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H. B. 3115

(By Delegates Shott, Ellington, Sumner, Gearheart,  
Hamrick, Moore, Ellem and J. Nelson)

[Introduced March 25, 2013; referred to the  
Committee on Government Organization then Finance.]

A BILL to amend and reenact §24-1-1 of the Code of West Virginia,  
1931, as amended, relating to requiring the Public Service  
Commission to include additional information in its annual  
report to the Joint Committee on Government and Finance; and  
setting forth what additional information is to be included in  
that report.

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

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

**ARTICLE 1. GENERAL PROVISIONS.**

**§24-1-1. Legislative purpose and policy; plan for internal  
reorganization; promulgation of plan as rule;  
cooperation with joint committee on government and  
finance.**

(a) It is the purpose and policy of the Legislature in  
enacting this chapter to confer upon the Public Service Commission

1 of this state the authority and duty to enforce and regulate the  
2 practices, services and rates of public utilities in order to:

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

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

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

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

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

18 (6) Encourage and support open and competitive marketing of  
19 rail carrier services by providing to all rail carriers access to  
20 tracks as provided in section three-b, article three of this  
21 chapter. It is the purpose of the Legislature to remove artificial  
22 barriers to rail carrier service, stimulate competition, stimulate  
23 the free flow of goods and passengers throughout the state and  
24 promote the expansion of the tourist industry, thereby improving

1 the economic condition of the state.

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

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

20       (d) It is legislative policy to ensure that the Legislature  
21 and the general public become better informed regarding the  
22 regulation of public utilities in this state and the conduct of the  
23 business of the Public Service Commission. To aid in the  
24 achievement of this policy, the Public Service Commission annually

1 shall present to the Joint Committee on Government and Finance,  
2 created by article three, chapter four of this code, or a  
3 subcommittee designated by the joint committee, a management  
4 summary report which describes in a concise manner:

5 (1) The major activities of the commission for the year  
6 especially as such activities relate to the implementation of the  
7 provisions of this chapter;

8 (2) Important policy decisions reached and initiatives  
9 undertaken during the year including, but not limited to, actions  
10 taken to ensure that the utilities subject to its regulation have  
11 adopted and are utilizing best management practices in their  
12 respective operations;

13 (3) A schedule of all rate modification requests resolved  
14 during the preceding calendar year, disclosing the amount of the  
15 modification initially requested and the amount of any modification  
16 actually approved by the commission, if any, together with the  
17 total dollars projected to be generated with respect to each  
18 approved or pending rate modification and the rate of return  
19 approved with respect to each approved application;

20 (4) An analysis comparing the current rates charged by  
21 utilities for water, electricity and natural gas in each of the  
22 twenty-eight border counties with the comparable rates for the  
23 non-West Virginia counties that share a common boundary with each  
24 border county;

1       (5) A description of any current practices and/or policies  
2 intended to minimize the amount of any possible over-recovery from  
3 rate payers paying interim rates while a rate case is pending;

4       (6) A summary of complaints raised by consumers since the  
5 filing of the immediately preceding management summary report,  
6 together with a brief description of how the commission responded  
7 to each complaint;

8       ~~(3)~~ (7) The current balance of supply and demand for natural  
9 gas and electric utility services in the state and forecast of the  
10 probable balance for the next ten years; and

11       ~~(4)~~ (8) Other information considered by the commission to be  
12 important including recommendations for statutory reform and the  
13 reasons for such recommendations.

14       (e) In addition to any other studies and reports required to  
15 be conducted and made by the Public Service Commission pursuant to  
16 any other provision of this section, the commission shall study and  
17 initially report to the Legislature no later than the first day of  
18 the regular session of the Legislature in the year 1980, upon:

19       (1) The extent to which natural gas wells or wells heretofore  
20 supplying gas utilities in this state have been capped off or shut  
21 in; the number of such wells, their probable extent of future  
22 production and the reasons given and any justification for, capping  
23 off or shutting in such wells, the reasons, if any, why persons  
24 engaged or heretofore engaged in the development of gas wells in

1 this state or the Appalachian areas have been discouraged from  
2 drilling, developing or selling the production of such wells and  
3 whether there are fixed policies by any utility or group of  
4 utilities to avoid the purchase of natural gas produced in the  
5 Appalachian region of the United States generally and in West  
6 Virginia specifically.

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

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

12 In carrying out the provisions of this section the commission  
13 shall have jurisdiction over such persons, whether public utilities  
14 or not, as may be in the opinion of the commission necessary to the  
15 exercise of its mandate and may compel attendance before it, take  
16 testimony under oath and compel the production of papers or other  
17 documents. Upon reasonable request by the commission, all other  
18 state agencies shall cooperate with the commission in carrying out  
19 the provisions and requirements of this subsection.

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

24 (1) A division within the Public Service Commission which

1 shall include the office of the commissioners, the hearing  
2 examiners and such support staff as may be necessary to carry out  
3 the functions of decision making and general supervision of the  
4 commission, which functions shall not include advocacy in cases  
5 before the commission;

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

8 (3) The means and procedures by which the division to be  
9 created pursuant to the provisions of subdivision (2) of this  
10 subsection shall protect the interests of each class of customers  
11 and the means by which the commission will assure that such  
12 division will be financially and departmentally independent of the  
13 division created by subdivision (1) of this subsection;

14 (4) The creation of a division within the Public Service  
15 Commission which shall assume the duties and responsibilities now  
16 charged to the commissioners with regard to motor carriers which  
17 division shall exist separately from those divisions set out in  
18 subdivisions (1) and (2) of this subsection and which shall relieve  
19 the commissioners of all except minimal administrative  
20 responsibilities as to motor carriers and which plan shall provide  
21 for a hearing procedure to relieve the commissioners from hearing  
22 motor carrier cases;

23 (5) Which members of the staff of the Public Service  
24 Commission shall be exempted from the salary schedules or pay plan

1 adopted by the civil service commission and identify such staff  
2 members by job classification or designation, together with the  
3 salary or salary ranges for each such job classification or  
4 designation;

5       (6) The manner in which the commission will strengthen its  
6 knowledge and independent capacity to analyze key conditions and  
7 trends in the industries it regulates extending from general  
8 industry analysis and supply-demand forecasting to continuing and  
9 more thorough scrutiny of the capacity planning, construction  
10 management, operating performance and financial condition of the  
11 major companies within these industries.

12       Such plan shall be based on the concept that each of the  
13 divisions mentioned in subdivisions (1), (2) and (4) of this  
14 subsection shall exist independently of the others and the plan  
15 shall discourage ex parte communications between them by such means  
16 as the commission shall direct, including, but not limited to,  
17 separate clerical and professional staffing for each division.  
18 Further, the Public Service Commission is directed to incorporate  
19 within the said plan to the fullest extent possible the  
20 recommendations presented to the subcommittee on the Public Service  
21 Commission of the Joint Committee on Government and Finance in a  
22 final report dated February, 1979, and entitled "A Plan for  
23 Regulatory Reform and Management Improvement."

24       The commission shall before January 5, 1980, adopt said plan



1 by order, which order shall promulgate the same as a rule of the  
2 commission to be effective upon the date specified in said order,  
3 which date shall be no later than December 31, 1980. Certified  
4 copies of such order and rule shall be filed on the first day of  
5 the 1980 regular session of the Legislature, by the chairman of the  
6 commission with the clerk of each house of the Legislature, the  
7 Governor and the Secretary of State. The chairman of the  
8 commission shall also file with the office of the Secretary of  
9 State the receipt of the clerk of each house and of the Governor,  
10 which receipt shall evidence compliance with this section.

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

15       Within the limits of funds appropriated therefor, the rule of  
16 the Public Service Commission shall be effective upon the date  
17 specified in the order of the commission promulgating it unless an  
18 alternative plan be adopted by general law or unless the rule is  
19 disapproved by a concurrent resolution of the Legislature adopted  
20 prior to adjournment sine die of the regular session of the  
21 Legislature to be held in the year 1980: *Provided*, That if such  
22 rule is approved in part and disapproved in part by a concurrent  
23 resolution of the Legislature adopted prior to such adjournment,  
24 such rule shall be effective to the extent and only to the extent

1 that the same is approved by such concurrent resolution.

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

5       (g) The Public Service Commission is hereby directed to  
6 cooperate with the Joint Committee on Government and Finance of the  
7 Legislature in its review, examination and study of the  
8 administrative operations and enforcement record of the railroad  
9 safety division of the Public Service Commission and any similar  
10 studies.

11       (h) (1) The Legislature hereby finds that rates for natural  
12 gas charged to customers of all classes have risen dramatically in  
13 recent years to the extent that such increases have adversely  
14 affected all customer classes. The Legislature further finds that  
15 it must take action necessary to mitigate the adverse consequences  
16 of these dramatic rate increases.

17       (2) The Legislature further finds that the practices of  
18 natural gas utilities in purchasing high-priced gas supplies, in  
19 purchasing gas supplies from out-of-state sources when West  
20 Virginia possesses abundant natural gas, and in securing supplies,  
21 directly or indirectly by contractual agreements including  
22 take-or-pay provisions, indefinite price escalators, or  
23 most-favored nation clauses have contributed to the dramatic  
24 increase in natural gas prices. It is therefore the policy of the

1 Legislature to discourage such purchasing practices in order to  
2 protect all customer classes.

3       (3) The Legislature further finds that it is in the best  
4 interests of the citizens of West Virginia to encourage the  
5 transportation of natural gas in intrastate commerce by interstate  
6 or intrastate pipelines or by local distribution companies in order  
7 to provide competition in the natural gas industry and in order to  
8 provide natural gas to consumers at the lowest possible price.

9       (i) The Legislature further finds that transactions between  
10 utilities and affiliates are a contributing factor to the increase  
11 in natural gas and electricity prices and tend to confuse  
12 consideration of a proper rate of return calculation. The  
13 Legislature therefore finds that it is imperative that the Public  
14 Service Commission have the opportunity to properly study the issue  
15 of proper rate of return for lengthy periods of time and to limit  
16 the return of a utility to a proper level when compared to return  
17 or profit that affiliates earn on transactions with sister  
18 utilities.

NOTE: The purpose of this bill is to require the Public Service Commission to include additional information in its annual report to the Joint Committee on Government and Finance. The bill requires that information to include ensuring that utilities are using best management practices, schedules of rate modifications and projections, analysis comparing rates charged by utilities in border counties with those charged in the non-West Virginia counties, the measures taken to minimize over-recovery and a summary of consumer complains filed with the commission.

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