

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2663**

5 (By Delegates Moye, T. Campbell, Manchin,  
6 Shaver, Stephens, Barker, M. Poling and Doyle)

7  
8 [Passed March 12, 2011; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §11-13-3f of the Code of West Virginia,  
11 1931, as amended be amended and reenacted; to amend and  
12 reenact §11-13F-1 of said code; to amend and reenact §11-24-11  
13 of said code; to amend and reenact §24-1-3, §24-1-4 and §24-1-  
14 6 of said code; to amend and reenact §24-2A-2 of said code; to  
15 amend said code by adding thereto a new section, designated  
16 §24-2A-5; and to amend and reenact §24-3-2, all relating to  
17 duties of the Public Service Commission; requiring at least  
18 one commissioner be present at any public hearing on a public  
19 utility; requiring the commission establish a website and  
20 toll-free telephone number for reception of public comments;  
21 adding cost of providing private water utility services to  
22 qualified low-income residents to matters that the commission  
23 must certify and deleting obsolete language.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §11-13-3f of the Code of West Virginia, 1931, as amended  
26 be amended and reenacted; that §11-13F-1 be amended and reenacted;

1 that §11-24-11 be amended and reenacted; that §24-1-3, §24-1-4 and  
2 §24-1-6 be amended and reenacted; that §24-2A-2 be amended and  
3 reenacted; that §24-3-2 be amended and reenacted; and that said  
4 code be amended by adding thereto a new section, designated §24-2A-  
5 5, all to read as follows:

6 **CHAPTER 11. TAXATION.**

7 **ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

8 **§11-13-3f. Tax credit for reducing electric and natural gas**  
9 **utility rates for low-income residential**  
10 **customers; regulations.**

11 (a) There shall be allowed as a credit against the tax imposed  
12 by this article, the cost of providing electric or natural gas or  
13 water utility service, or any combination of electric, natural gas  
14 or water utility services, at reduced rates to qualified low-income  
15 residential customers which has not been reimbursed by any other  
16 means.

17 (b) The tax commissioner may prescribe such regulations as may  
18 be necessary to carry out the purposes of this section, of article  
19 thirteen-f of this chapter and of section eleven, article twenty-  
20 four of this chapter.

21 **ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING**  
22 **ELECTRIC, NATURAL GAS AND WATER UTILITY RATES FOR**  
23 **LOW-INCOME RESIDENTIAL CUSTOMERS.**

24 **§11-13F-1. Legislative Purpose.**

25 In order to reimburse public utilities for the revenue

1 deficiencies that they incur in providing special reduced electric  
2 and natural gas utility rates to low-income residential customers  
3 in accordance with the provisions of article two-a of chapter  
4 twenty-four, there is hereby provided a business and occupation tax  
5 credit for reducing electric natural gas, and water utility rates  
6 for low-income residential customers.

7 **ARTICLE 24. CORPORATION NET INCOME TAX.**

8 **§11-24-11. Credit for reducing electric, natural gas and water**  
9 **utility rates for low-income residential customers.**

10 (a) General. -- A credit shall be allowed against the primary  
11 tax liability of an eligible taxpayer under this article for the  
12 cost of providing electric natural gas or water utility service, or  
13 any combination of electric, natural gas or water utility services,  
14 at special reduced rates to qualified low-income residential  
15 customers which has not been reimbursed by any other means.

16 (b) Definitions. -- For purposes of this section, the term:

17 (1) "Eligible taxpayer" means a utility which has provided  
18 electric natural gas or water utility service, or any combination  
19 of electric, natural gas or water utility services, to qualified  
20 low-income residential customers at special reduced rates.

21 (2) "Cost of providing electric or natural gas or water  
22 utility service, or any combination of electric, natural gas or  
23 water utility services, at special reduced rates" means the amount  
24 certified by the public service commission under the provisions of  
25 section three, article two-a, chapter twenty-four of this code, as

1 the revenue deficiency incurred by a public utility in providing  
2 special reduced rates for electric natural gas or water utility  
3 service, or any combination of electric, natural gas or water  
4 utility services, as required by section one, article two-a,  
5 chapter twenty-four of this code.

6 (3) "Special reduced rates" means the rates ordered by the  
7 public service commission under the authority of sections one, and  
8 five article two-a, chapter twenty-four of this code.

9 (4) "Qualified low-income residential customers" means those  
10 utility customers eligible to receive electric natural gas or water  
11 utility service, or any combination of electric, natural gas or  
12 water utility services, under special reduced rates.

13 (c) Amount of credit.--The amount of the credit available to  
14 any eligible taxpayer shall be equal to its cost of providing  
15 electric or natural gas service, or both, at special reduced rates  
16 to qualified residential customers, less any reimbursement of said  
17 cost which the taxpayer has received through any other means.

18 (d) When credit may be taken. -- An eligible taxpayer may  
19 claim a credit allowed under this section on its annual return for  
20 the taxable year in which it receives certification of the amount  
21 of its revenue deficiency from the public service commission.

22 Notwithstanding the provisions of section sixteen of this article  
23 to the contrary, no credit may be claimed on any declaration of  
24 estimated tax filed for such taxable year prior to the first day of  
25 July of such taxable year. Such credit may be claimed on a  
26 declaration or amended declaration filed on or after that date but

1 only if the amount certified will not be recovered by application  
2 of the business and occupation tax credit allowed by section three-  
3 f, article thirteen of this chapter. In such event, only that  
4 amount not recovered by that credit may be considered or taken as  
5 a credit when estimating the tax due under this article. In no  
6 event may the eligible taxpayer recover more than one hundred  
7 percent of its revenue deficiency as certified by the public  
8 service commission.

9 (e) Application of credit. -- The credit allowable by this  
10 section for a taxable year is not subject to the fifty percent  
11 limitation specified in section nine of this article.

12 Notwithstanding the provisions of section four, article  
13 thirteen-f of this chapter, any unused credit may be carried over  
14 and applied against business and occupation taxes in the manner  
15 specified in section five, article thirteen-f of this chapter.

16 (f) Copy of certification order. -- A copy of a certification  
17 order from the public service commission shall be attached to any  
18 annual return under this article on which a credit allowed by this  
19 section is taken.

20 **ARTICLE 24. CORPORATION NET INCOME TAX.**

21 **§11-24-11. Credit for reducing electric natural gas and water**  
22 **utility rates for low-income residential customers.**

23 (a) General. -- A credit shall be allowed against the primary  
24 tax liability of an eligible taxpayer under this article for the  
25 cost of providing electric natural gas or water utility service, or

1 any combination of electric, natural gas or water utility services,  
2 at special reduced rates to qualified low-income residential  
3 customers which has not been reimbursed by any other means.

4 (b) Definitions. -- For purposes of this section, the term:

5 (1) "Eligible taxpayer" means a utility which has provided  
6 electric natural gas or water utility service, or any combination  
7 of electric, natural gas or water utility services, to qualified  
8 low-income residential customers at special reduced rates.

9 (2) "Cost of providing electric natural gas or water utility  
10 service, or any combination of electric, natural gas or water  
11 utility services, at special reduced rates" means the amount  
12 certified by the public service commission under the provisions of  
13 section three, article two-a, chapter twenty-four of this Code, as  
14 the revenue deficiency incurred by a public utility in providing  
15 special reduced rates for electric natural gas or water utility  
16 service, or any combination of electric, natural gas or water  
17 utility services, as required by section one, article two-a,  
18 chapter twenty-four of this code.

19 (3) "Special reduced rates" means the rates ordered by the  
20 public service commission under the authority of section one,  
21 article two-a, chapter twenty-four of this code.

22 (4) "Qualified low-income residential customers" means those  
23 utility customers eligible to receive electric natural gas or water  
24 utility service, or any combination of electric, natural gas or  
25 water utility services, under special reduced rates.

1 (c) Amount of credit. -- The amount of the credit available to  
2 any eligible taxpayer shall be equal to its cost of providing  
3 electric natural gas or water utility service, or any combination  
4 of electric, natural gas or water utility services, at special  
5 reduced rates to qualified residential customers, less any  
6 reimbursement of said cost which the taxpayer has received through  
7 any other means.

8 (d) When credit may be taken. -- An eligible taxpayer may  
9 claim a credit allowed under this section on its annual return for  
10 the taxable year in which it receives certification of the amount  
11 of its revenue deficiency from the public service commission.  
12 Notwithstanding the provisions of section sixteen of this article  
13 to the contrary, no credit may be claimed on any declaration of  
14 estimated tax filed for such taxable year prior to the first day of  
15 July of such taxable year. Such credit may be claimed on a  
16 declaration or amended declaration filed on or after that date but  
17 only if the amount certified will not be recovered by application  
18 of the business and occupation tax credit allowed by section three-  
19 f, article thirteen of this chapter. In such event, only that  
20 amount not recovered by that credit may be considered or taken as  
21 a credit when estimating the tax due under this article. In no  
22 event may the eligible taxpayer recover more than one hundred  
23 percent of its revenue deficiency as certified by the public  
24 service commission.

25 (e) Application of credit. -- The credit allowable by this

1 section for a taxable year is not subject to the fifty percent  
2 limitation specified in section nine of this article.  
3 Notwithstanding the provisions of section four, article thirteen-f  
4 of this chapter, any unused credit may be carried over and applied  
5 against business and occupation taxes in the manner specified in  
6 section five, article thirteen-f of this chapter.

7 (f) Copy of certification order. -- A copy of a certification  
8 order from the public service commission shall be attached to any  
9 annual return under this article on which a credit allowed by this  
10 section is taken.

11 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

12 **ARTICLE 1. GENERAL PROVISIONS.**

13 **§24-1-3. Commission continued; membership; chairman; compensation;**  
14 **quorum.**

15 (a) The Public Service Commission of West Virginia is  
16 continued and directed as provided by this chapter, chapter twenty-  
17 four-a, chapter twenty-four-b and chapter twenty-four-d of this  
18 code. The Public Service Commission may sue and be sued by that  
19 name.

20 (b) The Public Service Commission shall consist of three  
21 members who shall be appointed by the Governor, with the advice and  
22 consent of the Senate. The commissioners shall be citizens and  
23 residents of this state and at least one of them shall be duly  
24 licensed to practice law in West Virginia, with not less than ten

1 years' actual work experience in the legal profession as a member  
2 of a State Bar.

3 (c) No more than two of the commissioners shall be members of  
4 the same political party.

5 (d) Each commissioner shall, before entering upon the duties  
6 of his or her office, take and subscribe to the oath provided by  
7 section five, article IV of the Constitution of this state. The  
8 oath shall be filed in the office of the Secretary of State.

9 (e) The Governor shall designate one of the commissioners to  
10 serve as chairman at the Governor's will and pleasure. The  
11 chairman shall be the chief administrative officer of the  
12 commission. The Governor may remove any commissioner only for  
13 incompetency, neglect of duty, gross immorality, malfeasance in  
14 office or violation of subsections (g) and (h) of this section.

15 (f) Upon expiration of the terms, appointments are for terms  
16 of six years, except that an appointment to fill a vacancy is for  
17 the unexpired term only.

18 (g) No person while in the employ of, or holding any official  
19 relation to, any public utility subject to the provisions of this  
20 chapter or holding any stocks or bonds of a public utility subject  
21 to the provisions of this chapter or who is pecuniarily interested  
22 in a public utility subject to the provisions of this chapter may  
23 serve as a member of the commission or as an employee of the  
24 commission.

25 (h) Nor may any commissioner be a candidate for or hold public

1 office or be a member of any political committee while acting as a  
2 commissioner; nor may any commissioner or employee of the  
3 commission receive any pass, free transportation or other thing of  
4 value, either directly or indirectly, from any public utility or  
5 motor carrier subject to the provisions of this chapter. In case  
6 any of the commissioners becomes a candidate for any public office  
7 or a member of any political committee, the Governor shall remove  
8 him or her from office and shall appoint a new commissioner to fill  
9 the vacancy created.

10 (i) The annual salary of each commissioner provided in section  
11 two-a, article seven, chapter six of this code shall be paid in  
12 monthly installments from the special funds in the percentages that  
13 follow:

14 (1) From the Public Service Commission Fund collected under  
15 the provisions of section six, article three of this chapter,  
16 eighty percent;

17 (2) From the Public Service Commission Motor Carrier Fund  
18 collected under the provisions of section six, article six, chapter  
19 twenty-four-a of this code, seventeen percent; and

20 (3) From the Public Service Commission Gas Pipeline Safety  
21 Fund collected under the provisions of section three, article five,  
22 chapter twenty-four-b of this code, three percent.

23 (j) In addition to the salary provided for all commissioners  
24 in section two-a, article seven, chapter six of this code, the  
25 chairman of the commission shall receive \$5,000 per annum to be

1 paid in monthly installments from the Public Service Commission  
2 Fund collected under the provisions of section six, article three  
3 of this chapter.

4 **§24-1-4. Appointment, duties and compensation of secretary and**  
5 **other employees; hearings generally; public comment;**  
6 **outside employment by certain employees prohibited.**

7 The commission shall appoint a secretary and such other  
8 employees as may be necessary to carry out the provisions of this  
9 chapter and shall fix their respective salaries or compensations.  
10 It shall be the duty of the secretary to keep a full and true  
11 record of all proceedings, acts, orders and judgments of the  
12 commission, to issue all necessary process, returns and notices, to  
13 keep all books, maps, documents and papers ordered filed by the  
14 commission, and all orders made by the commission or approved and  
15 confirmed by it and ordered to be filed; and he shall be  
16 responsible to the commission for the safe custody and preservation  
17 of all such documents in his office. He may administer oaths in  
18 all parts of the state, so far as the exercise of such power is  
19 properly incidental to the performance of his duty or that of the  
20 commission.

21 The commission may designate such of its employees as it deems  
22 necessary to hold hearings, held or required by this chapter, and  
23 to take evidence at such hearings, which employees are hereby  
24 empowered to subpoena witnesses, administer oaths, take testimony,  
25 require the production of documentary evidence and exercise such

1 other powers and perform such other duties as may be delegated to  
2 them and required by the commission, in any proceeding or  
3 examination instituted or conducted by the commission under this  
4 chapter, at any designated place of hearing within the state.

5         The Commission shall provide a web site to accept comments  
6 from West Virginia residents regarding any matter under the  
7 auspices of the Commission or before the commission. The Commission  
8 staff shall report to the full commission all comments and  
9 suggestions received through the web site.

10         Any commissioner or person employed by the commission other  
11 than on a part-time basis shall devote full time to the performance  
12 of his duties as such commissioner or employee during the regular  
13 working hours as set by the commission.

14 **§24-1-6. Office of commission; time and place of hearings; number**  
15 **of commissioners required for taking action.**

16         The general office of the commission shall be kept at the seat  
17 of government and in charge of the secretary or his or her deputy.  
18 Hearings and the taking of evidence may be had at such times and  
19 places and in such manner in each particular case as the commission  
20 may designate. If the sole purpose of the hearing is to receive  
21 public comment or protest, then not less than one commissioner is  
22 required to be present.

23         The concurrent judgment of two of the commissioners, when in  
24 session as the commission, shall be deemed the action of the  
25 commission, and a vacancy in the commission shall not affect the

1 right or duty of the remaining commissioners to function as a  
2 commission.

3 **ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF**  
4 **ELECTRICITY AND GAS.**

5 **§24-2A-2. Recovery of revenue deficiencies.**

6 In order to provide the special reduced rates mandated by  
7 sections one and five of this article and still maintain the  
8 integrity of the earnings of the utilities offering service under  
9 these rates, the commission shall each year, determine, upon  
10 application by any affected utility, that utility's revenue  
11 deficiency resulting from the special reduced rates. Upon  
12 determining any utility's revenue deficiency, the commission shall  
13 issue an order certifying the amount of that deficiency. Certified  
14 revenue deficiencies shall be recovered by the affected utilities  
15 as follows:

16 (1) A utility's certified revenue deficiency, if any,  
17 resulting from the special reduced rates shall be allowed as a tax  
18 credit against the liability of the utility pursuant to the  
19 provisions of article thirteen-f of chapter eleven of this code.

20 (2) After allowance of a tax credit pursuant to the provisions  
21 of article thirteen-f of chapter eleven, a utility's remaining  
22 revenue deficiency, if any, resulting from the special reduced  
23 rates, shall be allowed as a tax credit against the liability of  
24 the utility pursuant to the provisions of section eleven, article

1 twenty-four of chapter eleven.

2 **§24-2A-5. Special rates for certain water utility customers.**

3 (a) The commission may authorize a privately owned water  
4 utility to voluntarily implement a rate design featuring reduced  
5 rates and charges for service for residential utility customers  
6 receiving:

7 (1) Social Security Supplemental Security Income (SSI);

8 (2) Temporary Assistance for Needy Families (TANF);

9 (3) Temporary Assistance for Needy Families-Unemployed Parent  
10 Program (TANF-UP); or

11 (4) assistance from the Supplemental Nutrition Assistance  
12 Program (SNAP) if they are sixty years of age or older.

13 (b) The special reduced rate offered by each water utility to  
14 its eligible customers shall be a percentage less, which shall be  
15 approved by the commission, than the rate that would be applicable  
16 to such customers if they were not receiving any of the four forms  
17 of assistance that confer eligibility for the special reduced rates  
18 approved by the commission: *Provided*, That such rate reduction  
19 shall not exceed twenty percent of the rate that would be otherwise  
20 applicable.

21 (c) Before any individual may qualify to receive the special  
22 reduced rates, the following requirements must be met:

23 (1) The special reduced rates may apply only to current  
24 customers or to those persons who subsequently become customers in

1 their own right. If an SSI, TANF-UP or SNAP recipient is living in  
2 a household that is served under the name of a person who is not an  
3 SSI, TANF, TANF-UP or SNAP recipient, that service may not be  
4 changed or have been changed subsequent to July 1 , 2011, to the  
5 name of the SSI, TANF, TANF-UP or SNAP recipient in order to  
6 qualify for service under the special reduced rates.

7 (2) The burden of proving eligibility for the special reduced  
8 rates shall be on the customer requesting such rates. The  
9 Department of Health and Human Resources shall establish by rules  
10 procedures:

11 (A) To inform persons receiving any of the four forms of  
12 assistance that confer eligibility for the special reduced rates  
13 about the availability of the special reduced rates;

14 (B) To assist applicants for the special reduced rates in  
15 proving their eligibility therefor; and

16 (C) To assist water utilities offering the special reduced  
17 rates in determining on a continuing basis the eligibility therefor  
18 of persons receiving or applying for such rates.

19 The commission shall establish rules and procedures for the  
20 application for and provision of service under the special reduced  
21 rates and for the determination and certification of revenue  
22 deficiencies resulting from the special reduced rates.

23 (3) In order to provide each eligible residential utility  
24 customer the special reduced rates, each utility providing the  
25 special reduced rates shall credit against amounts otherwise owed

1 by each customer an amount equal to the difference between the  
2 total amount that each customer was actually billed during the  
3 previous month and the total amount that each customer would have  
4 been entitled to be billed under the special reduced rates. Each  
5 credit shall be fully reflected on the first bill issued to each  
6 customer after approval of each customer's application for the  
7 special reduced rates, except in cases where the interval between  
8 the approval and the issuance of the next bill is so short that it  
9 is administratively impracticable to do so, in which case, such  
10 credits shall be fully reflected on the second bill issued to each  
11 customer after approval of that customer's application. If the  
12 interval between the approval and the issuance of the next bill is  
13 fifteen days or more, it may not be deemed administratively  
14 impracticable to reflect the credit on the customer's first bill.

15 **ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO**  
16 **REGULATIONS OF COMMISSION.**

17 **§24-3-2. Discrimination prohibited.**

18 No public utility subject to the provisions of this chapter  
19 shall, directly or indirectly, by any special rate, rebate,  
20 drawback or other device or method, charge, demand, collect or  
21 receive from any person, firm or corporation, a greater or less  
22 compensation, for any service rendered or to be rendered, than it  
23 charges, demands, collects, or receives from any other person, firm  
24 or corporation for doing a like and contemporaneous service under  
25 the same or substantially similar circumstances and conditions.

1           It shall be unlawful for any public utility subject to the  
2 provisions of this chapter to make or give any undue or  
3 unreasonable preference or advantage to any particular person,  
4 company, firm, corporation or locality, or any particular character  
5 of traffic or service, in any respect whatsoever, or to subject any  
6 particular person, firm, corporation, company or locality, or any  
7 particular character of traffic or service, to any undue or  
8 unreasonable prejudice or disadvantage in any respect whatsoever.

9           Nothing in this section shall be construed to prevent the  
10 commission from:

11           (a) Authorizing or requiring any rate design consistent with  
12 the purposes and policies set forth in article two-a of this  
13 chapter; or

14           (b) Authorizing a private water utility to voluntarily  
15 implement a rate design featuring reduced rates and charges for  
16 service to qualifying low-income residential customers.