

1 **Senate Bill No. 566**

2 (By Senator Snyder)

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4 [Introduced March 19, 2013; referred to the Committee on

5 Government Organization; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend and reenact §24-2-4b of the Code of West Virginia,

12 1931, as amended, relating to permitting Class III cities and

13 Class IV towns and villages to opt into rate regulation by the

14 Public Service Commission; setting forth the procedure;

15 establishing that an enacted municipal rate is presumed to be

16 lawful; setting forth a rate review procedure; setting forth

17 a procedure to determine allegations of rate discrimination;

18 lengthening certain time periods; and permitting those Class

19 III cities and Class IV towns and villages who have opted into

20 regulation by the Public Service Commission to opt out only by

21 order of the commission.

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

23 That §24-2-4b of the Code of West Virginia, 1931, as amended,

24 be amended and reenacted to read as follows:

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

2 **§24-2-4b. Procedures for changing rates of electric and natural**
3 **gas cooperatives, local exchange services of**
4 **telephone cooperatives and municipally operated**
5 **public utilities.**

6 (a) The rates and charges of electric cooperatives, natural
7 gas cooperatives and municipally operated public utilities, except
8 for municipally operated commercial solid waste facilities as
9 defined in section two, article fifteen, chapter twenty-two of this
10 code, Class III cities and Class IV towns or villages who have
11 opted into commission regulation of the municipal utility's rates
12 and charges pursuant to subsection (j) of this section, and the
13 rates and charges for local exchange services provided by telephone
14 cooperatives are not subject to the rate approval provisions of
15 section four or four-a of this article, but are subject to the
16 limited rate provisions of this section.

17 (b) All rates and charges set by electric cooperatives,
18 natural gas cooperatives and municipally operated public utilities
19 and all rates and charges for local exchange services set by
20 telephone cooperatives shall be just, reasonable, applied without
21 unjust discrimination or preference and based primarily on the
22 costs of providing these services. The rates and charges shall be
23 adopted by the electric, natural gas or telephone cooperative's

1 governing board and in the case of the municipally operated public
2 utility by municipal ordinance to be effective not sooner than
3 forty-five days after adoption: *Provided*, That notice of intent to
4 effect a rate change shall be specified on the monthly billing
5 statement of the customers of the utility for the month next
6 preceding the month in which the rate change is to become effective
7 or the utility shall give its customers, and in the case of a
8 cooperative, its customers, members and stockholders, other
9 reasonable notices as will allow filing of timely objections to the
10 rate change. The rates and charges shall be filed with the
11 commission, together with any information showing the basis of the
12 rates and charges and other information as the commission considers
13 necessary. Any change in the rates and charges with updated
14 information shall be filed with the commission. If a petition, as
15 set out in subdivision (1), (2) or (3), subsection (c) of this
16 section is received and the electric cooperative, natural gas
17 cooperative, telephone cooperative or municipality has failed to
18 file with the commission the rates and charges with information
19 showing the basis of rates and charges and other information as the
20 commission considers necessary, the suspension period limitation of
21 one hundred ~~twenty~~ fifty days and the one ~~hundred-day~~ hundred
22 thirty-day period limitation for issuance of an order by a hearing
23 examiner, as contained in subsections (d) and (e) of this section,
24 is tolled until the necessary information is filed. The electric

1 cooperative, natural gas cooperative, telephone cooperative or
2 municipality shall set the date when any new rate or charge is to
3 go into effect.

4 (c) An enacted municipal rate ordinance shall be presumed to
5 be valid and lawful. The commission shall review and approve or
6 modify the rates or refer an ordinance for further review under
7 subdivision (4) of this subsection, upon the filing of a petition
8 within thirty days of the adoption of the ordinance or resolution
9 changing the rates or charges by:

10 (1) Any customer aggrieved by the changed rates or charges who
11 presents to the commission a petition signed by not less than
12 twenty-five percent of the customers served by the municipally
13 operated public utility or twenty-five percent of the membership of
14 the electric, natural gas or telephone cooperative residing within
15 the state;

16 (2) Any customer who is served by a municipally operated
17 public utility and who resides outside the corporate limits and who
18 is affected by the change in the rates or charges and who presents
19 to the commission a petition alleging discrimination between
20 customers within and without the municipal boundaries. The
21 petition shall be accompanied by evidence of discrimination; ~~or~~

22 (3) Any customer or group of customers who are affected by the
23 change in rates who reside within the municipal boundaries and who
24 present a petition to the commission alleging discrimination

1 between customer or group of customers and other customers of the
2 municipal utility. The petition shall be accompanied by evidence
3 of discrimination; or

4 (4) Upon receipt of an allegation of discrimination made
5 pursuant to subdivision (2) or (3) of this subsection, the
6 commission shall review the filing and any information filed by the
7 municipal utility pursuant to subsection (b) of this section. If,
8 after review to be completed no later than thirty days from receipt
9 of the protest, the commission finds the protest and filings by the
10 utility present a question of law or fact that supports, or may
11 support, a claim of discrimination, the commission shall find a
12 sufficient prima facie showing of discrimination and shall refer
13 the ordinance for further proceeding pursuant to subsection (e) of
14 this section.

15 (d) (1) The filing of a petition with the commission signed by
16 not less than twenty-five percent of the customers served by the
17 municipally operated public utility or twenty-five percent of the
18 membership of the electric, natural gas or telephone cooperative
19 residing within the state under subdivision (1), subsection (c) of
20 this section shall suspend the adoption of the rate change
21 contained in the ~~ordinance or~~ resolution for a period of one
22 hundred ~~twenty~~ fifty days from the date the rates or charges would
23 otherwise go into effect or until an order is issued as provided
24 herein.

1 (2) Upon sufficient showing of discrimination by customers
2 outside the municipal boundaries or a customer or a group of
3 customers within the municipal boundaries under a petition filed
4 under subdivision (2) or (3), subsection (c) of this section, the
5 commission shall ~~suspend the adoption of the rate change contained~~
6 ~~in the ordinance for a period of one hundred twenty days from the~~
7 ~~date the rates or charges would otherwise go into effect or until~~
8 ~~an order is issued as provided herein~~ issue a finding within one
9 hundred fifty days of the date the rates have taken effect unless
10 otherwise tolled pursuant to subsection (b) of this section.

11 (e) The commission shall forthwith appoint a hearing examiner
12 from its staff to review the grievances raised by the petitioners
13 and found to constitute a prima facie case of discrimination. The
14 hearing examiner shall conduct a public hearing and shall, within
15 one hundred thirty days from the date the rates or charges are
16 effective or would otherwise go into effect, unless otherwise
17 tolled as provided in subsection (b) of this section, issue an
18 order approving, disapproving or modifying, in whole or in part,
19 the rates or charges imposed by the electric, natural gas or
20 telephone cooperative or by the municipally operated public utility
21 pursuant to this section.

22 (f) Upon receipt of a petition for review of the rates under
23 the provisions of subsection (c) of this section, and a subsequent
24 finding of a prima facie case of discrimination, if alleged, the

1 commission may exercise the power granted to it under the
2 provisions of section three of this article. The commission may
3 determine the method by which the rates are reviewed and may grant
4 and conduct a de novo hearing on the matter if the customer,
5 electric, natural gas or telephone cooperative or municipality
6 requests a hearing.

7 (g) If the commission finds an enacted municipal rate
8 ordinance to be unlawful or invalid, it shall order the
9 modification of the subject rates and/or charges, and shall further
10 order a refund of any improperly assessed and collected rates or
11 charges.

12 ~~(g)~~ (h) The commission may, upon petition by a municipality or
13 electric, natural gas or telephone cooperative, allow an interim or
14 emergency rate to take effect, subject to refund or future
15 modification, if it is determined that the interim or emergency
16 rate is necessary to protect the municipality from financial
17 hardship attributable to the purchase of the utility commodity
18 sold, or the commission determines that a temporary or interim rate
19 increase is necessary for the utility to avoid financial distress.
20 In such cases, the commission may waive the forty-five day waiting
21 period provided for in subsection (b) of this section and the one
22 hundred ~~twenty-day~~ fifty-day suspension period provided for in
23 subsection (d) of this section.

24 ~~(h)~~ (i) Notwithstanding any other provision, the commission

1 has no authority or responsibility with regard to the regulation of
2 rates, income, services or contracts by municipally operated public
3 utilities for services which are transmitted and sold outside of
4 the State of West Virginia.

5 (j) Class III cities and Class IV towns or villages may opt
6 into commission regulation of the municipal utility's rates and
7 charges by filing with the executive secretary of the commission,
8 a resolution enacted by the governing body requesting regulation by
9 the commission. Once a Class III or Class IV governing body files
10 the resolution, the commission shall notify all utility customers
11 of the filing entity of the requested regulation through
12 publication of a Class I legal advertisement in compliance with
13 article three, chapter fifty-nine of this code. Upon receipt by
14 the executive secretary of an affidavit of publication of this
15 notice, the municipal utility may file, and the commission shall
16 process, rate requests from the municipal utility subject to
17 section four-a of this article rather than the provisions of this
18 section. A Class III city or Class IV town or village opting into
19 rate regulation under this subsection may subsequently petition the
20 commission to opt out of rate regulation, and may do so by order of
21 the commission.

NOTE: The purpose of this bill is to permit Class III cities

and Class IV towns and villages to opt into rate regulation by the Public Service Commission. The bill sets forth the procedure to be used. The bill establishes that an enacted municipal rate is presumed to be lawful. The bill sets forth a rate review procedure. The bill sets forth a procedure to use to determine allegations of rate discrimination. The bill lengthens certain time periods. The bill permits those Class III cities and Class IV towns and villages who have opted into regulation by the Public Service Commission to opt out only by order of the commission.

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