

Senate Bill No. 234

(By Senators Trump, M. Hall, Blair and Plymale)

[Introduced January 15, 2014; referred to the Committee on Government Organization; and then
to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to repeal §16-13A-25 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a and §16-13A-9 of said code; to amend and reenact §24-1-1 and §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to removing from the jurisdiction of the Public Service Commission water and sewer utilities owned or operated by political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

That §8-16-19 of the Code of West Virginia, 1931, as amended, be repealed; that §16-13A-25 of said code be repealed; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a and §16-13A-9 of said code be amended and reenacted; that §24-1-1 and §24-1-1b of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted,

1 all to read as follows:

2 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

3 **ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER**
4 **SYSTEMS.**

5 **§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on**
6 **bonds; rates for services; exemption from taxation.**

7 Whenever a municipality or county commission shall, under the provisions of this article,
8 determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks
9 system or an electric power system, or to construct any additions, betterments or improvements to
10 any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof,
11 and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of
12 this article, which ordinance or order shall set forth a brief description of the contemplated
13 undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of
14 payment, and other details in connection with the issuance of the bonds. ~~Such~~ The bonds shall be
15 in such form and shall be negotiated and sold in such manner and upon such terms as the governing
16 body of such municipality or county commission may by ordinance or order specify. All ~~such~~ the
17 bonds and the interest thereon shall be exempt from all taxation by this state, or any county,
18 municipality or county commission, political subdivision or agency thereof. Notwithstanding any
19 other provision of this code to the contrary, the real and personal property which a municipality or
20 county has acquired and constructed according to the provisions of this article, and any leasehold
21 interest therein held by other persons, shall be deemed public property and shall be exempt from
22 taxation by the state, or any county, municipality or other levying body, so long as the same is owned

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

1 said bonds and shall pledge the revenues derived from the waterworks or electric power system for
 2 the purpose of paying ~~such~~ the bonds and interest thereon, which pledge shall definitely fix and
 3 determine the amount of revenues which shall be necessary to be set apart and applied to the
 4 payment of the principal of and interest upon the bonds and the proportion of the balance of ~~such~~ the
 5 revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder
 6 shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or
 7 charges to be charged for the services from ~~such~~ the waterworks or electric power system shall be
 8 sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking
 9 fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor,
 10 and to provide for the repair, maintenance and operation of the waterworks or electric power system,
 11 and to provide an adequate depreciation fund, and to make any other payments which shall be
 12 required or provided for in the ordinance or order authorizing the issuance of said bonds. In the event
 13 that the combined system has significant insufficiencies in either its bond revenue or bond reserve
 14 accounts, the bondholder may petition the Circuit Court of Kanawha County for such redress as will
 15 bring the accounts to current status.

16 **CHAPTER 16. PUBLIC HEALTH.**

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

18 **§16-13A-1a. Jurisdiction of the Public Service Commission.**

19 The jurisdiction of the Public Service Commission relating to public service districts shall
 20 be expanded to include the following powers and ~~such~~ the powers shall be in addition to all other
 21 powers of the Public Service Commission set forth in this code:

22 (a) To study, modify, approve, deny or amend the plans created under section one-b of this

1 article for consolidation or merger of public service districts and their facilities, personnel or
2 administration;

3 (b) To petition the appropriate circuit court for the removal of a public service district board
4 member or members; and

5 (c) To create by general order a separate division within the Public Service Commission to
6 provide assistance to public service districts in technological, operational, financial and regulatory
7 matters; including, upon request of the public service district board, assistance to the board in
8 deliberations regarding a proposed rate change.

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

11 (a) (1) The board may make, enact and enforce all needful rules in connection with the
12 acquisition, construction, improvement, extension, management, maintenance, operation, care,
13 protection and the use of any public service properties owned or controlled by the district. The board
14 shall establish, in accordance with this article, rates, fees and charges for the services and facilities
15 it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law
16 or laws, to pay the cost of maintenance, operation and depreciation of the public service properties
17 and principal of and interest on all bonds issued, other obligations incurred under the provisions of
18 this article and all reserve or other payments provided for in the proceedings which authorized the
19 issuance of any bonds under this article. The schedule of the rates, fees and charges may be based
20 upon:

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

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

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

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

5 (E) May be determined on any other basis or classification which the board may determine
6 to be fair and reasonable, taking into consideration the location of the premises served and the nature
7 and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater
8 services may be assessed against highways, road and drainage easements or stormwater facilities
9 constructed, owned or operated by the West Virginia Division of Highways.

10 (2) The board may make, enact and enforce all needful rules in connection with the
11 enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall
12 provide for:

13 (A) Adequate prior public notice of the contemplated rates, fees and charges by causing a
14 notice of intent to effect such a change to be specified on the monthly billing statement of the
15 customers of the district for the month next preceding the month in which the contemplated change
16 is to be before the board on first reading.

17 (B) Adequate prior public notice of the contemplated rates, fees and charges by causing to
18 be published as a Class I legal advertisement of the proposed action, in compliance with the
19 provisions of article three (Sec. 59-3-1 et seq.), chapter fifty-nine of the code. The publication area
20 for publication shall be all territory served by the district. If the district provides service in more than
21 one county, publication shall be made in a newspaper of general circulation in each county that the
22 district provides service.

1 (C) The public notice of the proposed action shall state the current rates, fees and charges and
2 the proposed changes to said rates, fees and charges; the date, time, and place of both a public
3 hearing on the proposal and the proposed final vote on adoption; and, the place or places within the
4 district where the proposed rates, fees and charges may be inspected by the public. A reasonable
5 number of copies of the proposal shall be kept at the place or places and be made available for public
6 inspection. The notice shall also advise that interested parties may appear at the public hearing before
7 the board and be heard with respect to the proposed rates, fees and charges.

8 (D) The proposed rates, fees and charges shall be read at two meetings of the board with at
9 least two weeks intervening between each meeting. The public hearing may be conducted with or
10 following the second reading.

11 (E) Enactment of the proposed rates, fees and charges shall follow an affirmative vote of the
12 board and shall be effective no sooner than forty-five days following the action of the board. The
13 forty-five day waiting period may be waived by public vote of the board only if the board finds and
14 declares the district to be in financial distress such that the forty-five day waiting period would be
15 detrimental to the ability of the district to deliver continued and compliant public services.

16 (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all
17 furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate
18 of the charges. The board shall require all users of services and facilities furnished by the district to
19 designate on every application for service whether the applicant is a tenant or an owner of the
20 premises to be served. If the applicant is a tenant, he or she shall state the name and address of the
21 owner or owners of the premises to be served by the district. Notwithstanding the provisions of
22 section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for

1 service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the
2 applicant's specific customer class or \$50, with the district to secure the payment of service rates,
3 fees and charges in the event they become delinquent as provided in this section. If a district provides
4 both water and sewer service, all new applicants for service shall deposit the greater of a sum equal
5 to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal
6 to two twelfths of the average annual usage for wastewater service of the applicant's specific
7 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges
8 which were delinquent at the time of disconnection or termination of service, no reconnection or
9 reinstatement of service may be made by the district until another deposit equal to the greater of a
10 sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has
11 been remitted to the district. After twelve months of prompt payment history, the district shall return
12 the deposit to the customer or credit the customer's account at a rate as the Public Service
13 Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not
14 required to return the deposit until the time the tenant discontinues service with the district.
15 Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a
16 period of twenty days after the same become due and payable, the user of the services and facilities
17 provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The
18 board may, under reasonable rules promulgated by the Public Service Commission, shut off and
19 discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten
20 days after the water or gas services become delinquent: *Provided, however*, That nothing contained
21 within the rules of the Public Service Commission shall be deemed to require any agents or
22 employees of the board to accept payment at the customer's premises in lieu of discontinuing service

1 for a delinquent bill.

2 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
3 municipal corporation or other public service district included within the district owns and operates
4 separately water facilities, sewer facilities or stormwater facilities and the district owns and operates
5 another kind of facility either water or sewer, or both, as the case may be, then the district and the
6 publicly or privately owned utility, city, incorporated town or other municipal corporation or other
7 public service district shall covenant and contract with each other to shut off and discontinue the
8 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
9 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
10 be submitted to the Public Service Commission for approval. Any public service district which
11 provides water and sewer service, water and stormwater service or water, sewer and stormwater
12 service has the right to terminate water service for delinquency in payment of water, sewer or
13 stormwater bills. Where one public service district is providing sewer service and another public
14 service district or a municipality included within the boundaries of the sewer or stormwater district
15 is providing water service and the district providing sewer or stormwater service experiences a
16 delinquency in payment, the district or the municipality included within the boundaries of the sewer
17 or stormwater district that is providing water service, upon the request of the district providing sewer
18 or stormwater service to the delinquent account, shall terminate its water service to the customer
19 having the delinquent sewer or stormwater account: *Provided, however*, That any termination of
20 water service must comply with all rules and orders of the Public Service Commission. *Provided*
21 *further*, That nothing contained within the rules of the Public Service Commission shall be deemed
22 to require any agents or employees of the Public Service Districts to accept payment at the customer's

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

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

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

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

14 (e) The owner, tenant or occupant of any real property may be determined and declared to
15 be served by a stormwater system only after each of the following conditions is met: (1) The district
16 has been designated by the Environmental Protection Agency as an entity to serve a West Virginia
17 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26; (2) the district's
18 authority has been properly expanded to operate and maintain a stormwater system; (3) the district
19 has made available a stormwater system where stormwater from the real property affects or drains
20 into the stormwater system; and (4) the real property is located in the Municipal Separate Storm
21 Sewer System's designated service area. It is further hereby found, determined and declared that the
22 mandatory use of the stormwater system is necessary and essential for the health and welfare of the

1 inhabitants and residents of the district and of the state. The district may charge and the owner,
2 tenant or occupant shall pay the rates, fees and charges for stormwater services established under this
3 article only after thirty-day notice of the availability of the stormwater system has been received by
4 the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater
5 fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the
6 tenant.

7 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
8 facilities, gas facilities or stormwater systems or stormwater management programs are liens on the
9 premises served of equal dignity, rank and priority with the lien on the premises of state, county,
10 school and municipal taxes. Nothing contained within the rules of the Public Service Commission
11 shall be deemed to require any agents or employees of the Public Service Districts to accept payment
12 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
13 other remedies provided in this section, public service districts are granted a deferral of filing fees
14 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
15 for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the
16 delinquent account, plus reasonable costs, from its customer or other responsible party, the district
17 shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred.
18 In addition, each public service district may exchange with other public service districts a list of
19 delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
20 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
21 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real
22 property, unless the owner has contracted directly with the public service district to purchase the

1 services or facilities.

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

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

11 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

12 **ARTICLE 1. GENERAL PROVISIONS.**

13 **§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of**
14 **plan as rule; cooperation with Joint Committee on Government and Finance.**

15 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the
16 Public Service Commission of this state the authority and duty to enforce and regulate the practices,
17 services and rates of public utilities that are not political subdivisions of the state in order to:

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

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

22 (3) Encourage the well-planned development of utility resources in a manner consistent with

1 state needs and in ways consistent with the productive use of the state's energy resources, such as
2 coal;

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

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

8 (6) Encourage removal of artificial barriers to rail carrier service, stimulate competition,
9 stimulate the free flow of goods and passengers throughout the state and promote the expansion of
10 the tourism industry, thereby improving the economic condition of the state.

11 (b) The Legislature creates the Public Service Commission to exercise the legislative powers
12 delegated to it. The Public Service Commission is charged with the responsibility for appraising and
13 balancing the interests of current and future utility service customers, the general interests of the
14 state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and
15 decisions.

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

1 (d) It is legislative policy to ensure that the Legislature and the general public become better
2 informed regarding the regulation of public utilities in this state and the conduct of the business of
3 the Public Service Commission. To aid in the achievement of this policy, the Public Service
4 Commission annually shall present to the Joint Committee on Government and Finance, created by
5 article three, chapter four of this code, or a subcommittee designated by the joint committee, a
6 management summary report which describes in a concise manner:

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

9 (2) Important policy decisions reached and initiatives undertaken during the year;

10 (3) The current balance of supply and demand for natural gas and electric utility services in
11 the state and forecast of the probable balance for the next ten years; and (4) Other information
12 considered by the commission to be important including recommendations for statutory reform and
13 the reasons for ~~such~~ the recommendations.

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

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

1 production of ~~such~~ the wells; and whether there are fixed policies by any utility or group of utilities
2 to avoid the purchase of natural gas produced in the Appalachian region of the United States
3 generally and in West Virginia specifically.

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

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

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

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

16 (1) A division within the Public Service Commission which shall include the office of the
17 commissioners, the hearing examiners and such support staff as may be necessary to carry out the
18 functions of decisionmaking and general supervision of the commission, which functions shall not
19 include advocacy in cases before the commission;

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

22 (3) The means and procedures by which the division to be created pursuant to the provisions

1 of subdivision (2) of this subsection shall protect the interests of each class of customers and the
2 means by which the commission will assure that ~~such~~ the division will be financially and
3 departmentally independent of the division created by subdivision (1) of this subsection;

4 (4) The creation of a division within the Public Service Commission which shall assume the
5 duties and responsibilities now charged to the commissioners with regard to motor carriers which
6 division shall exist separately from those divisions set out in subdivisions (1) and (2) of this
7 subsection and which shall relieve the commissioners of all except minimal administrative
8 responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve
9 the commissioners from hearing motor carrier cases;

10 (5) Which members of the staff of the Public Service Commission shall be exempted from
11 the salary schedules or pay plan adopted by the civil service commission and identify ~~such~~ the staff
12 members by job classification or designation, together with the salary or salary ranges for each such
13 job classification or designation;

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

19 Such plan shall be based on the concept that each of the divisions mentioned in subdivisions
20 (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage
21 ex parte communications between them by such means as the commission shall direct, including,
22 but not limited to, separate clerical and professional staffing for each division. Further, the Public

1 Service Commission is directed to incorporate within the said plan to the fullest extent possible the
2 recommendations presented to the subcommittee on the Public Service Commission of the Joint
3 Committee on Government and Finance in a final report dated February, 1979, and entitled "A Plan
4 for Regulatory Reform and Management Improvement."

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

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

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

1 the concurrent resolution.

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

4 (g) The Public Service Commission is hereby directed to cooperate with the Joint Committee
5 on Government and Finance of the Legislature in its review, examination and study of the
6 administrative operations and enforcement record of the Railroad Safety Division of the Public
7 Service Commission and any similar studies.

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

12 (2) The Legislature further finds that the practices of natural gas utilities in purchasing
13 high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia
14 possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual
15 agreements including take-or-pay provisions, indefinite price escalators or most-favored nation
16 clauses have contributed to the dramatic increase in natural gas prices. It is therefore the policy of
17 the Legislature to discourage such purchasing practices in order to protect all customer classes.

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

22 (I) The Legislature further finds that transactions between utilities and affiliates are a

1 contributing factor to the increase in natural gas and electricity prices and tend to confuse
 2 consideration of a proper rate of return calculation. The Legislature therefore finds that it is
 3 imperative that the Public Service Commission have the opportunity to properly study the issue of
 4 proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level
 5 when compared to return or profit that affiliates earn on transactions with sister utilities.

6 **§24-1-1b. Supplemental rule for reorganization.**

7 The Public Service Commission shall, by general order, create a division within its staff
 8 which shall, upon request of the governing body of a political subdivision, provide legal,
 9 engineering, financial, rate making and accounting advice and assistance to ~~public service districts~~
 10 ~~and Class III cities and Class IV towns or villages~~ utilities that are political subdivisions of the state
 11 in operational, financial and regulatory matters, and may perform or participate in the studies
 12 required under section one-b, article thirteen-a, chapter sixteen of this code: *Provided, That advice*
 13 ~~and assistance to a Class III city or Class IV town or village shall only be given if such advice or~~
 14 ~~assistance is specifically requested by the Class III city or the Class IV town or village. The A request~~
 15 for advice and assistance may be withdrawn by the ~~city or town~~ political subdivision at any time,
 16 after which the commission shall not provide further assistance or advice. Any information collected
 17 by the commission staff in the course of providing advice and assistance may not be used in
 18 subsequent formal proceedings conducted by the commission.

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

20 **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

21 (a) The jurisdiction of the commission shall extend to all public utilities in this state that are
 22 not political subdivisions of the state and shall include any utility engaged in any of the following

1 public services:

2 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or
3 otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or
4 air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all
5 mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car
6 services; transmission of messages by telephone, telegraph or radio; generation and transmission of
7 electrical energy by hydroelectric or other utilities for service to the public, whether directly or
8 through a distributing utility; supplying ~~water~~, gas or electricity, by municipalities or others; sewer
9 systems servicing twenty-five or more persons or firms other than the owner of the sewer systems:
10 ~~unless that system is owned by a political subdivision: *Provided*, That if a public utility, other than~~
11 a political subdivision, intends to provide sewer service by an innovative, alternative method, as
12 defined by the Federal Environmental Protection Agency, the innovative, alternative method is a
13 public utility function and subject to the jurisdiction of the Public Service Commission regardless
14 of the number of customers served by the innovative, alternative method; ~~any public service district~~
15 ~~created under the provisions of article thirteen-a, chapter sixteen of this code~~; toll bridges, wharves,
16 ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas
17 producers who provide natural gas service to not more than twenty-five residential customers are
18 exempt from the jurisdiction of the commission with regard to the provisions of ~~such~~ the residential
19 service: *Provided further*, That upon request of any of the customers of such natural gas producers,
20 the commission may, upon good cause being shown, exercise such authority as the commission may
21 deem appropriate over the operation, rates and charges of ~~such~~ the producer and for such length of
22 time as the commission may consider to be proper: ~~*And provided further*, That the jurisdiction the~~

1 ~~commission may exercise over the rates and charges of municipally operated public utilities is~~
2 ~~limited to that authority granted the commission in section four b of this article: *And provided*~~
3 ~~*further*, That the decision-making authority granted to the commission in sections four and four-a~~
4 ~~of this article shall, in respect to an application filed by a public service district, be delegated to a~~
5 ~~single hearing examiner appointed from the commission staff, which hearing examiner shall be~~
6 ~~authorized to carry out all decision-making duties assigned to the commission by said sections, and~~
7 ~~to issue orders having the full force and effect of orders of the commission.~~

8 **§24-2-2. General power of commission to regulate public utilities.**

9 (a) The commission is hereby given power to investigate all rates, methods and practices of
10 public utilities that are not political subdivisions of the state and are subject to the provisions of this
11 chapter; to require them to conform to the laws of this state and to all rules, regulations and orders
12 of the commission not contrary to law; and to require copies of all reports, rates, classifications,
13 schedules and timetables in effect and used by the regulated public utility or other person, to be filed
14 with the commission, and all other information desired by the commission relating to the
15 investigation and requirements, including inventories of all property in such form and detail as the
16 commission may prescribe. The commission may compel obedience to its lawful orders by
17 mandamus or injunction or other proper proceedings in the name of the state in any circuit court
18 having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and
19 the proceedings shall have priority over all pending cases. The commission may change any
20 intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to
21 matters of a purely local nature which have not been regulated by or pursuant to an act of Congress
22 and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any

1 practice, device or method of service in order to prevent undue discrimination or favoritism between
2 persons and between localities and between commodities for a like and contemporaneous service.
3 But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering
4 the cost of the service. Every order entered by the commission shall continue in force until the
5 expiration of the time, if any, named by the commission in the order, or until revoked or modified
6 by the commission, unless the order is suspended, modified or revoked by order or decree of a court
7 of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter providers,
8 the commission shall prescribe such rates, charges or tolls that are the lowest available. "Emergency
9 shelter provider" means any nonprofit entity which provides temporary emergency housing and
10 services to the homeless or to victims of domestic violence or other abuse.

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

16 **§24-2-3. General power of commission with respect to rates.**

17 (a) The commission shall have power to enforce, originate, establish, change and promulgate
18 tariffs, rates, joint rates, tolls and schedules for all public utilities that are not political subdivisions
19 of the state: *Provided*, That the commission may exercise such rate authority over municipal utilities
20 that are political subdivisions of the state only under the circumstances and limitations set forth in
21 section four-b of this article. And whenever the commission shall, after hearing, find any existing
22 rates, tolls, tariffs, joint rates or schedules enacted or maintained by a utility that is not a political

1 subdivision of the state to be unjust, unreasonable, insufficient or unjustly discriminatory or
2 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix
3 reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those
4 found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of
5 any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix
6 a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate
7 charged on the main line of ~~such~~ the railroad.

8 **(b)** In determining just and reasonable rates, the commission may audit and investigate
9 management practices and policies, or have performed an audit and investigation of ~~such~~ practices
10 and policies, in order to determine whether the utility is operating with efficiency and is utilizing
11 sound management practices. The commission shall adopt rules and regulations setting forth the
12 scope, frequency and application of ~~such~~ the audits and investigations to the various utilities subject
13 to its jurisdiction. The commission may include the cost of conducting the management audit in the
14 cost of service of the utility.

15 **(c)** In determining just and reasonable rates, the commission shall investigate and review
16 transactions between utilities and affiliates. The commission shall limit the total return of the utility
17 to a level which, when considered with the level of profit or return the affiliate earns on transactions
18 with the utility, is just and reasonable.

19 **§24-2-4a. Procedure for changing rates after June 30, 1981.**

20 **(a)** After June 30, 1981, no public utility subject to this chapter, except those utilities that are
21 political subdivisions of the state, ~~except~~ and those utilities subject to the provisions of ~~section four-b~~
22 ~~and~~ section four-d of this article, shall change, suspend or annul any rate, joint rate, charge, rental

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

10 **(b)** Whenever there shall be filed with the commission any schedule stating a change in the
11 rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint
12 classification or any new individual or joint regulation or practice affecting any rate or charge, the
13 commission may either upon complaint or upon its own initiative without complaint enter upon a
14 hearing concerning the propriety of ~~such~~ the rate, charge, classification, regulation or practice; and,
15 if the commission so orders, it may proceed without answer or other form of pleading by the
16 interested parties, but upon reasonable notice, and, pending ~~such~~ hearing and the decisions thereon,
17 the commission, upon filing with such schedule and delivering to the public utility affected thereby
18 a statement in writing of its reasons for ~~such~~ suspension, may suspend the operation of ~~such~~ the
19 schedule and defer the use of ~~such~~ the rate, charge, classification, regulation or practice, but not for
20 a longer period than two hundred seventy days beyond the time when ~~such~~ the rate, charge,
21 classification, regulation or practice would otherwise go into effect; and after full hearing, whether
22 completed before or after the rate, charge, classification, regulation or practice goes into effect, the

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

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

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

14 (c) At any hearing involving a rate sought to be increased or involving the change of any rate,
15 charge, classification, regulation or practice, the burden of proof to show the justness and
16 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
17 charge, classification, regulation or practice shall be upon the public utility making application for
18 ~~such~~ the change. The commission shall, whenever practicable and within budgetary constraints,
19 conduct one or more public hearings within the area served by the public utility making application
20 for ~~such~~ the increase or change, for the purpose of obtaining comments and evidence on the matter
21 from local ratepayers.

22 (d) Each public utility subject to the provisions of this section shall be required to establish,

1 in a written report which shall be incorporated into each general rate case application, that it has
2 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
3 management, rate design and conservation as reported by the commission under subsection c, section
4 one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility
5 report shall contain as to each concept considered the reasons for adoption or rejection of each.
6 When in any case pending before the commission all evidence shall have been taken and the hearing
7 completed, the commission shall render a decision in ~~such~~ the case. The failure of the commission
8 to render a decision with respect to any ~~such~~ proposed change in any ~~such~~ rate, charge, classification,
9 regulation or practice within the various time periods specified in this section after the application
10 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

11 (e) Where more than twenty members of the public are affected by a proposed change in
12 rates, it shall be a sufficient notice to the public within the meaning of this section if ~~such~~ the notice
13 is published as a Class II legal advertisement in compliance with the provisions of article three,
14 chapter fifty-nine of this code, and the publication area for ~~such~~ publication shall be the community
15 where the majority of the resident members of the public affected by ~~such~~ the change reside or, in
16 case of nonresidents, have their principal place of business within this state.

17 (f) The commission may order rates into effect subject to refund, plus interest in the
18 discretion of the commission, in cases in which the commission determines that a temporary or
19 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon
20 which these rates are based are subject to modification by the commission or another regulatory
21 commission and to refund to the public utility. In such case the commission may require ~~such~~ the
22 public utility to enter into a bond in an amount deemed by the commission to be reasonable and

1 conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if
2 ~~such~~ the rates so put into effect are subsequently determined to be higher than those finally fixed for
3 ~~such~~ the utility.

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

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

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

19 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and
20 ~~municipally operated~~ public utilities that are political subdivisions of the state and all rates and
21 charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied
22 without unjust discrimination or preference and based primarily on the costs of providing these

1 services. The rates and charges shall be adopted by the electric, natural gas ~~or~~ telephone cooperative's
2 or political subdivision's governing board and in the case of the municipally operated public utility
3 by municipal ordinance to be effective not sooner than forty-five days after adoption. The forty-five
4 day waiting period may be waived by public vote of the governing body if that body finds and
5 declares the municipally operated public utility to be in financial distress such that the forty-five day
6 waiting period would be detrimental to the ability of the utility to deliver continued and compliant
7 public services: *Provided*, That notice of intent to effect a rate change shall be specified on the
8 monthly billing statement of the customers of the utility for the month next preceding the month in
9 which the rate change is to become effective ~~or~~ and the utility, governing board or body shall give
10 its customers, and in the case of a cooperative, its customers, members and stockholders, other
11 reasonable notices as will allow filing of timely objections to the proposed rate change or full
12 participation in municipal rate legislation through the provision of a public forum in which
13 customers may comment upon the proposed rate change prior to an enactment vote. The rates and
14 charges or ordinance shall be filed with the commission, together with any information showing the
15 basis of the rates and charges and other information as the commission considers necessary. Any
16 change in the rates and charges with updated information shall be filed with the commission. If a
17 petition, as set out in subdivision (1), ~~(2) or (3)~~; subsection (c) of this section is received and the
18 electric cooperative, natural gas cooperative or telephone cooperative ~~or municipality~~ has failed to
19 file with the commission the rates and charges with information showing the basis of rates and
20 charges and other information as the commission considers necessary, the suspension period
21 limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an
22 order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the

1 necessary information is filed. The electric cooperative, natural gas cooperative, telephone
2 cooperative, political subdivision or municipality shall set the date when any new rate or charge is
3 to go into effect.

4 (c) The commission shall review and approve or modify the rates and charges of electric
5 cooperatives, natural gas cooperatives and telephone cooperatives upon the filing of a petition within
6 thirty days of the adoption of the ordinance or resolution changing the rates or charges by ~~(1)~~ any
7 customer aggrieved by the changed rates or charges who presents to the commission a petition signed
8 by not less than ~~twenty-five percent of the customers served by the municipally operated public~~
9 ~~utility~~ or twenty-five percent of the membership of the electric, natural gas or telephone cooperative
10 residing within the state.

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

15 (d) Any customer or group of customers who are affected by the change in rates who reside
16 within the municipal boundaries and who present a petition to the commission alleging
17 discrimination between customer or group of customers and other customers of the municipal utility.
18 The petition shall be accompanied by evidence of discrimination.

19 ~~(d)(1)~~ The filing of a petition with the commission signed by not less than ~~twenty-five percent~~
20 ~~of the customers served by the municipally operated public utility~~ or twenty-five percent of the
21 membership of the electric, natural gas or telephone cooperative residing within the state under
22 ~~subdivision (1)~~; subsection (c) of this section shall suspend the adoption of the rate change contained

1 in the ordinance or resolution for a period of one hundred twenty days from the date the rates or
2 charges would otherwise go into effect or until an order is issued as provided herein.

3 ~~(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries~~
4 ~~or a customer or a group of customers within the municipal boundaries under a petition filed under~~
5 ~~subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of~~
6 ~~the rate change contained in the ordinance for a period of one hundred twenty days from the date the~~
7 ~~rates or charges would otherwise go into effect or until an order is issued as provided herein. A~~
8 ~~municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or~~
9 ~~state code that establishes or proposes a rate increase that results in an increase of less than~~
10 ~~twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be~~
11 ~~allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates~~
12 ~~established or proposed that increase by more than twenty-five percent of the gross revenue of the~~
13 ~~municipally operated public utility, the utility may apply for, and the commission may grant, a~~
14 ~~waiver of the suspension period and allow rates to be effective upon enactment.~~

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

21 (f) Upon receipt of a petition for review of the rates under the provisions of subsection (c)
22 of this section, the commission may exercise the power granted to it under the provisions of section

1 three of this article, ~~consistent with the applicable rate provisions of section twenty, article ten,~~
2 ~~chapter eight of this code, section four, article nineteen, chapter eight of this code, and section~~
3 ~~sixteen, article thirteen, chapter sixteen of this code.~~ The commission may determine the method by
4 which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the
5 customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

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

14 (h) ~~(g)~~ The commission may, upon petition by ~~a municipality or an~~ electric, natural gas or
15 telephone cooperative, allow an interim or emergency rate to take effect, subject to refund or future
16 modification, if it is determined that the interim or emergency rate is necessary to protect the
17 municipality from financial hardship attributable to the purchase of the utility commodity sold, or
18 the commission determines that a temporary or interim rate increase is necessary for the utility to
19 avoid financial distress. In such cases, the commission shall waive the 45-day waiting period
20 provided for in subsection (b) of this section and the one hundred twenty-day suspension period
21 provided for in subsection (d) of this section.

22 (h) The commission shall, by its staff and upon written request of the governing body of a

1 political subdivision, provide technical assistance to the governing body in its deliberations regarding
2 a proposed rate increase.

3 (I) Notwithstanding any other provision, the commission has no authority or responsibility
4 with regard to the regulation of rates, income, services or contracts by municipally operated public
5 utilities for services which are transmitted and sold outside of the State of West Virginia.

6 **§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures**
7 **respecting receivership; appointment and compensation of receiver; liquidation.**

8 (a) Whenever, under the provisions of this chapter, the commission shall find any regulations,
9 measurements, practices, acts or service provided by a public utility that is not a political subdivision
10 of the state to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in
11 violation of any provisions of this chapter, or shall find that any service is inadequate, or that any
12 service which is demanded cannot be reasonably obtained, the commission shall determine and
13 declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be
14 furnished, imposed, observed and followed in the state in lieu of those found to be unjust,
15 unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this
16 chapter, and shall make such other order respecting the same as shall be just and reasonable.

17 (b) If the public service commission shall determine that any utility that is not a political
18 subdivision of the state is unable or unwilling to adequately serve its customers or has been actually
19 or effectively abandoned by its owners, or that its management is grossly and willfully inefficient,
20 irresponsible or unresponsive to the needs of its customers, the commission may petition to the
21 circuit court of any county wherein the utility does business for an order attaching the assets of the
22 utility and placing ~~such~~ the utility under the sole control and responsibility of a receiver. If the court

1 determines that the petition is proper in all respects and finds, after a hearing thereon, that the
2 allegations contained in the petition are true, it shall grant the same and shall order that the utility
3 be placed in receivership. The court, in its discretion and in consideration of the recommendation
4 of the commission, shall appoint a receiver who shall be a responsible individual, partnership or
5 corporation knowledgeable in public utility affairs and who shall maintain control and responsibility
6 for the running and management of the affairs of ~~such~~ the utility. In so doing, the receiver shall
7 operate the utility so as to preserve the assets of the utility and to serve the best interests of its
8 customers. The receiver shall be compensated from the assets of ~~said~~ the utility in an amount to be
9 determined by the court.

10 (c) Control of and responsibility for said the utility shall remain in the receiver until the same
11 can, in the best interest of the customers, be returned to the owners, transferred to other owners or
12 assumed by another utility or public service corporation: *Provided*, That if the court after hearing,
13 determines that control of and responsibility for the affairs of the utility should not, in the best
14 interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to
15 liquidate the assets of ~~such~~ the utility in the manner provided by law.

16 (d) The laws generally applicable to receivership shall govern receiverships created pursuant
17 to this section.

18 (e) Whenever, under the provisions of this chapter, the commission finds any regulations,
19 measurements, practices, acts or service provided by a public utility that is a political subdivision
20 of the state to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in
21 violation of any provisions of this chapter, or finds that any service is inadequate, or that any
22 service which is demanded cannot be reasonably obtained, the commission shall inform in writing

1 the governing body of the political subdivision of the findings and shall, upon request of the
2 governing body, provide advice and technical support regarding remedial measures to be employed
3 to cure the alleged deficiency.

4 **§24-2-11. Requirements for certificate of public convenience and necessity.**

5 (a) A public utility, other than a political subdivision, person or corporation may not begin
6 the construction of any plant, equipment, property or facility for furnishing to the public any of the
7 services enumerated in section one, article two of this chapter, nor apply for, nor obtain any
8 franchise, license or permit from any municipality or other governmental agency, except ordinary
9 extensions of existing systems in the usual course of business, unless and until it shall obtain from
10 the Public Service Commission a certificate of public convenience and necessity authorizing ~~such~~
11 the construction franchise, license or permit.

12 (b) Upon the filing of any application for the certificate, and after hearing, the commission
13 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
14 convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no
15 substantial protest is received within thirty days after the notice is given, may waive formal hearing
16 on the application. Notice shall be given by publication which shall state that a formal hearing may
17 be waived in the absence of substantial protest, made within thirty days, to the application. The
18 notice shall be published as a Class I legal advertisement in compliance with the provisions of article
19 three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

20 (c) Any public utility, other than a political subdivision, person or corporation subject to the
21 provisions of this section shall give the commission at least thirty days' notice of the filing of any the
22 application for a certificate of public convenience and necessity under this section: *Provided*, That

1 the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day
2 notice requirement for projects approved by the Infrastructure and Jobs Development Council.

3 (d) The commission shall render its final decision on any application filed under the
4 provisions of this section or section eleven-a of this article within two hundred seventy days of the
5 filing of the application and within ninety days after final submission of ~~any such~~ the application for
6 decision following a hearing: *Provided*, That if the application is for authority to construct a water
7 and sewer project and the projected total cost is less than \$10 million, the Commission shall render
8 its final decision within two hundred twenty-five days of the filing of the application.

9 (e) The commission shall render its final decision on any application filed under the
10 provisions of this section that has received the approval of the Infrastructure and Jobs Development
11 Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days
12 after filing of the application: *Provided*, That if a substantial protest is received within thirty days
13 after the notice is provided pursuant to subsection (b) of this section, the commission shall render
14 its final decision within two hundred seventy days or two hundred twenty-five days of the filing of
15 the application, whichever is applicable as determined in subsection (d).

16 (f) If the projected total cost of a project which is the subject of an application filed pursuant
17 to this section or section eleven-a of this article is greater than \$50 million, the commission shall
18 render its final decision on ~~any such~~ the application filed under the provisions of this section or
19 section eleven-a of this article within four hundred days of the filing of the application and within
20 ninety days after final submission of ~~any such~~ the application for decision after a hearing.

21 (g) If a decision is not rendered within the; time-frames established in this section, the
22 commission shall issue a certificate of convenience and necessity as applied for in the application.

1 (h) The commission shall prescribe rules as it may deem proper for the enforcement of the
2 provisions of this section; and, in establishing that public convenience and necessity do exist, the
3 burden of proof shall be upon the applicant.

4 (I) Pursuant to the requirements of this section, the commission may issue a certificate of
5 public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution
6 company for the transportation in intrastate commerce of natural gas used by any person for one or
7 more uses, as defined by rule, by the commission in the case of:

8 (1) Natural gas sold by a producer, pipeline or other seller to the person; or

9 (2) Natural gas produced by the person.

10 (j) A public utility, including a public service district, which has received a certificate of
11 public convenience and necessity after July 8, 2005, from the commission and has been approved
12 by the Infrastructure and Jobs Development Council, is not required to, and cannot be compelled to,
13 reopen the proceeding if the cost of the project changes but the change does not affect the rates
14 established for the project.

15 (k) Any public utility, person or corporation proposing any electric power project that
16 requires a certificate under this section is not required to obtain ~~such~~ the certificate before applying
17 for or obtaining any franchise, license or permit from any municipality or other governmental
18 agency.

19 (l) Political subdivisions desiring to pursue construction projects that are not in the ordinary
20 course of business shall provide notice to both current customers and those citizens who will be
21 affected by the proposed construction as follows:

22 (A) Adequate prior public notice of the contemplated construction by causing a notice of

1 intent to pursue a project that is not in the ordinary course of business to be specified on the monthly
2 billing statement of the customers of the district for the month next preceding the month in which
3 the contemplated construction is to be before the board on first reading.

4 (B) Adequate prior public notice of the contemplated construction by causing to be published
5 as a Class I legal advertisement of the proposed action, in compliance with the provisions of article
6 three , chapter fifty-nine of the code. The publication area for publication shall be all territory served
7 by the district. If the political subdivision provides service in more than one county, publication
8 shall be made in a newspaper of general circulation in each county that the political subdivision
9 provides service.

10 (C) The public notice of the proposed construction shall state the scope of the proposed
11 construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges;
12 the date, time, and place of both a public hearing on the proposal and the proposed final vote on
13 adoption; and, the place or places within the political subdivision where the proposed construction
14 and the rates, fees and charges may be inspected by the public. A reasonable number of copies of the
15 proposal shall be kept at the place or places and be made available for public inspection. The notice
16 shall also advise that interested parties may appear at the public hearing before the political
17 subdivision and be heard with respect to the proposed construction and the proposed rates, fees and
18 charges.

19 (D) The proposed construction and the proposed rates, fees and charges shall be read at two
20 meetings of the board with at least two weeks intervening between each meeting. The public hearing
21 may be conducted with or following the second reading.

22 (E) Enactment of the proposed construction and the proposed rates, fees and charges shall

1 follow an affirmative vote of the board and shall be effective no sooner than forty-five days
 2 following the action of the board. If the political subdivision proposes rates that will go into effect
 3 prior than the completion of construction of the proposed project, the forty-five day waiting period
 4 may be waived by public vote of the board only if the political subdivision finds and declares the
 5 political subdivision to be in financial distress such that the forty-five day waiting period would be
 6 detrimental to the ability of the political subdivision to deliver continued and compliant public
 7 services.

8 **ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO**
 9 **REGULATIONS OF COMMISSION.**

10 **§24-3-5. Schedule of rates to be filed with commission.**

11 Every public utility ~~subject to the provisions of this chapter~~ shall file with the commission,
 12 and keep open to public inspection, schedules showing all the rates, charges and tolls for service to
 13 be rendered by it or by other persons, firms or corporations in connection with it: *Provided, however,*
 14 That the reports and tariffs filed by interstate carriers with the public service commission may be
 15 copies of its reports and tariffs filed with the interstate commerce commission; but nothing herein
 16 shall preclude the public service commission from requiring interstate carriers to furnish information
 17 bearing upon any complaint or question pending before said public service commission and with
 18 which it has a right to deal.

NOTE: The purpose of this bill is to exempt water and sewer utilities owned by political subdivisions from Public Service Commission jurisdiction.

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