

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 623**

5 (SENATOR SYPOLT, *original sponsor*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
8 _____
9

10 AN ACT to amend and reenact §24-2-2 of the Code of West Virginia,
11 1931, as amended, relating generally to the power of the
12 Public Service Commission to regulate public utilities; and
13 authorizing the Public Service Commission to promulgate rules
14 establishing requirements for capacity improvement fees.

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

16 That §24-2-2 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

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

19 **§24-2-2. General power of commission to regulate public utilities.**

20 (a) The commission is hereby given power to investigate all
21 rates, methods and practices of public utilities subject to the
22 provisions of this chapter; to require them to conform to the laws
23 of this state and to all rules, regulations and orders of the
24 commission not contrary to law; and to require copies of all

1 reports, rates, classifications, schedules and timetables in effect
2 and used by the public utility or other person, to be filed with
3 the commission, and all other information desired by the commission
4 relating to the investigation and requirements, including
5 inventories of all property in such form and detail as the
6 commission may prescribe. The commission may compel obedience to
7 its lawful orders by mandamus or injunction or other proper
8 proceedings in the name of the state in any circuit court having
9 jurisdiction of the parties or of the subject matter, or the
10 Supreme Court of Appeals direct, and the proceedings shall have
11 priority over all pending cases. The commission may change any
12 intrastate rate, charge or toll which is unjust or unreasonable or
13 any interstate charge with respect to matters of a purely local
14 nature which have not been regulated by or pursuant to an act of
15 Congress and may prescribe a rate, charge or toll that is just and
16 reasonable, and change or prohibit any practice, device or method
17 of service in order to prevent undue discrimination or favoritism
18 between persons and between localities and between commodities for
19 a like and contemporaneous service. But in no case shall the rate,
20 toll or charge be more than the service is reasonably worth,
21 considering the cost of the service. Every order entered by the
22 commission shall continue in force until the expiration of the
23 time, if any, named by the commission in the order, or until
24 revoked or modified by the commission, unless the order is

1 suspended, modified or revoked by order or decree of a court of
2 competent jurisdiction: *Provided*, That in the case of utilities
3 used by emergency shelter providers, the commission shall prescribe
4 such rates, charges or tolls that are the lowest available.
5 "Emergency shelter provider" means any nonprofit entity which
6 provides temporary emergency housing and services to the homeless
7 or to victims of domestic violence or other abuse.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, rates are not discriminatory if, when considering the
10 debt costs associated with a future water or sewer project which
11 would not benefit existing customers, the commission establishes
12 rates which ensure that the future customers to be served by the
13 new project are solely responsible for the debt costs associated
14 with the project.

15 (c) Notwithstanding any other provision of this code to the
16 contrary, the commission shall promulgate and adopt rules that
17 relate to its establishment and modification of capacity
18 improvement fees for residential and commercial customers for
19 inclusion in the tariff of a private, public or municipal water or
20 sewer utility.

21 (1) A capacity improvement fee shall be based upon the
22 estimated cost of future additions or upgrades of capacity required
23 to serve future capacity demand by a new connection compared to the
24 overall demand due to customer growth;

1 (2) A capacity improvement fee shall apply to developers and
2 owners of structures that seek to connect to water and sewer
3 systems;

4 (3) In establishing the capacity improvement fee, the
5 commission shall consider, together with other criteria it may in
6 its discretion consider, the expected growth in population that
7 will be served by the utility, the capacity requirement to serve
8 that population growth and the expected exhaustion date of existing
9 capacity;

10 (4) The commission shall consider establishing differentials
11 in the fee or limitations on the amount of or calculation of fees
12 based upon a relative cost of housing index created pursuant to the
13 provisions of section two-b, article one, chapter eleven of this
14 code, which fee differentials shall not be considered
15 discriminatory rates within the meaning of this chapter;

16 (5) The commission shall consider an affordable housing
17 component with a discount capacity improvement fee schedule based
18 upon the new home's value compared to the most recent annual single
19 dwelling residential housing index created pursuant to the
20 provisions of section two-b, article one, chapter eleven of this
21 code;

22 (6) The capacity improvement fee shall include a lower fee for
23 manufactured housing equal to twenty-five percent of the otherwise
24 applicable fee for a standard residential housing unit;

1 (7) The commission shall establish a method for developing fee
2 schedules and maximum fees for commercial developments and
3 residential developments with multiple units;

4 (8) The revenue from the capacity improvement fees shall be
5 deposited in a separate account to be used only for future capital
6 improvements, as determined and authorized by commission order;

7 (9) The commission may develop further criteria relating to
8 existing and proposed capacity improvement fees the commission
9 considers necessary to effectuate the provisions of this
10 subsection;

11 (10) The commission shall promulgate rules in accordance with
12 section seven, article one, chapter twenty-four of this code to
13 effectuate the purposes of this subsection; and

14 (11) Nothing contained in this subsection may be construed to
15 invalidate any capacity improvement fees approved by the commission
16 prior to the effective date of the rules required to be promulgated
17 by this subsection.