

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2663

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



Passed March 12, 2011

In Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

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H. B. 2663

(BY DELEGATES MOYE, T. CAMPBELL, MANCHIN,
SHAVER, STEPHENS, BARKER, M. POLING AND DOYLE)

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

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

Be it enacted by the Legislature of West Virginia:

That §11-13-3f of the Code of West Virginia, 1931, as amended be amended and reenacted; that §11-13F-1 be amended and reenacted; that §11-24-11 be amended and reenacted; that §24-1-3, §24-1-4 and §24-1-6 be amended and reenacted; that §24-2A-2 be amended and reenacted; that §24-3-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-2A-5, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

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

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

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

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

§11-13F-1. Legislative Purpose.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

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

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

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

9 (1) "Eligible taxpayer" means a utility which has
10 provided electric natural gas or water utility service, or any
11 combination of electric, natural gas or water utility services,
12 to qualified low-income residential customers at special
13 reduced rates.

14 (2) "Cost of providing electric or natural gas or water
15 utility service, or any combination of electric, natural gas or
16 water utility services, at special reduced rates" means the
17 amount certified by the public service commission under the

18 provisions of section three, article two-a, chapter twenty-four
19 of this code, as the revenue deficiency incurred by a public
20 utility in providing special reduced rates for electric, natural
21 gas or water utility service, or any combination of electric,
22 natural gas or water utility services, as required by section
23 one, article two-a, chapter twenty-four of this code.

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

27 (4) "Qualified low-income residential customers" means
28 those utility customers eligible to receive electric, natural gas
29 or water utility service, or any combination of electric,
30 natural gas or water utility services, under special reduced
31 rates.

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

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

43 Notwithstanding the provisions of section sixteen of this
44 article to the contrary, no credit may be claimed on any
45 declaration of estimated tax filed for such taxable year prior
46 to the first day of July of such taxable year. Such credit may
47 be claimed on a declaration or amended declaration filed on
48 or after that date but only if the amount certified will not be

49 recovered by application of the business and occupation tax
50 credit allowed by section three-f, article thirteen of this
51 chapter. In such event, only that amount not recovered by that
52 credit may be considered or taken as a credit when estimating
53 the tax due under this article. In no event may the eligible
54 taxpayer recover more than one hundred percent of its
55 revenue deficiency as certified by the public service
56 commission.

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

60 Notwithstanding the provisions of section four, article
61 thirteen-f of this chapter, any unused credit may be carried
62 over and applied against business and occupation taxes in the
63 manner specified in section five, article thirteen-f of this
64 chapter.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

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

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

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

9 (1) "Eligible taxpayer" means a utility which has
10 provided electric, natural gas or water utility service, or any
11 combination of electric, natural gas or water utility services,
12 to qualified low-income residential customers at special
13 reduced rates.

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

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

27 (4) "Qualified low-income residential customers" means
28 those utility customers eligible to receive electric, natural gas
29 or water utility service, or any combination of electric,
30 natural gas or water utility services, under special reduced
31 rates.

32 (c) Amount of credit. -- The amount of the credit
33 available to any eligible taxpayer shall be equal to its cost of
34 providing electric, natural gas or water utility service, or any
35 combination of electric, natural gas or water utility services,
36 at special reduced rates to qualified residential customers,
37 less any reimbursement of said cost which the taxpayer has
38 received through any other means.

39 (d) When credit may be taken. -- An eligible taxpayer
40 may claim a credit allowed under this section on its annual
41 return for the taxable year in which it receives certification of
42 the amount of its revenue deficiency from the public service
43 commission. Notwithstanding the provisions of section
44 sixteen of this article to the contrary, no credit may be
45 claimed on any declaration of estimated tax filed for such
46 taxable year prior to the first day of July of such taxable year.
47 Such credit may be claimed on a declaration or amended
48 declaration filed on or after that date but only if the amount
49 certified will not be recovered by application of the business
50 and occupation tax credit allowed by section three-f, article
51 thirteen of this chapter. In such event, only that amount not
52 recovered by that credit may be considered or taken as a
53 credit when estimating the tax due under this article. In no
54 event may the eligible taxpayer recover more than one
55 hundred percent of its revenue deficiency as certified by the
56 public service commission.

57 (e) Application of credit. -- The credit allowable by this
58 section for a taxable year is not subject to the fifty percent
59 limitation specified in section nine of this article.
60 Notwithstanding the provisions of section four, article
61 thirteen-f of this chapter, any unused credit may be carried
62 over and applied against business and occupation taxes in the
63 manner specified in section five, article thirteen-f of this
64 chapter.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

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

1 (a) The Public Service Commission of West Virginia is
2 continued and directed as provided by this chapter, chapter
3 twenty-four-a, chapter twenty-four-b and chapter twenty-
4 four-d of this code. The Public Service Commission may
5 sue and be sued by that name.

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

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

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

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

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

30 (g) No person while in the employ of, or holding any
31 official relation to, any public utility subject to the provisions
32 of this chapter or holding any stocks or bonds of a public
33 utility subject to the provisions of this chapter or who is
34 pecuniarily interested in a public utility subject to the
35 provisions of this chapter may serve as a member of the
36 commission or as an employee of the commission.

37 (h) Nor may any commissioner be a candidate for or hold
38 public office or be a member of any political committee
39 while acting as a commissioner; nor may any commissioner
40 or employee of the commission receive any pass, free
41 transportation or other thing of value, either directly or
42 indirectly, from any public utility or motor carrier subject to
43 the provisions of this chapter. In case any of the
44 commissioners becomes a candidate for any public office or
45 a member of any political committee, the Governor shall
46 remove him or her from office and shall appoint a new
47 commissioner to fill the vacancy created.

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

52 (1) From the Public Service Commission Fund collected
53 under the provisions of section six, article three of this
54 chapter, eighty percent;

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

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

61 (j) In addition to the salary provided for all
62 commissioners in section two-a, article seven, chapter six of
63 this code, the chairman of the commission shall receive
64 \$5,000 per annum to be paid in monthly installments from
65 the Public Service Commission Fund collected under the
66 provisions of section six, article three of this chapter.

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

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

16 The commission may designate such of its employees as
17 it deems necessary to hold hearings, held or required by this
18 chapter, and to take evidence at such hearings, which
19 employees are hereby empowered to subpoena witnesses,
20 administer oaths, take testimony, require the production of
21 documentary evidence and exercise such other powers and
22 perform such other duties as may be delegated to them and
23 required by the commission, in any proceeding or

24 examination instituted or conducted by the commission under
25 this chapter, at any designated place of hearing within the
26 state.

27 The Commission shall provide a web site to accept
28 comments from West Virginia residents regarding any matter
29 under the auspices of the Commission or before the
30 commission. The Commission staff shall report to the full
31 commission all comments and suggestions received through
32 the web site.

33 Any commissioner or person employed by the
34 commission other than on a part-time basis shall devote full
35 time to the performance of his duties as such commissioner
36 or employee during the regular working hours as set by the
37 commission.

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

1 The general office of the commission shall be kept at the
2 seat of government and in charge of the secretary or his or
3 her deputy. Hearings and the taking of evidence may be had
4 at such times and places and in such manner in each
5 particular case as the commission may designate. If the sole
6 purpose of the hearing is to receive public comment or
7 protest, then not less than one commissioner is required to be
8 present.

9 The concurrent judgment of two of the commissioners,
10 when in session as the commission, shall be deemed the
11 action of the commission, and a vacancy in the commission
12 shall not affect the right or duty of the remaining
13 commissioners to function as a commission.

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

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

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

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

15 (2) After allowance of a tax credit pursuant to the
16 provisions of article thirteen-f of chapter eleven, a utility's
17 remaining revenue deficiency, if any, resulting from the
18 special reduced rates, shall be allowed as a tax credit against
19 the liability of the utility pursuant to the provisions of section
20 eleven, article twenty-four of chapter eleven.

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

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

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

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

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

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

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

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

24 (1) The special reduced rates may apply only to current
25 customers or to those persons who subsequently become
26 customers in their own right. If an SSI, TANF-UP or SNAP
27 recipient is living in a household that is served under the
28 name of a person who is not an SSI, TANF, TANF-UP or
29 SNAP recipient, that service may not be changed or have
30 been changed subsequent to July 1 , 2011, to the name of the
31 SSI, TANF, TANF-UP or SNAP recipient in order to qualify
32 for service under the special reduced rates.

33 (2) The burden of proving eligibility for the special
34 reduced rates shall be on the customer requesting such rates.
35 The Department of Health and Human Resources shall
36 establish by rules procedures:

37 (A) To inform persons receiving any of the four forms of
38 assistance that confer eligibility for the special reduced rates
39 about the availability of the special reduced rates;

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

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

45 The commission shall establish rules and procedures for
46 the application for and provision of service under the special
47 reduced rates and for the determination and certification of
48 revenue deficiencies resulting from the special reduced rates.

49 (3) In order to provide each eligible residential utility
50 customer the special reduced rates, each utility providing the
51 special reduced rates shall credit against amounts otherwise
52 owed by each customer an amount equal to the difference
53 between the total amount that each customer was actually
54 billed during the previous month and the total amount that
55 each customer would have been entitled to be billed under the
56 special reduced rates. Each credit shall be fully reflected on
57 the first bill issued to each customer after approval of each
58 customer's application for the special reduced rates, except
59 in cases where the interval between the approval and the
60 issuance of the next bill is so short that it is administratively
61 impracticable to do so, in which case, such credits shall be
62 fully reflected on the second bill issued to each customer
63 after approval of that customer's application. If the interval

64 between the approval and the issuance of the next bill is
65 fifteen days or more, it may not be deemed administratively
66 impracticable to reflect the credit on the customer's first bill.

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

§24-3-2. Discrimination prohibited.

1 No public utility subject to the provisions of this chapter
2 shall, directly or indirectly, by any special rate, rebate,
3 drawback or other device or method, charge, demand, collect
4 or receive from any person, firm or corporation, a greater or
5 less compensation, for any service rendered or to be
6 rendered, than it charges, demands, collects, or receives from
7 any other person, firm or corporation for doing a like and
8 contemporaneous service under the same or substantially
9 similar circumstances and conditions.

10 It shall be unlawful for any public utility subject to the
11 provisions of this chapter to make or give any undue or
12 unreasonable preference or advantage to any particular
13 person, company, firm, corporation or locality, or any
14 particular character of traffic or service, in any respect
15 whatsoever, or to subject any particular person, firm,
16 corporation, company or locality, or any particular character
17 of traffic or service, to any undue or unreasonable prejudice
18 or disadvantage in any respect whatsoever.

19 Nothing in this section shall be construed to prevent the
20 commission from:

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor