to present.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.