

1 **H. B. 2799**

2
3 (By Delegates Caputo, Butcher, M. Poling,
4 D. Poling, Marshall, Guthrie, Manypenny
5 and Boggs)
6

7 [Introduced January 24, 2011; referred to the
8 Committee on Energy, Industry and Labor, Economic
9 Development and Small Business then the Judiciary.]

10 A BILL to amend and reenact §24-1-1 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding a new
12 section, designated §24-2-1k, all relating to requiring
13 greater information to be submitted by the Public Service
14 Commission annually regarding the quality of service provided
15 by utilities and persons subject to its jurisdiction; and
16 requiring incumbent local exchange carriers to achieve certain
17 levels of advanced services availability within the state by
18 July 1, 2014.

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

20 That §24-1-1 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; and that said code be amended by adding
22 thereto a new section, designated §24-2-1k, all to read as follows:

23 **ARTICLE 1. GENERAL PROVISIONS.**

24 **§24-1-1. Legislative purpose and policy; plan for internal**
25 **reorganization; promulgation of plan as rule;**
26 **cooperation with Joint Committee on Government and**

1 **Finance.**

2 (a) It is the purpose and policy of the Legislature in
3 enacting this chapter to confer upon the Public Service Commission
4 of this state the authority and duty to enforce and regulate the
5 practices, services and rates of public utilities in order to:

6 (1) Ensure fair and prompt regulation of public utilities in
7 the interest of the using and consuming public;

8 (2) Provide the availability of adequate, economical and
9 reliable utility services throughout the state;

10 (3) Encourage the well-planned development of utility
11 resources in a manner consistent with state needs and in ways
12 consistent with the productive use of the state's energy resources,
13 such as coal;

14 (4) Ensure that rates and charges for utility services are
15 just, reasonable, applied without unjust discrimination or
16 preference, applied in a manner consistent with the purposes and
17 policies set forth in article two-a of this chapter, and based
18 primarily on the costs of providing these services;

19 (5) Encourage energy conservation and the effective and
20 efficient management of regulated utility enterprises; and

21 (6) Encourage and support open and competitive marketing of
22 rail carrier services by providing to all rail carriers access to
23 tracks as provided in section three-b, article three of this
24 chapter. It is the purpose of the Legislature to remove artificial

1 barriers to rail carrier service, stimulate competition, stimulate
2 the free flow of goods and passengers throughout the state and
3 promote the expansion of the tourist industry, thereby improving
4 the economic condition of the state.

5 (b) The Legislature creates the Public Service Commission to
6 exercise the legislative powers delegated to it. The Public
7 Service Commission is charged with the responsibility for
8 appraising and balancing the interests of current and future
9 utility service customers, the general interests of the state's
10 economy and the interests of the utilities subject to its
11 jurisdiction in its deliberations and decisions.

12 (c) The Legislature directs the Public Service Commission to
13 identify, explore and consider the potential benefits or risks
14 associated with emerging and state-of-the-art concepts in utility
15 management, rate design and conservation. The commission may
16 conduct inquiries and hold hearings regarding such concepts in
17 order to provide utilities subject to its jurisdiction and other
18 interested persons the opportunity to comment, and shall report to
19 the Governor and the Legislature regarding its findings and
20 policies to each of these areas not later than the first day of the
21 regular session of the Legislature in the year 1985, and every two
22 years thereafter.

23 (d) It is legislative policy to ensure that the Legislature
24 and the general public become and remain better informed regarding

1 the regulation of public utilities in this state, the quality of
2 service provided by public utilities to consumers in the state and
3 the levels of customer satisfaction with their public utility
4 service as reflected in formal or informal complaints lodged with
5 the commission, and the conduct of the business of the Public
6 Service Commission. To aid in the achievement of this policy, the
7 Public Service Commission annually shall present to the Joint
8 Committee on Government and Finance, created by article three,
9 chapter four of this code, or a subcommittee designated by the
10 joint committee, a management summary report which describes in a
11 concise manner:

12 (1) The major activities of the commission for the year
13 especially as such activities relate to the implementation of the
14 provisions of this chapter;

15 (2) Important policy decisions reached and initiatives
16 undertaken during the year;

17 (3) The current balance of supply and demand for natural gas
18 and electric utility services in the state and forecast of the
19 probable balance for the next ten years; ~~and~~

20 (4) Other information considered by the commission to be
21 important including recommendations for statutory reform and the
22 reasons for such recommendations, and

23 (5) The following information or data reflecting upon both the
24 quality of service provided by public utilities to consumers in the

1 state and the level of customer satisfaction with their public
2 utility service for each major utility type, including without
3 limitation, public utilities that provide electric, gas, telephone,
4 cable, water and wastewater service (including municipal
5 corporations and sanitary districts, and public service districts)
6 and motor carriers of passengers and property for hire:

7 (A) The number and nature of formal complaints filed with the
8 commission against such utilities or other persons subject to the
9 commission's jurisdiction and the disposition, if any, of such
10 complaints in the preceding twelve calendar months;

11 (B) The number and nature of informal complaints lodged with
12 the commission against such utilities or other persons subject to
13 the commission's jurisdiction in the preceding twelve calendar
14 months, which shall identify at least the following categories of
15 informal complaint type: initiation or installation of service,
16 billing disputes, poor quality of service or product, service
17 outages, poor customer service, termination of service, right of
18 way disputes, property damage and cable rates and programming; and

19 (C) The change, expressed both in absolute number and as a
20 percentage, in the number of formal and informal complaints for
21 each major utility type reported in the commission's preceding
22 annual report to the Joint Committee on Government and Finance.

23 (e) In addition to any other studies and reports required to
24 be conducted and made by the Public Service Commission pursuant to

1 any other provision of this section, the commission shall study and
2 initially report to the Legislature no later than the first day of
3 the regular session of the Legislature in the year 1980, upon:

4 (1) The extent to which natural gas wells or wells heretofore
5 supplying gas utilities in this state have been capped off or shut
6 in; the number of such wells, their probable extent of future
7 production and the reasons given and any justification for, capping
8 off or shutting in such wells, the reasons, if any, why persons
9 engaged or heretofore engaged in the development of gas wells in
10 this state or the Appalachian areas have been discouraged from
11 drilling, developing or selling the production of such wells and
12 whether there are fixed policies by any utility or group of
13 utilities to avoid the purchase of natural gas produced in the
14 Appalachian region of the United States generally and in West
15 Virginia specifically.

16 (2) The extent of the export and import of natural gas utility
17 supplies in West Virginia.

18 (3) The cumulative effect of the practices mentioned in
19 subdivisions (1) and (2) of this subsection upon rates theretofore
20 and hereafter charged gas utility customers in West Virginia.

21 In carrying out the provisions of this section the commission
22 shall have jurisdiction over such persons, whether public utilities
23 or not, as may be in the opinion of the commission necessary to the
24 exercise of its mandate and may compel attendance before it, take

1 testimony under oath and compel the production of papers or other
2 documents. Upon reasonable request by the commission, all other
3 state agencies shall cooperate with the commission in carrying out
4 the provisions and requirements of this subsection.

5 (f) No later than the first day of the regular session of the
6 Legislature in the year 1980, the Public Service Commission shall
7 submit to the Legislature a plan for internal reorganization which
8 plan shall specifically address the following:

9 (1) A division within the Public Service Commission which
10 shall include the office of the commissioners, the hearing
11 examiners and such support staff as may be necessary to carry out
12 the functions of decision making and general supervision of the
13 commission, which functions shall not include advocacy in cases
14 before the commission;

15 (2) The creation of a division which shall act as an advocate
16 for the position of and in the interest of all customers;

17 (3) The means and procedures by which the division to be
18 created pursuant to the provisions of subdivision (2) of this
19 subsection shall protect the interests of each class of customers
20 and the means by which the commission will assure that such
21 division will be financially and departmentally independent of the
22 division created by subdivision (1) of this subsection;

23 (4) The creation of a division within the Public Service
24 Commission which shall assume the duties and responsibilities now

1 charged to the commissioners with regard to motor carriers which
2 division shall exist separately from those divisions set out in
3 subdivisions (1) and (2) of this subsection and which shall relieve
4 the commissioners of all except minimal administrative
5 responsibilities as to motor carriers and which plan shall provide
6 for a hearing procedure to relieve the commissioners from hearing
7 motor carrier cases;

8 (5) Which members of the staff of the Public Service
9 Commission shall be exempted from the salary schedules or pay plan
10 adopted by the Civil Service Commission and identify such staff
11 members by job classification or designation, together with the
12 salary or salary ranges for each such job classification or
13 designation;

14 (6) The manner in which the commission will strengthen its
15 knowledge and independent capacity to analyze key conditions and
16 trends in the industries it regulates extending from general
17 industry analysis and supply-demand forecasting to continuing and
18 more thorough scrutiny of the capacity planning, construction
19 management, operating performance and financial condition of the
20 major companies within these industries.

21 Such plan shall be based on the concept that each of the
22 divisions mentioned in subdivisions (1), (2) and (4) of this
23 subsection shall exist independently of the others and the plan
24 shall discourage ex parte communications between them by such means

1 as the commission shall direct, including, but not limited to,
2 separate clerical and professional staffing for each division.
3 Further, the Public Service Commission is directed to incorporate
4 within the said plan to the fullest extent possible the
5 recommendations presented to the subcommittee on the Public Service
6 Commission of the Joint Committee on Government and Finance in a
7 final report dated February, 1979, and entitled "A Plan for
8 Regulatory Reform and Management Improvement."

9 The commission shall before January 5, 1980, adopt said plan
10 by order, which order shall promulgate the same as a rule of the
11 commission to be effective upon the date specified in said order,
12 which date shall be no later than December 31, 1980. Certified
13 copies of such order and rule shall be filed on the first day of
14 the regular session of the Legislature, 1980, by the chairman of
15 the commission with the clerk of each house of the Legislature, the
16 Governor and the Secretary of State. The chairman of the
17 commission shall also file with the office of the Secretary of
18 State the receipt of the clerk of each house and of the Governor,
19 which receipt shall evidence compliance with this section.

20 Upon the filing of a certified copy of such order and rule,
21 the clerk of each house of the Legislature shall report the same to
22 their respective houses and the presiding officer thereof shall
23 refer the same to appropriate standing committee or committees.

24 Within the limits of funds appropriated therefor, the rule of

1 the Public Service Commission shall be effective upon the date
2 specified in the order of the commission promulgating it unless an
3 alternative plan be adopted by general law or unless the rule is
4 disapproved by a concurrent resolution of the Legislature adopted
5 prior to adjournment sine die of the regular session of the
6 Legislature to be held in the year 1980: *Provided*, That if such
7 rule is approved in part and disapproved in part by a concurrent
8 resolution of the Legislature adopted prior to such adjournment,
9 such rule shall be effective to the extent and only to the extent
10 that the same is approved by such concurrent resolution.

11 The rules promulgated and made effective pursuant to this
12 section shall be effective notwithstanding any other provisions of
13 this code for the promulgation of rules or regulations.

14 (g) The Public Service Commission is hereby directed to
15 cooperate with the Joint Committee on Government and Finance of the
16 Legislature in its review, examination and study of the
17 administrative operations and enforcement record of the railroad
18 safety division of the Public Service Commission and any similar
19 studies.

20 (h) (1) The Legislature hereby finds that rates for natural
21 gas charged to customers of all classes have risen dramatically in
22 recent years to the extent that such increases have adversely
23 affected all customer classes. The Legislature further finds that
24 it must take action necessary to mitigate the adverse consequences

1 of these dramatic rate increases.

2 (2) The Legislature further finds that the practices of
3 natural gas utilities in purchasing high-priced gas supplies, in
4 purchasing gas supplies from out-of-state sources when West
5 Virginia possesses abundant natural gas, and in securing supplies,
6 directly or indirectly by contractual agreements including take-or-
7 pay provisions, indefinite price escalators, or most-favored nation
8 clauses have contributed to the dramatic increase in natural gas
9 prices. It is therefore the policy of the Legislature to
10 discourage such purchasing practices in order to protect all
11 customer classes.

12 (3) The Legislature further finds that it is in the best
13 interests of the citizens of West Virginia to encourage the
14 transportation of natural gas in intrastate commerce by interstate
15 or intrastate pipelines or by local distribution companies in order
16 to provide competition in the natural gas industry and in order to
17 provide natural gas to consumers at the lowest possible price.

18 (i) The Legislature further finds that transactions between
19 utilities and affiliates are a contributing factor to the increase
20 in natural gas and electricity prices and tend to confuse
21 consideration of a proper rate of return calculation. The
22 Legislature therefore finds that it is imperative that the Public
23 Service Commission have the opportunity to properly study the issue
24 of proper rate of return for lengthy periods of time and to limit

1 the return of a utility to a proper level when compared to return
2 or profit that affiliates earn on transactions with sister
3 utilities.

4 **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

5 **§24-2-1k. Required levels of advanced services deployment by**
6 **incumbent local exchange carriers.**

7 (a) Every incumbent local exchange carrier (telecommunications
8 carrier that offers or provides a regulated telecommunications
9 service) subject to the Public Service Commission's jurisdiction
10 shall offer or provide advanced telecommunications services to not
11 less than one hundred per cent of its customers by July 1, 2014:
12 Provided, That for purposes of this section, "advanced services"
13 means broadband services with information transfer rates equal to
14 or greater than 768 kbps but less than 1.5 mbps in the faster
15 direction, or as may be defined by the Federal Communications
16 Commission as "basic broadband tier 1" services.

17 (b) On or before December 31, 2011, each incumbent local
18 exchange carrier subject to the requirements of this section shall
19 file with the commission a proposed plan for achieving the advanced
20 services deployment levels set forth herein by July 1, 2014 or,
21 alternatively, certify to the commission that it is currently
22 achieving the advanced services deployment levels set forth herein
23 and provide information supporting such certification: Provided,
24 That the information provided to the commission under this

1 subsection shall be deemed public and not subject to protection
2 from disclosure to the public under the provisions of article one,
3 chapter twenty-nine-b of the code or any other provision of state
4 law.

5 (c) The commission is authorized to issue such orders as
6 necessary to require incumbent local exchange carriers subject to
7 its jurisdiction to achieve the advanced services deployment levels
8 set forth herein by July 1, 2014: *Provided*, That the commission
9 may grant an extension of time for up to twelve months to any
10 incumbent local exchange carrier able to demonstrate to the
11 commission that it is technically unfeasible to achieve the
12 advanced services deployment levels set forth herein by July 1,
13 2014.

NOTE: The purpose of this bill is to require greater information to be submitted by the Public Service Commission annually regarding the quality of service provided by utilities and persons subject to its jurisdiction, and to require incumbent local exchange carriers to achieve certain levels of advanced services availability within the state by July 1, 2014.

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

§24-2-1k is new; therefore, it has been completely underscored.