

1 **ENROLLED**

2 **H. B. 4601**

3
4 (By Delegates White (By Request), Boggs and Skaff)

5 [Passed March 8, 2014; in effect ninety days from passage.]

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10 AN ACT to amend and reenact §16-13A-18a of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §24-2-4a
12 and §24-2-4b of said code, all relating to fiscal management
13 and regulation of publicly owned utilities; waiving certain
14 cash distribution requirements in the case of a sale between
15 two political subdivisions; eliminating a suspension period
16 for a rate increase established by municipal rate ordinance or
17 enacted by a public service district that increases rates less
18 than twenty-five percent of gross revenues; providing a
19 process to apply for a waiver of the suspension period for
20 rates established by municipal rate ordinance or enacted by a
21 public service district that increases rates by more than
22 twenty-five percent of gross revenues; and providing a refund
23 procedure for proposed municipal or public service district
24 rate increase in certain circumstances.

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

2 That §16-13A-18a of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted; and that §24-2-4a and §24-2-4b
4 of said code be amended and reenacted, all to read as follows:

5 **CHAPTER 16. PUBLIC HEALTH**

6 **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

7 **§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or**
8 **gas system by district; distribution of proceeds.**

9 In any case where a public service district owns a water,
10 sewer, stormwater or gas system, and a majority of not less than
11 sixty percent of the members of the public service board thereof
12 deem it for the best interests of the district to sell, lease or
13 rent such water, sewer, stormwater or gas system to any
14 municipality or privately-owned water, sewer, stormwater or gas
15 system, or to any water, sewer, stormwater or gas system owned by
16 an adjacent public service district, the board may so sell, lease
17 or rent such water, sewer, stormwater or gas system upon such terms
18 and conditions as said board, in its discretion, considers in the
19 best interests of the district: *Provided*, That such sale, leasing
20 or rental may be made only upon: (1) The publication of notice of
21 a hearing before the board of the public service district, as a
22 Class I legal advertisement in compliance with the provisions of
23 article three, chapter fifty-nine of this code, in a newspaper
24 published and of general circulation in the county or counties

1 wherein the district is located, such publication to be made not
2 earlier than twenty days and not later than seven days prior to the
3 hearing; (2) approval by the county commission or commissions of
4 the county or counties in which the district operates; and (3)
5 approval by the public service commission of West Virginia.

6 In the event of any such sale, the proceeds thereof, if any,
7 remaining after payment of all outstanding bonds and other
8 obligations of the district, shall be ratably distributed to any
9 persons who have made contributions in aid of construction of such
10 water, sewer, stormwater or gas system, such distribution not to
11 exceed the actual amount of any such contribution, without
12 interest, and any balance of funds thereafter remaining shall be
13 paid to the county commission of the county in which the major
14 portion of such water, sewer, stormwater or gas system is located
15 to be placed in the general funds of such county commission:
16 *Provided*, That no such distribution shall be required in the case
17 of a sale between political subdivisions of the state.

18 **CHAPTER 24. PUBLIC SERVICE COMMISSION**

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

20 **§24-2-4a. Procedure for changing rates after June 30, 1981.**

21 After June 30, 1981, no public utility subject to this chapter
22 except those utilities subject to the provisions of section four-b
23 and section four-d of this article, shall change, suspend or annul
24 any rate, joint rate, charge, rental or classification except after

1 thirty days' notice to the commission and the public, which notice
2 shall plainly state the changes proposed to be made in the schedule
3 then in force and the time when the changed rates or charges shall
4 go into effect; but the commission may enter an order suspending
5 the proposed rate as hereinafter provided. The proposed changes
6 shall be shown by printing new schedules, or shall be plainly
7 indicated upon the schedules in force at the time, and kept open to
8 public inspection: Provided, That the commission may, in its
9 discretion, and for good cause shown, allow changes upon less time
10 than the notice herein specified, or may modify the requirements of
11 this section in respect to publishing, posting and filing of
12 tariffs, either by particular instructions or by general order.

13 Whenever there shall be filed with the commission any schedule
14 stating a change in the rates or charges, or joint rates or
15 charges, or stating a new individual or joint rate or charge or
16 joint classification or any new individual or joint regulation or
17 practice affecting any rate or charge, the commission may either
18 upon complaint or upon its own initiative without complaint enter
19 upon a hearing concerning the propriety of such rate, charge,
20 classification, regulation or practice; and, if the commission so
21 orders, it may proceed without answer or other form of pleading by
22 the interested parties, but upon reasonable notice, and, pending
23 such hearing and the decisions thereon, the commission, upon filing
24 with such schedule and delivering to the public utility affected

1 thereby a statement in writing of its reasons for such suspension,
2 may suspend the operation of such schedule and defer the use of
3 such rate, charge, classification, regulation or practice, but not
4 for a longer period than two hundred seventy days beyond the time
5 when such rate, charge, classification, regulation or practice
6 would otherwise go into effect; and after full hearing, whether
7 completed before or after the rate, charge, classification,
8 regulation or practice goes into effect, the commission may make
9 such order in reference to such rate, charge, classification,
10 regulation or practice as would be proper in a proceeding initiated
11 after the rate, charge, classification, regulation or practice had
12 become effective: *Provided*, That in the case of a public utility
13 having two thousand five hundred customers or less and which is not
14 principally owned by any other public utility corporation or public
15 utility holding corporation, the commission may suspend the
16 operation of such schedule and defer the use of such rate, charge,
17 classification, regulation or practice, but not for a longer period
18 than one hundred twenty days beyond the time when such rate,
19 charge, classification, regulation or practice would otherwise go
20 into effect; and in the case of a public utility having more than
21 two thousand five hundred customers, but not more than five
22 thousand customers, and which is not principally owned by any other
23 public utility corporation or public utility holding corporation,
24 the commission may suspend the operation of such schedule and defer

1 the use of such rate, charge, classification, regulation or
2 practice, but not for a longer period than one hundred fifty days
3 beyond the time when such rate, charge, classification, regulation
4 or practice would otherwise go into effect; and in the case of a
5 public utility having more than five thousand customers, but not
6 more than seven thousand five hundred customers, and which is not
7 principally owned by any other public utility corporation or public
8 utility holding corporation, the commission may suspend the
9 operation of such schedule and defer the use of such rate, charge,
10 classification, regulation or practice, but not for a longer period
11 than one hundred eighty days beyond the time when such rate,
12 charge, classification, regulation or practice would otherwise go
13 into effect; and after full hearing, whether completed before or
14 after the rate, charge, classification, regulation or practice goes
15 into effect, the commission may make such order in reference to
16 such rate, charge, classification, regulation or practice as would
17 be proper in a proceeding initiated after the rate, charge,
18 classification, regulation or practice had become effective:
19 *Provided, however,* That, in the case of rates established or
20 proposed that increase by less than twenty-five percent of the
21 gross revenue of the public service district, there shall be no
22 suspension period in the case of rates established by a public
23 service district pursuant to section nine, article thirteen-a,
24 chapter sixteen of this code, and the proposed rates of public

1 service districts shall go into effect upon the date of filing with
2 the commission, subject to refund modification at the conclusion of
3 the commission proceeding. In the case of rates established or
4 proposed that increase by more than twenty-five percent of the
5 gross revenue of the public service district, the district may
6 apply for, and the commission may grant, a waiver of the suspension
7 period and allow rates to be effective upon the date of filing with
8 the commission. The public service district shall provide notice by
9 Class 1 legal advertisement in a newspaper of general circulation
10 in its service territory of the percentage increase in rates at
11 least fourteen days prior to the effective date of the increased
12 rates. Any refund determined to be determined to be due and owing
13 as a result of any difference between any final rates approved the
14 commission and the rates placed into effect subject to refund shall
15 be refunded by the public service district as a credit against each
16 customer's account for a period of up to six months after entry of
17 the commission's final order. Any remaining balance which is not
18 fully credited by credit within six months after entry of the
19 commission's final order shall be directly refunded to the customer
20 by check: *Provided, further,* That if any such hearing and decision
21 thereon is not concluded within the periods of suspension, as above
22 stated, such rate, charge, classification, regulation or practice
23 shall go into effect at the end of such period not subject to
24 refund: *And provided further,* That if any such rate, charge,

1 classification, regulation or practice goes into effect because of
2 the failure of the commission to reach a decision, the same shall
3 not preclude the commission from rendering a decision with respect
4 thereto which would disapprove, reduce or modify any such proposed
5 rate, charge, classification, regulation or practice, in whole or
6 in part, but any such disapproval, reduction or modification shall
7 not be deemed to require a refund to the customers of such utility
8 as to any rate, charge, classification, regulation or practice so
9 disapproved, reduced or modified. The fact of any rate, charge,
10 classification, regulation or practice going into effect by reason
11 of the commission's failure to act thereon shall not affect the
12 commission's power and authority to subsequently act with respect
13 to any such application or change in any rate, charge,
14 classification, regulation or practice. Any rate, charge,
15 classification, regulation or practice which shall be approved,
16 disapproved, modified or changed, in whole or in part, by decision
17 of the commission shall remain in effect as so approved,
18 disapproved, modified or changed during the period or pendency of
19 any subsequent hearing thereon or appeal therefrom. Orders of the
20 commission affecting rates, charges, classifications, regulations
21 or practices which have gone into effect automatically at the end
22 of the suspension period are prospective in effect only. At any
23 hearing involving a rate sought to be increased or involving the
24 change of any rate, charge, classification, regulation or practice,

1 the burden of proof to show the justness and reasonableness of the
2 increased rate or proposed increased rate, or the proposed change
3 of rate, charge, classification, regulation or practice shall be
4 upon the public utility making application for such change. The
5 commission shall, whenever practicable and within budgetary
6 constraints, conduct one or more public hearings within the area
7 served by the public utility making application for such increase
8 or change, for the purpose of obtaining comments and evidence on
9 the matter from local ratepayers.

10 Each public utility subject to the provisions of this section
11 shall be required to establish, in a written report which shall be
12 incorporated into each general rate case application, that it has
13 thoroughly investigated and considered the emerging and state-of-
14 the-art concepts in the utility management, rate design and
15 conservation as reported by the commission under subsection ©,
16 section one, article one of this chapter, as alternatives to, or in
17 mitigation of, any rate increase. The utility report shall contain
18 as to each concept considered the reasons for adoption or rejection
19 of each. When in any case pending before the commission all
20 evidence shall have been taken and the hearing completed, the
21 commission shall render a decision in such case. The failure of the
22 commission to render a decision with respect to any such proposed
23 change in any such rate, charge, classification, regulation or
24 practice within the various time periods specified in this section

1 after the application therefor shall constitute neglect of duty on
2 the part of the commission and each member thereof.

3 Where more than twenty members of the public are affected by
4 a proposed change in rates, it shall be a sufficient notice to the
5 public within the meaning of this section if such notice is
6 published as a Class II legal advertisement in compliance with the
7 provisions of article three, chapter fifty-nine of this code, and
8 the publication area for such publication shall be the community
9 where the majority of the resident members of the public affected
10 by such change reside or, in case of nonresidents, have their
11 principal place of business within this state.

12 The commission may order rates into effect subject to refund,
13 plus interest in the discretion of the commission, in cases in
14 which the commission determines that a temporary or interim rate
15 increase is necessary for the utility to avoid financial distress,
16 or in which the costs upon which these rates are based are subject
17 to modification by the commission or another regulatory commission
18 and to refund to the public utility. In such case the commission
19 may require such public utility to enter into a bond in an amount
20 deemed by the commission to be reasonable and conditioned upon the
21 refund to the persons or parties entitled thereto of the amount of
22 the excess if such rates so put into effect are subsequently
23 determined to be higher than those finally fixed for such utility.

24 No utility may make application for a general rate increase

1 while another general rate application is pending before the
2 commission and not finally acted upon, except pursuant to the
3 provisions of the next preceding paragraph of this section. The
4 provisions of this paragraph shall not be construed so as to
5 prohibit any such rate application from being made while a previous
6 application which has been finally acted upon by the commission is
7 pending before or upon appeal to the West Virginia supreme court of
8 appeals.

9 **§24-2-4b. Procedures for changing rates of electric and natural**
10 **gas cooperatives, local exchange services of telephone**
11 **cooperatives and municipally operated public utilities.**

12 (a) The rates and charges of electric cooperatives, natural
13 gas cooperatives and municipally operated public utilities, except
14 for municipally operated commercial solid waste facilities as
15 defined in section two, article fifteen, chapter twenty-two of this
16 code, and the rates and charges for local exchange services
17 provided by telephone cooperatives are not subject to the rate
18 approval provisions of section four or four-a of this article, but
19 are subject to the limited rate provisions of this section.

20 (b) All rates and charges set by electric cooperatives,
21 natural gas cooperatives and municipally operated public utilities
22 and all rates and charges for local exchange services set by
23 telephone cooperatives shall be just, reasonable, applied without
24 unjust discrimination or preference and based primarily on the

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

1 for issuance of an order by a hearing examiner, as contained in
2 subsections (d) and (e) of this section, is tolled until the
3 necessary information is filed. The electric cooperative, natural
4 gas cooperative, telephone cooperative or municipality shall set
5 the date when any new rate or charge is to go into effect.

6 (c) The commission shall review and approve or modify the
7 rates upon the filing of a petition within thirty days of the
8 adoption of the ordinance or resolution changing the rates or
9 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 petition
21 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 of
3 discrimination.

4 (d) (1) The filing of a petition with the commission signed by
5 not less than twenty-five percent of the customers served by the
6 municipally operated public utility or twenty-five percent of the
7 membership of the electric, natural gas or telephone cooperative
8 residing within the state under subdivision (1), subsection (c) of
9 this section shall suspend the adoption of the rate change
10 contained in the ordinance or resolution for a period of one
11 hundred twenty days from the date the rates or charges would
12 otherwise go into effect or until an order is issued as provided
13 herein.

14 (2) Upon sufficient showing of discrimination by customers
15 outside the municipal boundaries or a customer or a group of
16 customers within the municipal boundaries under a petition filed
17 under subdivision (2) or (3), subsection (c) of this section, the
18 commission shall suspend the adoption of the rate change contained
19 in the ordinance for a period of one hundred twenty days from the
20 date the rates or charges would otherwise go into effect or until
21 an order is issued as provided herein. A municipal rate ordinance
22 enacted pursuant to the provisions of this section and municipal
23 charter or state code that establishes or proposes a rate increase
24 that results in an increase of less than twenty-five percent of the

1 gross revenue of the utility shall be presumed valid and rates
2 shall be allowed to go into effect, subject to refund, upon the
3 date stated in that ordinance. In the case of rates established or
4 proposed that increase by more than twenty-five percent of the
5 gross revenue of the municipally operated public utility, the
6 utility may apply for, and the commission may grant, a waiver of
7 the suspension period and allow rates to be effective upon
8 enactment.

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

19 (f) Upon receipt of a petition for review of the rates under
20 the provisions of subsection (c) of this section, the commission
21 may exercise the power granted to it under the provisions of
22 section three of this article, consistent with the applicable rate
23 provisions of section twenty, article ten, chapter eight of this
24 code, section four, article nineteen, chapter eight of this code,

1 and section sixteen, article thirteen, chapter sixteen of this
2 code. The commission may determine the method by which the rates
3 are reviewed and may grant and conduct a de novo hearing on the
4 matter if the customer, electric, natural gas or telephone
5 cooperative or municipality requests a hearing.

6 (g) A municipal utility shall be required to refund revenues
7 collected from rates enacted that are disapproved or modified upon
8 subsequent order of the commission entered in a proceeding under
9 this section. Any refund determined to be due and owing as a result
10 of any difference between the municipal rates placed into effect
11 subject to refund and any final rates approved the commission shall
12 be refunded by the municipal utility as a credit against each
13 customer's account for a period of up to six months after entry of
14 the commission's final order. Any remaining balance which is not
15 fully refunded by credit within six months after entry of the
16 commission's final order shall be directly refunded to the
17 individual customer by check.

18 (h) The commission may, upon petition by a municipality or
19 electric, natural gas or telephone cooperative, allow an interim or
20 emergency rate to take effect, subject to refund or future
21 modification, if it is determined that the interim or emergency
22 rate is necessary to protect the municipality from financial
23 hardship attributable to the purchase of the utility commodity
24 sold, or the commission determines that a temporary or interim rate

1 increase is necessary for the utility to avoid financial distress.
2 In such cases, the commission shall waive the 45-day waiting period
3 provided for in subsection (b) of this section and the one hundred
4 twenty-day suspension period provided for in subsection (d) of this
5 section.

6 (i) Notwithstanding any other provision, the commission has no
7 authority or responsibility with regard to the regulation of rates,
8 income, services or contracts by municipally operated public
9 utilities for services which are transmitted and sold outside of
10 the State of West Virginia.