

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2663**

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

6
7 (Originating in the Committee on the Judiciary.)

8 [February 3, 2011]

9
10 A BILL to amend and reenact §24-1-3 and §24-1-4 of the Code of West
11 Virginia, 1931, as amended, all relating to the conduct of
12 hearings by the Public Service Commission and its designated
13 hearing examiners; requiring the Commission to preside en banc
14 over any hearings conducted with respect to any case in which
15 the Commission retains to sit en banc as the initial finder of
16 fact; and deleting obsolete language.

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

18 That §24-1-3 and §24-1-4 of the Code of West Virginia, 1931,
19 as amended, be amended and reenacted to read as follows:

20 **ARTICLE 1. GENERAL PROVISIONS.**

21 **§24-1-3. Commission continued; membership; chairman; compensation;**
22 **quorum.**

23 (a) The Public Service Commission of West Virginia is continued
24 and directed as provided by this chapter, chapter twenty-four-a,
25 chapter twenty-four-b and chapter twenty-four-d of this code. ~~After~~
26 ~~having conducted a performance audit through its joint committee on~~

~~1 government operations, pursuant to section nine, article ten,
2 chapter four of this code, the Legislature hereby finds and declares
3 that the Public Service Commission should be continued and
4 reestablished. Accordingly, notwithstanding the provisions of
5 section five, article ten, chapter four of this code, the Public
6 Service Commission shall continue to exist until July 1, two
7 thousand three. The Public Service Commission may sue and be sued
8 by that name.~~

9 **(b)** The Public Service Commission shall consist of three
10 members who shall be appointed by the Governor, with the advice and
11 consent of the Senate. The commissioners shall be citizens and
12 residents of this state and at least one of them shall be duly
13 licensed to practice law in West Virginia, with not less than ten
14 years' actual work experience in the legal profession as a member
15 of a State Bar.

16 **(c)** No more than two of the commissioners shall be members of
17 the same political party.

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

22 **(e)** The Governor shall designate one of the commissioners to
23 serve as chairman at the Governor's will and pleasure. The chairman
24 shall be the chief administrative officer of the commission. The
25 Governor may remove any commissioner only for incompetency, neglect
26 of duty, gross immorality, malfeasance in office or violation of

1 ~~subsection (c)~~ subsections (g) and (h) of this section.

2 ~~(b) (f)~~ (f) ~~The unexpired terms of members of the Public Service~~
3 ~~Commission at the time this subsection becomes effective are~~
4 ~~continued.~~ Upon expiration of the terms, appointments are for terms
5 of six years, except that an appointment to fill a vacancy is for
6 the unexpired term only. ~~The commissioners whose terms are~~
7 ~~terminated by the provisions of this subsection are eligible for~~
8 ~~reappointment.~~

9 ~~(e)~~ (g) No person while in the employ of, or holding any
10 official relation to, any public utility subject to the provisions
11 of this chapter or holding any stocks or bonds of a public utility
12 subject to the provisions of this chapter or who is pecuniarily
13 interested in a public utility subject to the provisions of this
14 chapter may serve as a member of the commission or as an employee
15 of the commission.

16 (h) Nor may any commissioner be a candidate for or hold public
17 office or be a member of any political committee while acting as a
18 commissioner; nor may any commissioner or employee of the commission
19 receive any pass, free transportation or other thing of value,
20 either directly or indirectly, from any public utility or motor
21 carrier subject to the provisions of this chapter. In case any of
22 the commissioners becomes a candidate for any public office or a
23 member of any political committee, the Governor shall remove him or
24 her from office and shall appoint a new commissioner to fill the
25 vacancy created.

26 ~~(d)~~ (i) ~~The salaries of members of the Public Service~~

~~1 Commission and the manner in which they are paid established by the~~
~~2 prior enactment of this section are continued. Effective July 1,~~
~~3 2001,~~ The annual salary of each commissioner provided in section
4 two-a, article seven, chapter six of this code shall be paid in
5 monthly installments from the special funds in the percentages that
6 follow:

7 (1) From the Public Service Commission Fund collected under the
8 provisions of section six, article three of this chapter, eighty
9 percent;

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

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

16 (j) In addition to the salary provided for all commissioners
17 in section two-a, article seven, chapter six of this code, the
18 chairman of the commission shall receive \$5,000 per annum to be paid
19 in monthly installments from the Public Service Commission Fund
20 collected under the provisions of section six, article three of this
21 chapter.

22 **§24-1-4. Appointment, duties and compensation of secretary and**
23 **other employees; hearings generally; outside**
24 **employment by certain employees prohibited.**

25 The commission shall appoint a secretary and such other

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

13 The commission may designate such of its employees as it deems
14 necessary to hold hearings, held or required by this chapter, and
15 to take evidence at such hearings, which employees are hereby
16 empowered to subpoena witnesses, administer oaths, take testimony,
17 require the production of documentary evidence and exercise such
18 other powers and perform such other duties as may be delegated to
19 them and required by the commission, in any proceeding or
20 examination instituted or conducted by the commission under this
21 chapter, at any designated place of hearing within the state.

22 On any matter the Commission retains to hear en banc as the
23 initial finder of fact, the Commission shall preside en banc over
24 all hearings that are conducted with respect to that matter,
25 including any associated public protest hearings.

26 Any commissioner or person employed by the commission other

1 than on a part-time basis shall devote full time to the performance
2 of his duties as such commissioner or employee during the regular
3 working hours as set by the commission.

NOTE: The purpose of this bill is to require the Commission to sit en banc over all hearings conducted with respect any matter in which the Public Service Commission has retained to decide en banc as the initial finder of fact, including any associated public protest hearings. The bill also deletes obsolete language.

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