

1 **H. B. 4601**

2
3 (By Delegates White (By Request), Boggs and Skaff.

4 [Introduced February 17, 2014, referred to the Committee on the
5 Judiciary.]

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10 A BILL to amend and reenact §8-19-4 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §8-20-10 of said code;
12 to amend and reenact §16-13-16 of said code; to amend and
13 reenact §16-13A-9 of said code; to amend and reenact §16-13A-
14 18a of said code; to amend and reenact §24-1-1b of said code;
15 to amend and reenact §24-2-4a of said code; and to amend and
16 reenact §24-2-4b, all relating to fiscal management and
17 regulation of publicly-owned utilities; requiring a minimum
18 working capital allowance for these utilities; waiving certain
19 cash distribution requirements in the case of a sale between
20 two political subdivisions; reorganizing and retasking the
21 public service commission to assist publicly owned utilities;
22 establishing a presumption of validity of a municipal rate
23 ordinance or rate enacted by a public service district board;
24 authorizing a rate adjustment based on the increased price of

1 electricity, materials, chemicals and/or fuel and granting
2 associated rulemaking authority to the public service
3 commission; and requiring an annual publicly owned utility
4 rate adjustment based upon an increase of the consumer price
5 index for all urban consumers.

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

7 That §8-19-4 of the Code of West Virginia, 1931, as amended,
8 be amended and reenacted; that §8-20-10 of said code be amended and
9 reenacted; that §16-13-16 of said code be amended and reenacted;
10 that §16-13A-9 of said code be amended and reenacted; that §16-13A-
11 18a of said code be amended and reenacted; that §24-1-1b of said
12 code be amended and reenacted; that §24-2-4a of said code be
13 amended and reenacted; and that §24-2-4b be amended and reenacted,
14 all to read as follows:

15 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

16 **ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER**
17 **SYSTEMS.**

18 **§8-19-4. Estimate of cost; ordinance or order for issuance of**
19 **revenue bonds; interest on bonds; rates for services;**
20 **exemption from taxation.**

21 Whenever a municipality or county commission shall, under the
22 provisions of this article, determine to acquire, by purchase or
23 otherwise, construct, establish, extend or equip a waterworks
24 system or an electric power system, or to construct any additions,

1 betterments or improvements to any waterworks or electric power
2 system, it shall cause an estimate to be made of the cost thereof,
3 and may, by ordinance or order, provide for the issuance of revenue
4 bonds under the provisions of this article, which ordinance or
5 order shall set forth a brief description of the contemplated
6 undertaking, the estimated cost thereof, the amount, rate or rates
7 of interest, the time and place of payment, and other details in
8 connection with the issuance of the bonds. Such bonds shall be in
9 such form and shall be negotiated and sold in such manner and upon
10 such terms as the governing body of such municipality or county
11 commission may by ordinance or order specify. All such bonds and
12 the interest thereon shall be exempt from all taxation by this
13 state, or any county, municipality or county commission, political
14 subdivision or agency thereof. Notwithstanding any other provision
15 of this code to the contrary, the real and personal property which
16 a municipality or county has acquired and constructed according to
17 the provisions of this article, and any leasehold interest therein
18 held by other persons, shall be deemed public property and shall be
19 exempt from taxation by the state, or any county, municipality or
20 other levying body, so long as the same is owned by such
21 municipality or county: *Provided*, That with respect to electric
22 power systems, this exemption for real and personal property shall
23 be applicable only for such real and personal property (1)
24 physically situate within the municipal or county boundaries of the

1 municipality or county which acquired or constructed such electric
2 power system and there was in place prior to the effective date of
3 the amendments to this section made in the year one thousand nine
4 hundred ninety-two an agreement between the municipality and the
5 county commission for payments in lieu of tax, or (2) acquired or
6 constructed with the written agreement of the county school board,
7 county commission and any municipal authority within whose
8 jurisdiction the electric power system is or is to be physically
9 situate. Notwithstanding anything contained in this statute to the
10 contrary, this exemption shall be applicable to any leasehold or
11 similar interest held by persons other than a municipality or
12 county only if acquired or constructed with the written agreement
13 of the county school board, county commission and any municipal
14 authority within whose jurisdiction the electric power system is or
15 is to be physically situate: *Provided, however,* That payments made
16 to any county commission, county school board or municipality in
17 lieu of tax pursuant to such an agreement shall be distributed as
18 if the payments resulted from ad valorem property taxation. Such
19 bonds shall bear interest at a rate per annum set by the
20 municipality or county commission, payable at such times, and shall
21 be payable as to principal at such times, not exceeding fifty years
22 from their date, and at such place or places, within or without the
23 state, as shall be prescribed in the ordinance or order providing
24 for their issuance. Unless the governing body of the municipality

1 or county commission shall otherwise determine, such ordinance or
2 order shall also declare that a statutory mortgage lien shall exist
3 upon the property so to be acquired, constructed, established,
4 extended or equipped, fix minimum rates or charges for water or
5 electricity to be collected prior to the payment of all of said
6 bonds and shall pledge the revenues derived from the waterworks or
7 electric power system for the purpose of paying such bonds and
8 interest thereon, which pledge shall definitely fix and determine
9 the amount of revenues which shall be necessary to be set apart and
10 applied to the payment of the principal of and interest upon the
11 bonds and the proportion of the balance of such revenues, which are
12 to be set aside as a proper and adequate depreciation account, and
13 the remainder shall be set aside for the reasonable and proper
14 maintenance and operation thereof. Rates, fees or charges for such
15 waterworks system or electric power system shall be sufficient in
16 each year for the payment of the proper and reasonable expense of
17 operation, repair, replacements and maintenance of the system,
18 including, but not limited to, an adequate working capital
19 allowance of no less than 1/8 actual or projected operations and
20 maintenance expenses, an adequate cash reserve in accordance with
21 bond covenants requiring repair and a replacement fund and/or a
22 depreciation fund, and for the payment of the sums herein required
23 to be paid into the sinking fund. The working capital allowance
24 required in this section shall be separate and distinct from and in

1 addition to any repair and replacement and/or depreciation fund
2 established and maintained in accordance with bond covenants. The
3 rates or charges to be charged for the services from such
4 waterworks or electric power system shall be sufficient at all
5 times to provide for the payment of interest upon all bonds and to
6 create a sinking fund to pay the principal thereof as and when the
7 same become due, and reasonable reserves therefor, and to provide
8 for the repair, maintenance and operation of the waterworks or
9 electric power system, and to provide an adequate depreciation
10 fund, and to make any other payments which shall be required or
11 provided for in the ordinance or order authorizing the issuance of
12 said bonds.

13 **CHAPTER 8.MUNICIPAL CORPORATIONS.**

14 **ARTICLE 20. COMBINED SYSTEMS.**

15 **§8-20-10. Power and authority of municipality to enact ordinances**
16 **and make rules and fix rates, fees or charges;**
17 **deposit required for new customers; change in**
18 **rates, fees or charges; failure to cure**
19 **delinquency; delinquent rates, discontinuance of**
20 **service; reconnecting deposit; return of deposit;**
21 **fees or charges as liens; civil action for recovery**
22 **thereof; deferral of filing fees and costs in**
23 **magistrate court action; limitations with respect**
24 **to foreclosure.**

1 (a) (1) The governing body of a municipality availing itself of
2 the provisions of this article shall have plenary power and
3 authority to make, enact and enforce all necessary rules for the
4 repair, maintenance, operation and management of the combined
5 system of the municipality and for the use thereof. The governing
6 body of a municipality also has the plenary power and authority to
7 make, enact and enforce all necessary rules and ordinances for the
8 care and protection of any such system for the health, comfort and
9 convenience of the public, to provide a clean water supply, to
10 provide properly treated sewage insofar as it is reasonably
11 possible to do and, if applicable, to properly collecting and
12 controlling the stormwater as is reasonably possible to do:
13 *Provided*, That no municipality may make, enact or enforce any rule,
14 regulation or ordinance regulating any highways, road or drainage
15 easements or storm water facilities constructed, owned or operated
16 by the West Virginia Division of Highways.

17 (2) A municipality has the plenary power and authority to
18 charge the users for the use and service of a combined system and
19 to establish required deposits, rates, fees or charges for such
20 purpose. Separate deposits, rates, fees or charges may be fixed for
21 the water and sewer services respectively and, if applicable, the
22 stormwater services, or combined rates, fees or for the combined
23 water and sewer services, and, if applicable, the storm water
24 services. Such deposits, rates, fees or charges, whether separate

1 or combined, shall be sufficient at all times to pay the cost of
2 repair, maintenance and operation of the combined system, provide
3 ~~and maintain an adequate reserve fund, an adequate depreciation~~
4 ~~fund~~ a working capital allowance of no less than 1/8 actual or
5 projected annual operations and maintenance expenses, provide an
6 adequate cash reserve in accordance with bond covenants requiring
7 a repair and replacement fund and/or a depreciation fund; and, pay
8 the principal and interest upon all revenue bonds issued under this
9 article. The working capital allowance required in this section
10 shall be separate and distinct from and in addition to any repair
11 and replacement and/or depreciation fund established and maintained
12 in accordance with bond covenants. Deposits, rates, fees or
13 charges shall be established, revised and maintained by ordinance
14 and become payable as the governing body may determine by
15 ordinance. The rates, fees or charges shall be changed, from time
16 to time, as necessary, consistent with the provisions of this
17 article.

18 (3) All new applicants for service shall indicate to the
19 municipality or governing body whether they are an owner or tenant
20 with respect to the service location. An entity providing
21 stormwater service shall provide a tenant a report of the
22 stormwater fee charged for the entire property and, if appropriate,
23 that portion of the fee to be assessed to the tenant.

24 (4) The municipality or governing body, but only one of them, may

1 collect from all new applicants for service a deposit of \$100 or
2 two twelfths of the average annual usage of the applicant's
3 specific customer class, whichever is greater, to secure the
4 payment of water and sewage service rates, fees and charges in the
5 event they become delinquent as provided in this section. In any
6 case where a deposit is forfeited to pay service rates, fees and
7 charges which were delinquent and the user's service is
8 disconnected or terminated, service may not be reconnected or
9 reinstated by the municipality or governing body until another
10 deposit equal to \$100 or a sum equal to two twelfths of the average
11 usage for the applicant's specific customer class, whichever is
12 greater, is remitted to the municipality or governing body. After
13 twelve months of prompt payment history, the municipality or
14 governing body shall return the deposit to the customer or credit
15 the customer's account with interest at a rate to be set by the
16 Public Service Commission: *Provided*, That where the customer is a
17 tenant, the municipality or governing body is not required to
18 return the deposit until the time the tenant discontinues service
19 with the municipality governing body. Whenever any rates, fees,
20 rentals or charges for services or facilities furnished remain
21 unpaid for a period of twenty days after they become due, the user
22 of the services and facilities provided is delinquent and the user
23 is liable at law until all rates, fees and charges are fully paid.
24 The municipality or governing body may terminate water services to

1 a delinquent user of either water or sewage facilities, or both,
2 ten days after the water or sewage services become delinquent
3 regardless of whether the governing body utilizes the security
4 deposit to satisfy any delinquent payments: *Provided further,* That
5 any termination of water service must comply with all rules and
6 orders of the Public Service Commission: *Provided, however,* That
7 nothing contained within the rules of the Public Service Commission
8 shall be deemed to require any agents or employees of the
9 municipality or governing body to accept payment at the customer's
10 premises in lieu of discontinuing service for a delinquent bill.

11 (b) Whenever any rates, fees or charges for services or
12 facilities furnished remain unpaid for a period of twenty days
13 after they become due, the user of the services and facilities
14 provided shall be delinquent and the municipality or governing body
15 may apply any deposit against any delinquent fee. The user is
16 liable until such time as all rates, fees and charges are fully
17 paid.

18 (c) All rates, fees or charges for water service, sewer
19 service and, if applicable, stormwater service, whenever
20 delinquent, as provided by ordinance of the municipality, shall be
21 liens of equal dignity, rank and priority with the lien on such
22 premises of state, county, school and municipal taxes for the
23 amount thereof upon the real property served. The municipality has
24 the plenary power and authority to enforce such lien in a civil

1 action to recover the money due for services rendered plus court
2 fees and costs and reasonable attorney's fees: *Provided*, That an
3 owner of real property may not be held liable for the delinquent
4 rates, fees or charges for services or facilities of a tenant, nor
5 shall any lien attach to real property for the reason of delinquent
6 rates, fees or charges for services or facilities of a tenant of
7 the real property, unless the owner has contracted directly with
8 the municipality to purchase such services or facilities.

9 (d) Municipalities are hereby granted a deferral of filing
10 fees or other fees and costs incidental to filing an action in
11 magistrate court for collection of the delinquent rates and
12 charges. If the municipality collects the delinquent account, plus
13 fees and costs, from its customer or other responsible party, the
14 municipality shall pay to the magistrate court the filing fees or
15 other fees and costs which were previously deferred.

16 (e) No municipality may foreclose upon the premises served by
17 it for delinquent rates, fees or charges for which a lien is
18 authorized by this section except through a civil action in the
19 circuit court of the county wherein the municipality lies. In every
20 such action, the court shall be required to make a finding based
21 upon the evidence and facts presented that the municipality has
22 exhausted all other remedies for collection of debts with respect
23 to such delinquencies prior to bringing the action. In no event
24 shall foreclosure procedures be instituted by any municipality or

1 on its behalf unless the delinquency has been in existence or
2 continued for a period of two years from the date of the first
3 delinquency for which foreclosure is being sought.

4 (f) Notwithstanding any other provision contained in this
5 article, a municipality which has been designated by the
6 Environmental Protection Agency as an entity to serve a West
7 Virginia Separate Storm Sewer System community, as defined in 40
8 C.F.R. §122.26, has the authority to enact ordinances or
9 regulations which allow for the issuance of orders, the right to
10 enter properties and the right to impose reasonable fines and
11 penalties regarding correction of violations of municipal
12 stormwater ordinances or regulations within the municipal watershed
13 served by the municipal stormwater system, as long as such rules,
14 regulations, fines or acts are not contrary to any rules or orders
15 of the Public Service Commission.

16 (g) Notice of a violation of a municipal stormwater ordinance
17 or regulation shall be served in person to the alleged violator or
18 by certified mail, return receipt requested. The notice shall state
19 the nature of the violation, the potential penalty, the action
20 required to correct the violation and the time limit for making the
21 correction. Should a person, after receipt of proper notice, fail
22 to correct violation of the municipal stormwater ordinance or
23 regulation, the municipality may correct or have the corrections of
24 the violation made and bring the party into compliance with the

1 applicable stormwater ordinance or regulation. The municipality may
2 collect the costs of correcting the violation from the person by
3 instituting a civil action, as long as such actions are not
4 contrary to any rules or orders of the Public Service Commission.

5 (h) A municipality which has been designated by the
6 Environmental Protection Agency as an entity to serve a West
7 Virginia Separate Storm Sewer System community shall prepare an
8 annual report detailing the collection and expenditure of rates,
9 fees or charges and make it available for public review at the
10 place of business of the governing body and the stormwater utility
11 main office.

12 **CHAPTER 16. PUBLIC HEALTH**

13 **ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS**

14 **§16-13-16. Rates for service; deposit required for new customers;**
15 **forfeiture of deposit; reconnecting deposit;**
16 **tenant's deposit; change or readjustment; hearing;**
17 **lien and recovery; discontinuance of services.**

18 A governing body has the power and duty, by ordinance, to
19 establish and maintain just and equitable rates, fees or charges
20 for the use of and the service rendered by:

21 (a) Sewerage works, to be paid by the owner of each and every
22 lot, parcel of real estate or building that is connected with and
23 uses such works by or through any part of the sewerage system of
24 the municipality or that in any way uses or is served by such

1 works; and

2 (b) Stormwater works, to be paid by the owner of each and
3 every lot, parcel of real estate or building that in any way uses
4 or is served by such stormwater works or whose property is improved
5 or protected by the stormwater works or any user of such stormwater
6 works.

7 (c) The governing body may change and readjust such rates,
8 fees or charges from time to time. However, no rates, fees or
9 charges for stormwater services may be assessed against highways,
10 road and drainage easements or stormwater facilities constructed,
11 owned or operated by the West Virginia Division of Highways.

12 (d) All new applicants for service shall indicate to the
13 governing body whether they are an owner or tenant with respect to
14 the service location. An entity providing stormwater service shall
15 provide a tenant a report of the stormwater fee charged for the
16 entire property and, if appropriate, that portion of the fee to be
17 assessed to the tenant.

18 (e) The governing body may collect from all new applicants for
19 service a deposit of \$50 or two twelfths of the average annual
20 usage of the applicant's specific customer class, whichever is
21 greater, to secure the payment of service rates, fees and charges
22 in the event they become delinquent as provided in this section. In
23 any case where a deposit is forfeited to pay service rates, fees

1 and charges which were delinquent at the time of disconnection or
2 termination of service, service may not be reconnected or
3 reinstated by the governing body until another deposit equal to \$50
4 or a sum equal to two twelfths of the average usage for the
5 applicant's specific customer class, whichever is greater, is
6 remitted to the governing body. After twelve months of prompt
7 payment history, the governing body shall return the deposit to the
8 customer or credit the customer's account with interest at a rate
9 as the Public Service Commission may prescribe: *Provided*, That
10 where the customer is a tenant, the governing body is not required
11 to return the deposit until the time the tenant discontinues
12 service with the governing body. Whenever any rates, fees, rentals
13 or charges for services or facilities furnished remain unpaid for
14 a period of twenty days after they become due, the user of the
15 services and facilities provided is delinquent. The user is liable
16 until all rates, fees and charges are fully paid. The governing
17 body may, under reasonable rules promulgated by the Public Service
18 Commission, shut off and discontinue water services to a delinquent
19 user of sewer facilities ten days after the sewer services become
20 delinquent regardless of whether the governing body utilizes the
21 security deposit to satisfy any delinquent payments: *Provided*,
22 *however*, That nothing contained within the rules of the Public
23 Service Commission shall be deemed to require any agents or
24 employees of the governing body to accept payment at the customer's

1 premises in lieu of discontinuing service for a delinquent bill.

2 (f) Such rates, fees or charges shall be sufficient in each
3 year for the payment of the proper and reasonable expenses of
4 operation, repair, replacements and maintenance of the works,
5 including, but not limited to, a working capital allowance of no
6 less than 1/8 actual or projected operations and maintenance
7 expenses, provide an adequate cash reserve in accordance with bond
8 covenants requiring a repair and replacement fund and/or
9 depreciation funds, and for the payment of the sums herein required
10 to be paid into the sinking fund. The working capital allowance
11 required in this section shall be separate and distinct from and in
12 addition to any repair and replacement and/or depreciation fund
13 established and maintained in accordance with bond covenants.
14 Revenues collected pursuant to this section shall be considered the
15 revenues of the works.

16 (g) No such rates, fees or charges shall be established until
17 after a public hearing, at which all the users of the works and
18 owners of property served or to be served thereby and others
19 interested shall have an opportunity to be heard concerning the
20 proposed rates, fees or charges.

21 (h) After introduction of the ordinance fixing such rates,
22 fees or charges, and before the same is finally enacted, notice of
23 such hearing, setting forth the proposed schedule of rates, fees or
24 charges, shall be given by publication as a Class II-0 legal

1 advertisement in compliance with the provisions of article three,
2 chapter fifty-nine of this code and the publication area for such
3 publication shall be the municipality. The first publication shall
4 be made at least ten days before the date fixed in the notice for
5 the hearing.

6 (i) After the hearing, which may be adjourned, from time to
7 time, the ordinance establishing rates, fees or charges, either as
8 originally introduced or as modified and amended, shall be passed
9 and put into effect. A copy of the schedule of the rates, fees and
10 charges shall be kept on file in the office of the board having
11 charge of the operation of such works, and also in the office of
12 the clerk of the municipality, and shall be open to inspection by
13 all parties interested. The rates, fees or charges established for
14 any class of users or property served shall be extended to cover
15 any additional premises thereafter served which fall within the
16 same class, without the necessity of any hearing or notice.

17 (j) Any change or readjustment of such rates, fees or charges
18 may be made in the same manner as the rates, fees or charges were
19 originally established as hereinbefore provided: *Provided*, That if
20 a change or readjustment be made substantially pro rata, as to all
21 classes of service, no hearing or notice shall be required. The
22 aggregate of the rates, fees or charges shall always be sufficient
23 for the expense of operation, repair and maintenance and for the
24 sinking fund payments.

1 (k) All rates, fees or charges, if not paid when due, shall
2 constitute a lien upon the premises served by such works. If any
3 service rate, fees or charge is not paid within twenty days after
4 it is due, the amount thereof, together with a penalty of ten
5 percent and a reasonable attorney's fee, may be recovered by the
6 board in a civil action in the name of the municipality. The lien
7 may be foreclosed against such lot, parcel of land or building in
8 accordance with the laws relating thereto. Where both water and
9 sewer services are furnished by any municipality to any premises,
10 the schedule of charges may be billed as a single amount or
11 individually itemized and billed for the aggregate thereof.

12 (l) Whenever any rates, rentals, fees or charges for services
13 or facilities furnished shall remain unpaid for a period of twenty
14 days after they become due, the property and the owner thereof, as
15 well as the user of the services and facilities shall be delinquent
16 until such time as all rates, fees and charges are fully paid. When
17 any payment for rates, rentals, fees or charges becomes delinquent,
18 the governing body may use the security deposit to satisfy the
19 delinquent payment.

20 (m) The board collecting the rates, fees or charges shall be
21 obligated under reasonable rules to shut off and discontinue both
22 water and sewer services to all delinquent users of water, sewer or
23 stormwater facilities and shall not restore either water facilities
24 or sewer facilities to any delinquent user of any such facilities

1 until all delinquent rates, fees or charges for water, sewer and
2 stormwater facilities, including reasonable interest and penalty
3 charges, have been paid in full, as long as such actions are not
4 contrary to any rules or orders of the Public Service Commission:
5 *Provided*, That nothing contained within the rules of the Public
6 Service Commission shall be deemed to require any agents or
7 employees of the municipality or governing body to accept payment
8 at the customer's premises in lieu of discontinuing service for a
9 delinquent bill.

10 **CHAPTER 16. PUBLIC HEALTH**

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

12 **§16-13A-9. Rules; service rates and charges; discontinuance of**
13 **service; required water and sewer connections; lien**
14 **for delinquent fees.**

15 (a) (1) The board may make, enact and enforce all needful
16 rules in connection with the acquisition, construction,
17 improvement, extension, management, maintenance, operation, care,
18 protection and the use of any public service properties owned or
19 controlled by the district. The board shall establish rates, fees
20 and charges for the services and facilities it furnishes, which
21 shall be sufficient at all times, notwithstanding the provisions of
22 any other law or laws, ~~to pay the cost of maintenance, operation~~
23 ~~and depreciation of the public service properties and principal of~~
24 ~~and interest on all bonds issued, other obligations incurred under~~

1 ~~the provisions of this article and all reserve or other payments~~
2 ~~provided for in the proceedings which authorized the issuance of~~
3 ~~any bonds under this article~~ for the payment of the proper and
4 reasonable expenses of operation, repair, replacement and
5 maintenance of the public service properties, including, but not
6 limited to, an adequate working capital allowance of no less than
7 1/8 actual or projected operations and maintenance cost, an
8 adequate cash reserve in accordance with bond covenants requiring
9 repair and replacement and/or depreciation funds and for the
10 payment of the sums herein required to be paid into the sinking
11 fund. The working capital allowance required in this section shall
12 be separate and distinct and in addition to any repair and
13 replacement and/or depreciation fund established and maintained in
14 accordance with bond covenants. The schedule of the rates, fees
15 and charges may be based upon:

16 (A) The consumption of water or gas on premises connected with
17 the facilities, taking into consideration domestic, commercial,
18 industrial and public use of water and gas;

19 (B) The number and kind of fixtures connected with the
20 facilities located on the various premises;

21 (C) The number of persons served by the facilities;

22 (D) Any combination of paragraphs (A), (B) and (C) of this
23 subdivision; or

24 (E) May be determined on any other basis or classification

1 which the board may determine to be fair and reasonable, taking
2 into consideration the location of the premises served and the
3 nature and extent of the services and facilities furnished.
4 However, no rates, fees or charges for stormwater services may be
5 assessed against highways, road and drainage easements or
6 stormwater facilities constructed, owned or operated by the West
7 Virginia Division of Highways.

8 (2) Where water, sewer, stormwater or gas services, or any
9 combination thereof, are all furnished to any premises, the
10 schedule of charges may be billed as a single amount for the
11 aggregate of the charges. The board shall require all users of
12 services and facilities furnished by the district to designate on
13 every application for service whether the applicant is a tenant or
14 an owner of the premises to be served. If the applicant is a
15 tenant, he or she shall state the name and address of the owner or
16 owners of the premises to be served by the district.
17 Notwithstanding the provisions of section eight, article three,
18 chapter twenty-four of this code to the contrary, all new
19 applicants for service shall deposit the greater of a sum equal to
20 two twelfths of the average annual usage of the applicant's
21 specific customer class or \$50, with the district to secure the
22 payment of service rates, fees and charges in the event they become
23 delinquent as provided in this section. If a district provides both
24 water and sewer service, all new applicants for service shall

1 deposit the greater of a sum equal to two twelfths of the average
2 annual usage for water service or \$50 and the greater of a sum
3 equal to two twelfths of the average annual usage for wastewater
4 service of the applicant's specific customer class or \$50. In any
5 case where a deposit is forfeited to pay service rates, fees and
6 charges which were delinquent at the time of disconnection or
7 termination of service, no reconnection or reinstatement of service
8 may be made by the district until another deposit equal to the
9 greater of a sum equal to two twelfths of the average usage for the
10 applicant's specific customer class or \$50 has been remitted to the
11 district. After twelve months of prompt payment history, the
12 district shall return the deposit to the customer or credit the
13 customer's account at a rate as the Public Service Commission may
14 prescribe: *Provided*, That where the customer is a tenant, the
15 district is not required to return the deposit until the time the
16 tenant discontinues service with the district. Whenever any rates,
17 fees, rentals or charges for services or facilities furnished
18 remain unpaid for a period of twenty days after the same become due
19 and payable, the user of the services and facilities provided is
20 delinquent and the user is liable at law until all rates, fees and
21 charges are fully paid. The board may, under reasonable rules
22 promulgated by the Public Service Commission, shut off and
23 discontinue water or gas services to all delinquent users of either
24 water or gas facilities, or both, ten days after the water or gas

1 services become delinquent: *Provided, however,* That nothing
2 contained within the rules of the Public Service Commission shall
3 be deemed to require any agents or employees of the board to accept
4 payment at the customer's premises in lieu of discontinuing service
5 for a delinquent bill.

6 (b) In the event that any publicly or privately owned utility,
7 city, incorporated town, other municipal corporation or other
8 public service district included within the district owns and
9 operates separately water facilities, sewer facilities or
10 stormwater facilities and the district owns and operates another
11 kind of facility either water or sewer, or both, as the case may
12 be, then the district and the publicly or privately owned utility,
13 city, incorporated town or other municipal corporation or other
14 public service district shall covenant and contract with each other
15 to shut off and discontinue the supplying of water service for the
16 nonpayment of sewer or stormwater service fees and charges:
17 *Provided,* That any contracts entered into by a public service
18 district pursuant to this section shall be submitted to the Public
19 Service Commission for approval. Any public service district which
20 provides water and sewer service, water and stormwater service or
21 water, sewer and stormwater service has the right to terminate
22 water service for delinquency in payment of water, sewer or
23 stormwater bills. Where one public service district is providing
24 sewer service and another public service district or a municipality

1 included within the boundaries of the sewer or stormwater district
2 is providing water service and the district providing sewer or
3 stormwater service experiences a delinquency in payment, the
4 district or the municipality included within the boundaries of the
5 sewer or stormwater district that is providing water service, upon
6 the request of the district providing sewer or stormwater service
7 to the delinquent account, shall terminate its water service to the
8 customer having the delinquent sewer or stormwater account:
9 *Provided, however,* That any termination of water service must
10 comply with all rules and orders of the Public Service Commission.
11 *Provided further,* That nothing contained within the rules of the
12 Public Service Commission shall be deemed to require any agents or
13 employees of the Public Service Districts to accept payment at the
14 customer's premises in lieu of discontinuing service for a
15 delinquent bill.

16 (c) Any district furnishing sewer facilities within the
17 district may require, or may by petition to the circuit court of
18 the county in which the property is located, compel or may require
19 the Division of Health to compel all owners, tenants or occupants
20 of any houses, dwellings and buildings located near any sewer
21 facilities where sewage will flow by gravity or be transported by
22 other methods approved by the Division of Health, including, but
23 not limited to, vacuum and pressure systems, approved under the
24 provisions of section nine, article one, chapter sixteen of this

1 code, from the houses, dwellings or buildings into the sewer
2 facilities, to connect with and use the sewer facilities and to
3 cease the use of all other means for the collection, treatment and
4 disposal of sewage and waste matters from the houses, dwellings and
5 buildings where there is gravity flow or transportation by any
6 other methods approved by the Division of Health, including, but
7 not limited to, vacuum and pressure systems, approved under the
8 provisions of section nine, article one, chapter sixteen of this
9 code and the houses, dwellings and buildings can be adequately
10 served by the sewer facilities of the district and it is declared
11 that the mandatory use of the sewer facilities provided for in this
12 paragraph is necessary and essential for the health and welfare of
13 the inhabitants and residents of the districts and of the state. If
14 the public service district requires the property owner to connect
15 with the sewer facilities even when sewage from dwellings may not
16 flow to the main line by gravity and the property owner incurs
17 costs for any changes in the existing dwellings' exterior plumbing
18 in order to connect to the main sewer line, the Public Service
19 District Board shall authorize the district to pay all reasonable
20 costs for the changes in the exterior plumbing, including, but not
21 limited to, installation, operation, maintenance and purchase of a
22 pump or any other method approved by the Division of Health.
23 Maintenance and operation costs for the extra installation should
24 be reflected in the users charge for approval of the Public Service

1 Commission. The circuit court shall adjudicate the merits of the
2 petition by summary hearing to be held not later than thirty days
3 after service of petition to the appropriate owners, tenants or
4 occupants.

5 (d) Whenever any district has made available sewer facilities
6 to any owner, tenant or occupant of any house, dwelling or building
7 located near the sewer facility and the engineer for the district
8 has certified that the sewer facilities are available to and are
9 adequate to serve the owner, tenant or occupant and sewage will
10 flow by gravity or be transported by other methods approved by the
11 Division of Health from the house, dwelling or building into the
12 sewer facilities, the district may charge, and the owner, tenant or
13 occupant shall pay, the rates and charges for services established
14 under this article only after thirty-day notice of the availability
15 of the facilities has been received by the owner, tenant or
16 occupant. Rates and charges for sewage services shall be based upon
17 actual water consumption or the average monthly water consumption
18 based upon the owner's, tenant's or occupant's specific customer
19 class.

20 (e) The owner, tenant or occupant of any real property may be
21 determined and declared to be served by a stormwater system only
22 after each of the following conditions is met: (1) The district has
23 been designated by the Environmental Protection Agency as an entity
24 to serve a West Virginia Separate Storm Sewer System community, as

1 defined in 40 C.F.R. §122.26; (2) the district's authority has been
2 properly expanded to operate and maintain a stormwater system; (3)
3 the district has made available a stormwater system where
4 stormwater from the real property affects or drains into the
5 stormwater system; and (4) the real property is located in the
6 Municipal Separate Storm Sewer System's designated service area. It
7 is further hereby found, determined and declared that the mandatory
8 use of the stormwater system is necessary and essential for the
9 health and welfare of the inhabitants and residents of the district
10 and of the state. The district may charge and the owner, tenant or
11 occupant shall pay the rates, fees and charges for stormwater
12 services established under this article only after thirty-day
13 notice of the availability of the stormwater system has been
14 received by the owner. An entity providing stormwater service shall
15 provide a tenant a report of the stormwater fee charged for the
16 entire property and, if appropriate, that portion of the fee to be
17 assessed to the tenant.

18 (f) All delinquent fees, rates and charges of the district for
19 either water facilities, sewer facilities, gas facilities or
20 stormwater systems or stormwater management programs are liens on
21 the premises served of equal dignity, rank and priority with the
22 lien on the premises of state, county, school and municipal taxes.
23 Nothing contained within the rules of the Public Service Commission
24 shall be deemed to require any agents or employees of the Public

1 Service Districts to accept payment at the customer's premises in
2 lieu of discontinuing service for a delinquent bill. In addition to
3 the other remedies provided in this section, public service
4 districts are granted a deferral of filing fees or other fees and
5 costs incidental to the bringing and maintenance of an action in
6 magistrate court for the collection of delinquent water, sewer,
7 stormwater or gas bills. If the district collects the delinquent
8 account, plus reasonable costs, from its customer or other
9 responsible party, the district shall pay to the magistrate the
10 normal filing fee and reasonable costs which were previously
11 deferred. In addition, each public service district may exchange
12 with other public service districts a list of delinquent accounts:
13 *Provided*, That an owner of real property may not be held liable for
14 the delinquent rates or charges for services or facilities of a
15 tenant, nor may any lien attach to real property for the reason of
16 delinquent rates or charges for services or facilities of a tenant
17 of the real property, unless the owner has contracted directly with
18 the public service district to purchase the services or facilities.

19 (g) Anything in this section to the contrary notwithstanding,
20 any establishment, as defined in section three, article eleven,
21 chapter twenty-two of this code, now or hereafter operating its own
22 sewage disposal system pursuant to a permit issued by the
23 Department of Environmental Protection, as prescribed by section
24 eleven of said article, is exempt from the provisions of this

1 section.

2 (h) A public service district which has been designated by the
3 Environmental Protection Agency as an entity to serve a West
4 Virginia Separate Storm Sewer System community shall prepare an
5 annual report detailing the collection and expenditure of rates,
6 fees or charges and make it available for public review at the
7 place of business of the governing body and the stormwater utility
8 main office.

9 **§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or**
10 **gas system by district; distribution of proceeds.**

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

1 article three, chapter fifty-nine of this code, in a newspaper
2 published and of general circulation in the county or counties
3 wherein the district is located, such publication to be made not
4 earlier than twenty days and not later than seven days prior to the
5 hearing; (2) approval by the county commission or commissions of
6 the county or counties in which the district operates; and (3)
7 approval by the public service commission of West Virginia.

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

20 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

21 **ARTICLE 1. GENERAL PROVISIONS.**

22 **§24-1-1b. Supplemental rule for reorganization.**

23 The Public Service Commission shall, by general order, create
24 and maintain a division within its staff which shall provide legal,

1 engineering, financial and accounting advice and assistance to
2 public service districts and ~~Class III cities and Class IV towns or~~
3 ~~villages~~ municipally-owned utilities in operational, financial and
4 regulatory matters ~~and may perform or participate in the studies~~
5 ~~required under section one b, article thirteen a, chapter sixteen~~
6 ~~of this code: Provided, That advice and assistance to a Class III~~
7 ~~city or Class IV town or village shall only be given if such advice~~
8 ~~or assistance is specifically requested by the Class III city or~~
9 ~~the Class IV town or village. The request may be withdrawn by the~~
10 ~~city or town at any time, after which the commission shall not~~
11 ~~provide further assistance or advice.~~

12 The Legislature further finds that, in order to promote
13 regulatory certainty and economies within and between the state and
14 its political subdivisions providing water, wastewater and
15 stormwater utility services to the citizens of the state, that,
16 within the division created herein, a separate section will be
17 created which will investigate and provide recommendations to the
18 Commission in all matters that come before it regarding publicly
19 owned water, wastewater and stormwater enterprises. This section
20 will perform the accounting, financial, technical and engineering
21 analysis required by the Commission in performing its regulatory
22 functions with respect to political subdivisions of the state.

23 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

1 **§24-2-4a. Procedure for changing rates after June 30, 1981.**

2 After the thirtieth day of June, one thousand nine hundred
3 eighty-one, no public utility subject to this chapter except those
4 utilities subject to the provisions of section four-b and section
5 four-d of this article, shall change, suspend or annul any rate,
6 joint rate, charge, rental or classification except after thirty
7 days' notice to the commission and the public, which notice shall
8 plainly state the changes proposed to be made in the schedule then
9 in force and the time when the changed rates or charges shall go
10 into effect; but the commission may enter an order suspending the
11 proposed rate as hereinafter provided. The proposed changes shall
12 be shown by printing new schedules, or shall be plainly indicated
13 upon the schedules in force at the time, and kept open to public
14 inspection: *Provided*, That the commission may, in its discretion,
15 and for good cause shown, allow changes upon less time than the
16 notice herein specified, or may modify the requirements of this
17 section in respect to publishing, posting and filing of tariffs,
18 either by particular instructions or by general order.

19 Whenever there shall be filed with the commission any schedule
20 stating a change in the rates or charges, or joint rates or
21 charges, or stating a new individual or joint rate or charge or
22 joint classification or any new individual or joint regulation or
23 practice affecting any rate or charge, the commission may either
24 upon complaint or upon its own initiative without complaint enter

1 upon a hearing concerning the propriety of such rate, charge,
2 classification, regulation or practice; and, if the commission so
3 orders, it may proceed without answer or other form of pleading by
4 the interested parties, but upon reasonable notice, and, pending
5 such hearing and the decisions thereon, the commission, upon filing
6 with such schedule and delivering to the public utility affected
7 thereby a statement in writing of its reasons for such suspension,
8 may suspend the operation of such schedule and defer the use of
9 such rate, charge, classification, regulation or practice, but not
10 for a longer period than two hundred seventy days beyond the time
11 when such rate, charge, classification, regulation or practice
12 would otherwise go into effect; and after full hearing, whether
13 completed before or after the rate, charge, classification,
14 regulation or practice goes into effect, the commission may make
15 such order in reference to such rate, charge, classification,
16 regulation or practice as would be proper in a proceeding initiated
17 after the rate, charge, classification, regulation or practice had
18 become effective: *Provided*, That in the case of a public utility
19 having two thousand five hundred customers or less and which is not
20 principally owned by any other public utility corporation or public
21 utility holding corporation, the commission may suspend the
22 operation of such schedule and defer the use of such rate, charge,
23 classification, regulation or practice, but not for a longer period
24 than one hundred twenty days beyond the time when such rate,

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

1 Provided, however, That there shall be no suspension period in the
2 case of rates established by a public service district pursuant to
3 section nine [§16-13A-9], article thirteen-A, chapter sixteen of
4 this code and the proposed rates of public service districts shall
5 go into effect upon the date of filing with the Commission, subject
6 to refund modification at the conclusion of the commission
7 proceeding. The public service district shall provide notice by
8 Class 1 legal advertisement in a newspaper of general circulation
9 in its service territory of the percentage increase in rates at
10 least fourteen days prior to the effective date of the increased
11 rates. Any refund determined to be determined to be due and owing
12 as a result of any difference between any final rates approved the
13 Commission and the rates placed into effect subject to refund shall
14 be refunded by the public service district as a credit against each
15 customer's account for for a period of up to six months after entry
16 of the Commission's final order. Any remaining balance which is
17 not fully credited by credit within six months after entry of the
18 Commission's final order shall be directly refunded to the customer
19 by check: *Provided, however, That if any such hearing and decision*
20 *thereon is not concluded within the periods of suspension, as above*
21 *stated, such rate, charge, classification, regulation or practice*
22 *shall go into effect at the end of such period not subject to*
23 *refund: Provided further, That if any such rate, charge,*
24 *classification, regulation or practice goes into effect because of*

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

22 At any hearing involving a rate sought to be increased or
23 involving the change of any rate, charge, classification,
24 regulation or practice, the burden of proof to show the justness

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

1 district, allow for a purchased cost adjustment rate increase to
2 offset the increased cost of electricity, materials, chemicals,
3 water, wastewater treatment and/or fuel necessary to maintain
4 quality utility operations. Before the first day of January, two
5 thousand fifteen, the commission shall promulgate rules and
6 regulations detailing what a petition for relief under this
7 paragraph must show to support its case. No proceeding for a cost
8 adjustment under this subsection shall extend beyond ninety days
9 from the date of the filing of the petition and the rate increase
10 shall be effective from the earlier of the date of a commission
11 order or ninety days from the date of filing the petition. The
12 public service district shall provide notice by Class 1 legal
13 advertisement in a newspaper of general circulation in its service
14 territory of the percentage increase in rates at least fourteen
15 days prior to the effective date of the increased rates.

16 The commission shall, by order issued annually on/about
17 January 1 of each year, announce the percentage by which the rates
18 of all public service districts shall be adjusted upward consistent
19 with any increase of the consumer price index for all urban
20 consumers (CPI-U) reported by the U.S. Bureau of Labor Statistics
21 for the prior twelve months. In the case of increases associated
22 with this annual order, new rates shall be effective from the date
23 of the commission's order. The public service district shall
24 provide notice by Class 1 legal advertisement in a newspaper of

1 general circulation in its service territory of the percentage
2 increase in rates at least fourteen days prior to the effective
3 date of the increased rates.

4 No utility may make application for a general rate increase
5 while another general rate application is pending before the
6 commission and not finally acted upon, except pursuant to the
7 provisions of the next preceding paragraph of this section. The
8 provisions of this paragraph shall not be construed so as to
9 prohibit any such rate application from being made while a previous
10 application which has been finally acted upon by the commission is
11 pending before or upon appeal to the West Virginia supreme court of
12 appeals.

13 **§24-2-4b. Procedures for changing rates of electric and natural**
14 **gas cooperatives, local exchange services of**
15 **telephone cooperatives and municipally operated**
16 **public utilities.**

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

1 (b) All rates and charges set by electric cooperatives,
2 natural gas cooperatives and municipally operated public utilities
3 and all rates and charges for local exchange services set by
4 telephone cooperatives shall be just, reasonable, applied without
5 unjust discrimination or preference and based primarily on the
6 costs of providing these services. The rates and charges shall be
7 adopted by the electric, natural gas or telephone cooperative's
8 governing board and in the case of the municipally operated public
9 utility by municipal ordinance to be effective not sooner than
10 forty-five days after adoption: *Provided*, That notice of intent to
11 effect a rate change shall be specified on the monthly billing
12 statement of the customers of the utility for the month next
13 preceding the month in which the rate change is to become effective
14 or the utility shall give its customers, and in the case of a
15 cooperative, its customers, members and stockholders, other
16 reasonable notices as will allow filing of timely objections to the
17 rate change or full participation in municipal rate legislation.
18 The rates and charges or ordinance shall be filed with the
19 commission, together with any information showing the basis of the
20 rates and charges and other information as the commission considers
21 necessary. Any change in the rates and charges with updated
22 information shall be filed with the commission. If a petition, as
23 set out in subdivision (1), (2) or (3), subsection (c) of this
24 section is received and the electric cooperative, natural gas

1 cooperative or telephone cooperative ~~or municipality~~ has failed to
2 file with the commission the rates and charges with information
3 showing the basis of rates and charges and other information as the
4 commission considers necessary, the suspension period limitation of
5 one hundred twenty days and the one hundred-day period limitation
6 for issuance of an order by a hearing examiner, as contained in
7 subsections (d) and (e) of this section, is tolled until the
8 necessary information is filed. The electric cooperative, natural
9 gas cooperative, or telephone cooperative ~~or municipality~~ shall set
10 the date when any new rate or charge is to go into effect.

11 (c) The commission shall review and approve or modify the
12 rates upon the filing of a petition within thirty days of the
13 adoption of the ordinance or resolution changing the rates or
14 charges by:

15 (1) Any customer served by a municipally operated public
16 utility and who resides outside the corporate limits and who is
17 aggrieved by the changed rates or charges who presents to the
18 commission a petition signed by not less than twenty-five percent
19 of the customers served by the municipally operated public utility
20 and residing outside the corporate limits or twenty-five percent of
21 the membership of the electric, natural gas or telephone
22 cooperative residing within the state;

23 (2) Any customer who is served by a municipally operated
24 public utility and who resides outside the corporate limits and who

1 is affected by the change in the rates or charges and who presents
2 to the commission a petition alleging discrimination between
3 customers within and without the municipal boundaries. The petition
4 shall be accompanied by evidence of discrimination; or

5 (3) Any customer or group of customers who are affected by the
6 change in rates who reside within the municipal boundaries and who
7 present a petition to the commission alleging discrimination
8 between customer or group of customers and other customers of the
9 municipal utility. The petition shall be accompanied by evidence of
10 discrimination.

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

21 ~~(d) (2) Upon sufficient showing of discrimination by customers~~
22 ~~outside the municipal boundaries or a customer or a group of~~
23 ~~customers within the municipal boundaries under a petition filed~~
24 ~~under subdivision (2) or (3), subsection (c) of this section, the~~

1 ~~commission shall suspend the adoption of the rate change contained~~
2 ~~in the ordinance for a period of one hundred twenty days from the~~
3 ~~date the rates or charges would otherwise go into effect or until~~
4 ~~an order is issued as provided herein. A municipal rate ordinance~~
5 ~~enacted pursuant to the provisions of this section and municipal~~
6 ~~charter or state code shall be presumed valid and rates shall be~~
7 ~~allowed to go into effect, subject to refund, upon the date stated~~
8 ~~in that ordinance.~~

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 four [§8-19-4], article nineteen and section
24 ten [§8-10-20], and article twenty of chapter eight, and section

1 sixteen]§16-13-16], article thirteen of 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 (g) (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 forty-five day
3 waiting period provided for in subsection (b) of this section and
4 the one hundred twenty-day suspension period provided for in
5 subsection (d) of this section.

6 (i) The commission may, upon petition and a duly enacted
7 municipal ordinance enacting a purchased cost adjustment rate
8 increase, allow such cost adjustment rate increase to offset the
9 increased cost of electricity, materials, chemicals, water,
10 wastewater treatment and/or fuel necessary to maintain quality
11 utility operations. Before the first day of January, two thousand
12 fifteen, the commission shall promulgate rules and regulations
13 detailing what the petition for relief under this paragraph must
14 show to support its case. For purposes of this cost adjustment, the
15 municipality and the commission shall waive the forty-five day
16 waiting period provided for in subsection (b) of this section;
17 Provided, That no proceeding for a cost adjustment under this
18 subsection shall extend beyond ninety days from the date of the
19 filing of the petition and the rate increase shall be effective
20 from the earlier of the date of a commission order on such petition
21 or ninety days from the date of filing the petition.

22 (j) The commission shall, by order issued annually on/about
23 January 1 of each year, announce the percentage by which the rates
24 of all municipal utilities shall be adjusted upward consistent with

1 any increase of the consumer price index for all urban consumers
2 (CPI-U) reported by the U.S. Bureau of Labor Statistics for the
3 prior twelve months. In the case of increases associated with this
4 annual order, the forty-five day waiting period provided for in
5 subsection (b) of this section shall be waived and such new rates
6 shall be effective from the date of the commission's order. The
7 municipal utility shall provide notice by Class 1 legal
8 advertisement in a newspaper of general circulation in its service
9 territory of the percentage increase in rates at least fourteen
10 days prior to the effective date of the increased rates.

11 ~~(h)~~(k) Notwithstanding any other provision, the commission has
12 no authority or responsibility with regard to the regulation of
13 rates, income, services or contracts by municipally operated public
14 utilities for services which are transmitted and sold outside of
15 the state of West Virginia.

NOTE: The purpose of this bill is to add provisions to the regulatory scheme for Public Service Commission's regulation of public service districts and municipalities to allow for improved fiscal management and regulation of publicly-owned utilities. The bill includes provisions requiring a minimum working capital allowance for these utilities; retasking and restructuring the Public Service Commission's organization to provide more effective assistance to publicly-owned utilities; establishes a presumption of validity of enacted rate ordinances, and allows for the immediate implementation of requested rate increases by publicly-owned utilities, subject to refund; authorizes the use of rate adjustment based on measurable price increases, without requiring the filing of a complete rate review and rate case; and allows for an annual rate adjustment for publicly owned utilities based on the

consumer price index for all urban consumers. The bill would also waive certain cash reimbursement requirements otherwise required by code when one publicly owned utility facility is sold to another.

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