

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend the Code of Virginia by adding a section numbered 56-264.2, relating to entities
3 operating certain sewage treatment facilities; composition of governing board; arbitration of issues;
4 acquisition of facilities.

5 [H 439]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

8 **1. That the Code of Virginia is amended by adding a section numbered 56-264.2 as follows:**

9 § 56-264.2. Governing board of multistate entities operating certain sewage treatment facilities;
10 arbitration of issues; condemnation of facilities.

11 A. As used in this section, "multistate entity" means any corporation, company, political subdivision,
12 association, or other legal entity, without regard to whether such entity is a public utility or public
13 service company, that engages in the provision of sewerage service to persons residing in the
14 Commonwealth and to persons residing in an adjacent state and that operates a sewage treatment
15 facility with a capacity of not less than five million gallons per day that is located in the
16 Commonwealth, the construction or expansion of which treatment facility was financed primarily
17 through the Virginia Revolving Loan Fund or a successor loan fund program administered by the
18 Virginia Resources Authority or Department of Environmental Quality.

19 B. Notwithstanding any contrary provision of law, all powers of a multistate entity shall be exercised
20 by or under the authority of, and all business and affairs of the multistate entity shall be managed
21 under the direction of, a governing board, which may be titled a board of directors, board of trustees,
22 or similar appellation. The governing board shall be comprised of (i) two members residing in the
23 Commonwealth for each locality of the Commonwealth wherein the multistate entity provides sewerage
24 treatment services and (ii) a number of members residing in the adjacent state that is equal to the
25 number of members residing in the Commonwealth. The governing body of each locality of the
26 Commonwealth wherein the multistate entity provides sewerage services shall appoint two individuals to
27 the board, which individuals need not be residents of such locality. The terms of members of the board
28 residing in the Commonwealth shall expire one year following their appointment; however, despite the
29 expiration of such a member's term, the member shall continue to serve until his successor is elected
30 and qualifies. Unless the articles of incorporation, bylaws, charter, or other organic document of the
31 multistate entity requires a greater number for the transaction of particular business, a quorum of the
32 governing board shall consist of a majority of the number of members prescribed by this subsection. If a
33 quorum is present when a vote of the governing board is taken, the affirmative vote of a majority of
34 members present is the act of the governing board unless the articles of incorporation, bylaws, charter,
35 or other organic document of the multistate entity requires the vote of a greater number of members.
36 Except as provided in this section, the provisions of the articles of incorporation, bylaws, charter, or
37 other organic document of a multistate entity in effect prior to July 1, 2006, shall continue to apply with
38 respect to the method of appointing the board members residing in the adjacent state and the duration
39 of their terms, and to other matters relating to the governing board of such multistate entity, except that
40 no amendment to the articles of incorporation, bylaws, charter, or other organic document of the
41 multistate entity that contravenes any provision of this section shall be effective.

42 C. Upon the filing of a petition by not fewer than one-half of the members of the governing board of
43 a multistate entity requesting the Commission to arbitrate an issue pertaining to the management of the
44 business and affairs of the multistate entity that requires the affirmative vote of the members, upon
45 which issue the governing board is deadlocked, then the Commission shall commence a proceeding to
46 arbitrate the issue. The multistate entity and the non-petitioning members of the governing board shall
47 be parties to the proceeding. With the petition for arbitration, the petitioners shall provide all relevant
48 documentation concerning the issue on which it is alleged that the board is deadlocked and the
49 positions of the petitioners and the other members of the governing board with respect to the issue. The
50 Commission shall conduct the arbitration proceeding in accordance with its Rules of Practice and
51 Procedure (5 VAC 5-20-10 et seq.). The Commission's consideration shall be limited to the issue in the
52 petition. The Commission shall proceed promptly with the hearing and determination of the issue in
53 controversy. The final order of the Commission shall be final and binding on the multistate entity and
54 the governing board, unless notice of appeal to the Supreme Court is filed in the office of the Clerk of
55 the Commission within 30 days after entry of the order appealed from, in the manner provided in the
56 rules of the Supreme Court of Virginia. If the Commission incurs additional costs in conducting such an

57 arbitration proceeding that cannot be recovered through the maximum levy authorized pursuant to
58 § 58.1-2660, the unrecoverable portion of the costs of the arbitration proceedings shall be assessed
59 against the multistate entity.

60 D. If the articles of incorporation, bylaws, charter, or other organic document of a multistate entity
61 in existence on July 1, 2006, does not comply with the requirements of subsection B by January 1, 2008,
62 then the locality in the Commonwealth wherein the sewage treatment facility is located shall be
63 authorized to acquire, by exercise of the power of eminent domain if the governing body of the locality
64 deems it appropriate, the sewage treatment facility operated by the multistate entity, without regard to
65 whether such entity is the owner of the sewage treatment facility, and any related pipelines, easements,
66 and other property related to the provision of sewerage services that is located within the locality, for
67 the purpose of providing sewerage services to persons residing within the Commonwealth and the
68 Bluestone watershed.