

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2946

BY DELEGATES CRISS, HILL, WILSON, DEAN, BOGGS,
HARSHBARGER, J. KELLY, D. KELLY, FOSTER, PHILLIPS
AND CADLE

[Introduced February 8, 2019; Referred
to the Committee on Political Subdivisions then the
Judiciary.]

1 A BILL to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend
 3 and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to
 4 amend and reenact §16-13A-9 of said code; to amend and reenact §24-1-1 of said code;
 5 to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, and §24-2-11 of
 6 said code, all relating to clarifying Public Service Commission jurisdiction over water and
 7 sewer utilities owned by political subdivisions; establishing uniformity in the class of
 8 publications required by municipalities and public service districts for the revision in rates;
 9 providing a time period for the filing of and resolution of complaints filed at the Public
 10 Service Commission regarding actions of municipalities; cleaning up language regarding
 11 reference to other sections of the code regarding notice requirements for municipal
 12 utilities; and regarding the time period pertaining to the filing of appeals and the resolution
 13 of the appeals for rate and construction projects decided by county commissions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality owns a gas system, an electric system, a waterworks
 2 system, a sewer system or other public utility and a majority of not less than 60 percent of the
 3 members of the governing body thereof ~~shall deem~~ determines it for the best interest of ~~such~~ the
 4 municipality that ~~such~~ the utility be sold or leased, the governing body may so sell or lease ~~such~~
 5 the gas system, electric system, waterworks system, sewer system or other public utility upon
 6 such terms and conditions as ~~said~~ the governing body in its discretion considers in the best

7 interest of the municipality: *Provided*, That ~~such~~ the sale or lease may be made only upon: (1)
8 The publication of notice of a hearing before the governing body of the municipality, as a Class I
9 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a
10 newspaper published and of general circulation in the municipality, ~~such~~ the publication to be
11 made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the
12 approval by the Public Service Commission of West Virginia. The governing body, upon the
13 approval of the sale or lease by a majority of its members of not less than 60 percent of the
14 members of the governing body, shall have full power and authority to proceed to execute or
15 effect ~~such~~ the sale or lease in accordance with the terms and conditions prescribed in the
16 ordinance approved as aforesaid, and shall have power to do any and all things necessary or
17 incident thereto: *Provided, however*, That if at any time after ~~such~~ the approval and before the
18 execution of the authority under the ordinance, any person should present to the governing body
19 an offer to buy ~~such~~ the public utility at a price which exceeds by at least five percent the sale
20 price which shall have been so approved and authorized or to lease the same upon terms which
21 the governing body, in its discretion, shall consider more advantageous to the municipality than
22 the terms of the lease which shall have been previously approved as aforesaid, the governing
23 body shall have the power to accept ~~such~~ the subsequent offer, and to make ~~such~~ the sale or
24 ~~such~~ the lease to the person making the offer, upon approval of the offer by a majority of not less
25 than 60 percent of the members of the governing body; but, if a sale shall have been approved
26 by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease
27 shall have been approved by the governing body, and the subsequent proposition shall be for a
28 sale, the governing body ~~shall have the authority to~~ may accept the same upon approval of the
29 offer by a majority of not less than 60 percent of the members of the governing body. The person
30 making ~~such~~ the proposition shall furnish bond, with security to be approved by the governing
31 body, in a penalty of not less than 25 percent of ~~such~~ the proposed bid, conditioned to carry ~~such~~
32 the proposition into execution, if the same shall be approved by the governing body. In any case

33 where any such public utility shall be sold or leased by the governing body as hereinabove
 34 provided, no part of the moneys derived from ~~such~~ the sale or lease ~~shall~~ may be applied to the
 35 payment of current expenses of the municipality, but the proceeds of ~~such~~ the sale or lease shall
 36 be applied in payment and discharge of any indebtedness created in respect to ~~such~~ the public
 37 utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the
 38 power and authority to expend all such moneys when received for the purchase or construction
 39 of firefighting equipment and buildings for housing ~~such~~ the equipment, a municipal building or
 40 city hall, and the necessary land upon which to locate the same for capital investments in public
 41 works projects, vehicles and equipment and law-enforcement vehicles and equipment, for the
 42 demolition of dilapidated and abandoned buildings, or for the construction of paved streets,
 43 avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls and other like
 44 permanent improvements for fulfilling municipal pension and other post-employment benefit
 45 obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the
 46 payment of ~~such~~ the indebtedness, the surplus shall be used as aforesaid.

47 The requirements of this section ~~shall~~ may not apply to the sale or lease of any part of the
 48 properties of any such public utility determined by the governing body to be unnecessary for the
 49 efficient rendering of the service of ~~such~~ the utility.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

1 PART VI. IMPOSITION OF RATES, FEES OR CHARGES.

§8-16-18. Rates, fees or charges for services rendered by works.

1 The governing body shall have plenary power and authority and it shall be its duty, by
 2 ordinance, to establish and maintain just and equitable rates, fees or charges for the use and
 3 services rendered, or the improvement or protection of property, not to include highways, road
 4 and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the
 5 West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person
 6 using the same, receiving the services thereof, or owning the property improved or protected

7 thereby, and may readjust rates, fees or charges from time to time.

8 When two or more municipalities take joint action under the provisions of this article, the
9 rates, fees or charges shall be established by each participating municipality, with the
10 concurrence of the other participating municipality or municipalities as to the amount of the rates,
11 fees or charges, and ~~such~~ the rates, fees or charges may be the same with respect to each
12 municipality, or they may be different.

13 Rates, fees or charges heretofore or hereafter established and maintained for the
14 improvement or protection of property, not to include highways, road and drainage easements,
15 and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of
16 Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by
17 the person owning the property improved or protected thereby, shall be collectible and
18 enforceable from the time provided in any such ordinance, any provision of this or any other law
19 to the contrary notwithstanding, if, at such time, ~~such~~ the works, though not yet fully completed,
20 are nearing completion and the governing body is reasonably assured that the works will be
21 completed and placed in operation without unreasonable delay.

22 All rates, fees or charges shall be sufficient in each year for the payment of the proper and
23 reasonable expenses of repair (including replacements), maintenance and operation of the works,
24 and for the payment of the sums herein required to be paid into the sinking fund. Revenues
25 collected pursuant to the provisions of this section are considered the revenues of the works. No
26 such rates, fees or charges ~~shall~~ may be established until after a public hearing at which all the
27 users of the works and owners of the property served, or to be served thereby, and others
28 interested, shall have an opportunity to be heard concerning the proposed rates, fees or charges.

29 After introduction of the proposed ordinance fixing the rates, fees or charges and before
30 the same is finally adopted, notice of ~~such~~ the hearing, setting forth the proposed schedule of
31 ~~such~~ the rates, fees or charges, shall be given by publishing the same as a ~~Class I-0~~ Class I legal
32 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the

33 publication area for the publication shall be such the municipality or each such municipality, as
34 the case may be. ~~Said~~ The notice shall be published at least five days before the date fixed in
35 ~~such the~~ notice for the hearing, which hearing may be adjourned from time to time. No other or
36 further notice to parties in interest shall may be required.

37 After ~~such the~~ hearing the ordinance establishing rates, fees or charges, either as
38 originally proposed or introduced, or as modified and amended, shall be adopted and put into
39 effect. A copy of the schedule of ~~such the~~ rates, fees and charges so established shall be kept on
40 file in the office of the board having charge of ~~such the~~ works, and also in the office of the
41 governing body or bodies, and shall be open to inspection by all parties in interest.

42 The rates, fees or charges so established for any class of users or property served shall
43 be extended to cover any additional class of users or property thereafter served which fall within
44 the same class, without the necessity of any hearing or notice. Any change or adjustment of rates,
45 fees or charges may be made in the same manner as ~~such the~~ rates, fees or charges were
46 originally established as provided in this section. The aggregate of the rates, fees or charges shall
47 always be sufficient for the expenses of repair (including replacements), maintenance and
48 operation, and for the sinking fund payments.

49 If any rate, fee or charge so established ~~shall not be~~ is not paid within 30 days after the
50 same is due, the amount thereof, together with a penalty of 10 percent and reasonable attorney's
51 fees, may be recovered by the board in a civil action in the name of the municipality or
52 municipalities, and in the case of rates, fees or charges due for services rendered, ~~such the~~ rates,
53 fees or charges, if not paid when due, may, if the governing body so provide in the ordinance
54 provided for under §8-16-7 of this code, constitute a lien upon the premises served by ~~such the~~
55 works, which lien may be foreclosed against ~~such the~~ lot, parcel of land or building so served, in
56 accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any
57 person receiving any such service to pay for the same when due, the board may discontinue ~~such~~
58 the service without notice.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

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

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

22 this section made in the year 1992 an agreement between the municipality and the county
23 commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement
24 of the county school board, county commission and any municipal authority within whose
25 jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything
26 contained in this statute to the contrary, this exemption shall be applicable to any leasehold or
27 similar interest held by persons other than a municipality or county only if acquired or constructed
28 with the written agreement of the county school board, county commission and any municipal
29 authority within whose jurisdiction the electric power system is or is to be physically situate:
30 *Provided, however,* That payments made to any county commission, county school board or
31 municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments
32 resulted from ad valorem property taxation. The bonds shall bear interest at a rate per annum set
33 by the municipality or county commission, payable at such times, and shall be payable as to
34 principal at such times, not exceeding 50 years from their date, and at such place or places, within
35 or without the state, as shall be prescribed in the ordinance or order providing for their issuance.
36 Unless the governing body of the municipality or county commission shall otherwise determine,
37 the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the
38 property so to be acquired, constructed, established, extended or equipped, fix minimum rates or
39 charges for water or electricity to be collected prior to the payment of all of said bonds and shall
40 pledge the revenues derived from the waterworks or electric power system for the purpose of
41 paying the bonds and interest thereon, which pledge shall definitely fix and determine the amount
42 of revenues which shall be necessary to be set apart and applied to the payment of the principal
43 of and interest upon the bonds and the proportion of the balance of the revenues, which are to be
44 set aside as a proper and adequate depreciation account, and the remainder shall be set aside
45 for the reasonable and proper maintenance and operation thereof. The rates or charges to be
46 charged for the services from the waterworks or electric power system shall be sufficient at all
47 times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the

48 principal thereof as and when the same become due, and reasonable reserves therefor, and to
 49 provide for the repair, maintenance and operation of the waterworks or electric power system,
 50 and to provide an adequate depreciation fund, and to make any other payments which shall be
 51 required or provided for in the ordinance or order authorizing the issuance of said bonds: Provided
 52 further, That the notice given by the municipality or county commission for a change in rates or
 53 charges to be charged for the services from the waterworks or electric power system, shall be
 54 provided by Class I legal advertisement in a newspaper of general circulation in its service territory
 55 and on the website not less than one week prior to the public hearing of the governing body of
 56 the municipality or the county commission required for the approval of the change in rates or
 57 charges.

ARTICLE 20. COMBINED SYSTEMS.

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

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
 2 ~~shall have plenary power and authority to~~ may make, enact and enforce all necessary rules for
 3 the repair, maintenance, operation and management of the combined system of the municipality
 4 and for the use thereof. The governing body of a municipality also ~~has the plenary power and~~
 5 ~~authority to~~ may make, enact and enforce all necessary rules and ordinances for the care and
 6 protection of any such system for the health, comfort and convenience of the public, to provide a
 7 clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do
 8 and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible
 9 to do: *Provided*, That no municipality may make, enact or enforce any rule, regulation or ordinance

10 regulating any highways, road or drainage easements or storm water facilities constructed, owned
11 or operated by the West Virginia Division of Highways.

12 (2) A municipality ~~has the plenary power and authority to~~ may charge the users for the use
13 and service of a combined system and to establish required deposits, rates, fees or charges for
14 ~~such~~ that purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer
15 services respectively and, if applicable, the stormwater services, or combined rates, fees or for
16 the combined water and sewer services, and, if applicable, the storm water services. ~~Such~~ The
17 deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to
18 pay the cost of repair, maintenance and operation of the combined system, provide an adequate
19 reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue
20 bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and
21 maintained by ordinance and become payable as the governing body may determine by
22 ordinance. The rates, fees or charges shall be changed, from time to time, as necessary,
23 consistent with the provisions of this article: Provided, That the notice given by the municipality
24 for a change in rates or charges to be charged for the services from the waterworks or electric
25 power system, shall be provided by Class I legal advertisement in a newspaper of general
26 circulation in its service territory not less than one week prior to the public hearing of the governing
27 body of the municipality required for the approval of the change in rates or charges.

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

32 (4) The municipality or governing body, but only one of them, may collect from all new
33 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
34 applicant's specific customer class, whichever is greater, to secure the payment of water and
35 sewage service rates, fees and charges ~~in the event~~ if they become delinquent as provided in this

36 section. In any case where a deposit is forfeited to pay service rates, fees and charges which
37 were delinquent and the user's service is disconnected or terminated, service may not be
38 reconnected or reinstated by the municipality or governing body until another deposit equal to
39 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
40 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
41 prompt payment history, the municipality or governing body shall return the deposit to the
42 customer or credit the customer's account with interest at a rate to be set by the Public Service
43 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body
44 is not required to return the deposit until the time the tenant discontinues service with the
45 municipality governing body. Whenever any rates, fees, rentals or charges for services or facilities
46 furnished remain unpaid for a period of 20 days after they become due, the user of the services
47 and facilities provided is delinquent and the user is liable at law until all rates, fees and charges
48 are fully paid. The municipality or governing body may terminate water services to a delinquent
49 user of either water or sewage facilities, or both, 10 days after the water or sewage services
50 become delinquent regardless of whether the governing body utilizes the security deposit to
51 satisfy any delinquent payments: *Provided, however*, That any termination of water service must
52 comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing
53 contained within the rules of the Public Service Commission ~~shall be deemed to require any~~ may
54 require agents or employees of the municipality or governing body to accept payment at the
55 customer's premises in lieu of discontinuing service for a delinquent bill.

56 (b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid
57 for a period of 20 days after they become due, the user of the services and facilities provided shall
58 be delinquent and the municipality or governing body may apply any deposit against any
59 delinquent fee. The user is liable until such time as all rates, fees and charges are fully paid.

60 (c) All rates, fees or charges for water service, sewer service and, if applicable, stormwater
61 service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal

62 dignity, rank and priority with the lien on such the premises of state, county, school and municipal
63 taxes for the amount thereof upon the real property served. The municipality ~~has the plenary~~
64 ~~power and authority to~~ may enforce ~~such~~ the lien in a civil action to recover the money due for
65 services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an
66 owner of real property may not be held liable for the delinquent rates, fees or charges for services
67 or facilities of a tenant, nor ~~shall~~ may any lien attach to real property for the reason of delinquent
68 rates, fees or charges for services or facilities of a tenant of the real property, unless the owner
69 has contracted directly with the municipality to purchase ~~such~~ the services or facilities.

70 (d) Municipalities are hereby granted a deferral of filing fees or other fees and costs
71 incidental to filing an action in magistrate court for collection of the delinquent rates and charges.
72 If the municipality collects the delinquent account, plus fees and costs, from its customer or other
73 responsible party, the municipality shall pay to the magistrate court the filing fees or other fees
74 and costs which were previously deferred.

75 (e) No municipality may foreclose upon the premises served by it for delinquent rates, fees
76 or charges for which a lien is authorized by this section except through a civil action in the circuit
77 court of the county wherein the municipality lies. In every such action, the court shall be required
78 to make a finding based upon the evidence and facts presented that the municipality has
79 exhausted all other remedies for collection of debts with respect to ~~such~~ the delinquencies prior
80 to bringing the action. In no event ~~shall~~ may foreclosure procedures be instituted by any
81 municipality or on its behalf unless the delinquency has been in existence or continued for a period
82 of two years from the date of the first delinquency for which foreclosure is being sought.

83 (f) Notwithstanding any other provision contained in this article, a municipality which has
84 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
85 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, ~~has the authority to~~
86 may enact ordinances or regulations which allow for the issuance of orders, the right to enter
87 properties and the right to impose reasonable fines and penalties regarding correction of

88 violations of municipal stormwater ordinances or regulations within the municipal watershed
 89 served by the municipal stormwater system, as long as ~~such~~ the rules, regulations, fines or acts
 90 are not contrary to any rules or orders of the Public Service Commission.

91 (g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served
 92 in person to the alleged violator or by certified mail, return receipt requested. The notice shall
 93 state the nature of the violation, the potential penalty, the action required to correct the violation
 94 and the time limit for making the correction. Should a person, after receipt of proper notice, fail to
 95 correct violation of the municipal stormwater ordinance or regulation, the municipality may correct
 96 or have the corrections of the violation made and bring the party into compliance with the
 97 applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting
 98 the violation from the person by instituting a civil action, as long as ~~such~~ the actions are not
 99 contrary to any rules or orders of the Public Service Commission.

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

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

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

3 (a) Sewerage works, to be paid by the owner of ~~each~~ and every lot, parcel of real estate

4 or building that is connected with and uses ~~such~~ the works by or through any part of the sewerage
5 system of the municipality or that in any way uses or is served by ~~such~~ the works; and

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

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

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

17 (e) The governing body may collect from all new applicants for service a deposit of \$50 or
18 two twelfths of the average annual usage of the applicant's specific customer class, whichever is
19 greater, to secure the payment of service rates, fees and charges ~~in the event~~ if they become
20 delinquent as provided in this section. In any case where a deposit is forfeited to pay service
21 rates, fees and charges which were delinquent at the time of disconnection or termination of
22 service, service may not be reconnected or reinstated by the governing body until another deposit
23 equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific
24 customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt
25 payment history, the governing body shall return the deposit to the customer or credit the
26 customer's account with interest at a rate as the Public Service Commission may prescribe:
27 *Provided*, That where the customer is a tenant, the governing body is not required to return the
28 deposit until the time the tenant discontinues service with the governing body. Whenever any
29 rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of 20

30 days after they become due, the user of the services and facilities provided is delinquent. The
31 user is liable until all rates, fees and charges are fully paid. The governing body may, under
32 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water
33 services to a delinquent user of sewer facilities 10 days after the sewer services become
34 delinquent regardless of whether the governing body utilizes the security deposit to satisfy any
35 delinquent payments: *Provided, however,* That nothing contained within the rules of the Public
36 Service Commission ~~shall be deemed to require any~~ may require agents or employees of the
37 governing body to accept payment at the customer's premises in lieu of discontinuing service for
38 a delinquent bill.

39 (f) ~~Such~~ The rates, fees or charges shall be sufficient in each year for the payment of the
40 proper and reasonable expense of operation, repair, replacements and maintenance of the works
41 and for the payment of the sums herein required to be paid into the sinking fund. Revenues
42 collected pursuant to this section ~~shall be~~ are considered the revenues of the works.

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

46 (h) After introduction of the ordinance fixing ~~such~~ the rates, fees or charges, and before
47 the same is finally enacted, notice of ~~such~~ the hearing, setting forth the proposed schedule of
48 rates, fees or charges, shall be given by publication as a ~~Class II-0~~ Class I legal advertisement in
49 compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for ~~such~~
50 the publication shall be the municipality. The first publication shall be made at least ~~ten~~ five days
51 before the date fixed in the notice for the hearing.

52 (i) After the hearing, which may be adjourned, from time to time, the ordinance establishing
53 rates, fees or charges, either as originally introduced or as modified and amended, shall be
54 passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on
55 file in the office of the board having charge of the operation of ~~such~~ the works, and also in the

56 office of the clerk of the municipality, and shall be open to inspection by all parties interested. The
57 rates, fees or charges established for any class of users or property served shall be extended to
58 cover any additional premises thereafter served which fall within the same class, without the
59 necessity of any hearing or notice.

60 (j) Any change or readjustment of ~~such~~ the rates, fees or charges may be made in the
61 same manner as the rates, fees or charges were originally established as hereinbefore provided:
62 *Provided*, That if a change or readjustment be made substantially pro rata, as to all classes of
63 service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall
64 always be sufficient for the expense of operation, repair and maintenance and for the sinking fund
65 payments.

66 (k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises
67 served by ~~such~~ the works. If any service rate, fees or charge is not paid within 20 days after it is
68 due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's fee,
69 may be recovered by the board in a civil action in the name of the municipality. The lien may be
70 foreclosed against ~~such~~ the lot, parcel of land or building in accordance with the laws relating
71 thereto. Where both water and sewer services are furnished by any municipality to any premises,
72 the schedule of charges may be billed as a single amount or individually itemized and billed for
73 the aggregate thereof.

74 (l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall
75 remain unpaid for a period of 20 days after they become due, the property and the owner thereof,
76 as well as the user of the services and facilities shall be delinquent until such time as all rates,
77 fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes
78 delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

79 (m) The board collecting the rates, fees or charges shall be obligated under reasonable
80 rules to shut off and discontinue both water and sewer services to all delinquent users of water,
81 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any

82 delinquent user of any such facilities until all delinquent rates, fees or charges for water, sewer
 83 and stormwater facilities, including reasonable interest and penalty charges, have been paid in
 84 full, as long as ~~such~~ the actions are not contrary to any rules or orders of the Public Service
 85 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission
 86 ~~shall be deemed~~ may be considered to require any agents or employees of the municipality or
 87 governing body to accept payment at the customer's premises in lieu of discontinuing service for
 88 a delinquent bill.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

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

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

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

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

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

16 (D) Any combination of §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C)

17 of this code; or

18 (E) Any other basis or classification which the board may determine to be fair and
19 reasonable, taking into consideration the location of the premises served and the nature and
20 extent of the services and facilities furnished. However, no rates, fees or charges for stormwater
21 services may be assessed against highways, road, and drainage easements or stormwater
22 facilities constructed, owned, or operated by the West Virginia Division of Highways.

23 (2) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2019,
24 the board of a public service district with at least 4,500 customers and annual combined gross
25 revenue of \$3 million or more from its separate or combined water and sewer services providing
26 water or sewer service separately or in combination may make, enact, and enforce all needful
27 rules in connection with the enactment or amendment of rates, fees, and charges of the district.
28 At a minimum, these rules shall provide for:

29 (A) Adequate prior public notice of the contemplated rates, fees, and charges by causing
30 a notice of intent to effect such a change to be provided to the customers of the district for the
31 month immediately preceding the month in which the contemplated change is to be considered
32 at a hearing by the board. ~~Such~~ The notice shall include a statement that a change in rates, fees,
33 and charges is being considered, the time, date, and location of the hearing of the board at which
34 the change will be considered and that the proposed rates, fees, and charges are on file at the
35 office of the district for review during regular business hours. ~~Such~~ The notice shall be printed on,
36 or mailed with, the monthly billing statement, or provided in a separate mailing.

37 (B) Adequate prior public notice of the contemplated rates, fees, and charges by causing
38 to be published, after the first reading and approval of a resolution of the board considering such
39 the revised rates, fees, and charges but not less than one week prior to the public hearing of the
40 board on ~~such~~ the resolution, as a Class I legal advertisement, of the proposed action, in
41 compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for publication
42 shall be all territory served by the district. If the district provides service in more than one county,

43 publication shall be made in a newspaper of general circulation in each county that the district
44 provides service.

45 (C) The public notice of the proposed action shall summarize the current rates, fees, and
46 charges and the proposed changes to said rates, fees and charges; the date, time, and place of
47 the public hearing on the resolution approving ~~such~~ the revised rates, fees, and charges and the
48 place or places within the district where the proposed resolution approving the revised rates, fees,
49 and charges may be inspected by the public. A reasonable number of copies of the proposed
50 resolution shall be kept at the place or places and be made available for public inspection. The
51 notice shall also advise that interested parties may appear at the public hearing before the board
52 and be heard with respect to the proposed revised rates, fees and charges.

53 (D) The resolution proposing the revised rates, fees, and charges shall be read at two
54 meetings of the board with at least two weeks intervening between each meeting. The public
55 hearing may be conducted by the board prior to, or at, the meeting at which the resolution is
56 considered for adoption on the second reading.

57 (E) Rates, fees, and charges approved by resolution of the board shall be forwarded in
58 writing to the county commission with the authority to appoint the members of the board. The
59 county commission shall publish notice of the proposed revised rates, fees, and charges by a
60 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.
61 Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall
62 take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole
63 discretion. If, after 45 days, the county commission has not taken final action to approve, modify,
64 or reject the proposed rates, fees and charges, as presented to the county commission, shall be
65 effective with no further action by the board or county commission. In any event, this 45-day period
66 shall be mandatory unless extended by the official action of both the board proposing the rates,
67 fees, and charges, and the appointing county commission.

68 (F) Enactment of the proposed or modified rates, fees, and charges shall follow an

69 affirmative vote by the county commission and shall be effective no sooner than 45 days following
70 action. The 45-day waiting period may be waived by public vote of the county commission only if
71 the commission finds and declares the district to be in financial distress such that the 45-day
72 waiting period would be detrimental to the ability of the district to deliver continued and compliant
73 public services.

74 (G) The public service district, or a customer aggrieved by the changed rates or charges
75 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the
76 customers served by the public service district, whichever is fewer, when dissatisfied by the
77 approval, modification, or rejection by the county commission of the proposed rates, fees, and
78 charges under the provisions of this subdivision may file a complaint regarding the rates, fees,
79 and charges resulting from the action of, or failure to act by, the county commission in the circuit
80 court of the county in which the county commission sits: *Provided*, That any complaint or petition
81 filed hereunder shall be filed within 30 days of the county commission's final action approving,
82 modifying, or rejecting ~~such~~ the rates, fees and charges, or the expiration of the 45-day period
83 from the receipt by the county commission, in writing, of the rates, fees, and charges approved
84 by resolution of the board, without final action by the county commission to approve, modify, or
85 reject ~~such~~ the rates, fees, and charges, and the circuit court shall resolve ~~said~~ the complaint:
86 *Provided, however*, That the rates, fees, and charges so fixed by the county commission, or those
87 adopted by the district upon which the county commission failed to act, shall remain in full force
88 and effect, until set aside, altered, or amended by the circuit court in an order to be followed in
89 the future.

90 (3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all
91 furnished to any premises, the schedule of charges may be billed as a single amount for the
92 aggregate of the charges. The board shall require all users of services and facilities furnished by
93 the district to designate on every application for service whether the applicant is a tenant or an
94 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name

95 and address of the owner or owners of the premises to be served by the district. Notwithstanding
96 the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit
97 the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
98 customer class or \$50 with the district to secure the payment of service rates, fees, and charges
99 in the event they become delinquent as provided in this section. If a district provides both water
100 and sewer service, all new applicants for service shall deposit the greater of a sum equal to two
101 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to
102 two twelfths of the average annual usage for wastewater service of the applicant's specific
103 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees, and
104 charges which were delinquent at the time of disconnection or termination of service, no
105 reconnection or reinstatement of service may be made by the district until another deposit equal
106 to the greater of a sum equal to two twelfths of the average usage for the applicant's specific
107 customer class or \$50 has been remitted to the district. After 12 months of prompt payment
108 history, the district shall return the deposit to the customer or credit the customer's account at a
109 rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a
110 tenant, the district is not required to return the deposit until the time the tenant discontinues service
111 with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished
112 remain unpaid for a period of 20 days after the same become due and payable, the user of the
113 services and facilities provided is delinquent and the user is liable at law until all rates, fees, and
114 charges are fully paid. The board may, under reasonable rules promulgated by the Public Service
115 Commission, shut off and discontinue water or gas services to all delinquent users of either water
116 or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided*,
117 *however*, That nothing contained within the rules of the Public Service Commission ~~shall be~~
118 ~~deemed~~ may be considered to require any agents or employees of the board to accept payment
119 at the customer's premises in lieu of discontinuing service for a delinquent bill.

120 (b) ~~In the event that~~ If any publicly or privately owned utility, city, incorporated town, other

121 municipal corporation or other public service district included within the district owns and operates
122 separate water facilities, sewer facilities, or stormwater facilities, and the district owns and
123 operates another kind of facility, either water or sewer, or both, as the case may be, then the
124 district and the publicly or privately owned utility, city, incorporated town or other municipal
125 corporation or other public service district shall covenant and contract with each other to shut off
126 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
127 fees and charges: *Provided*, That any contracts entered into by a public service district pursuant
128 to this section shall be submitted to the Public Service Commission for approval. Any public
129 service district which provides water and sewer service, water and stormwater service or water,
130 sewer and stormwater service has the right to terminate water service for delinquency in payment
131 of water, sewer or stormwater bills. Where one public service district is providing sewer service
132 and another public service district or a municipality included within the boundaries of the sewer
133 or stormwater district is providing water service and the district providing sewer or stormwater
134 service experiences a delinquency in payment, the district or the municipality included within the
135 boundaries of the sewer or stormwater district that is providing water service, upon the request of
136 the district providing sewer or stormwater service to the delinquent account, shall terminate its
137 water service to the customer having the delinquent sewer or stormwater account: *Provided*,
138 *however*, That any termination of water service must comply with all rules and orders of the Public
139 Service Commission: *Provided further*, That nothing contained within the rules of the Public
140 Service Commission ~~shall be deemed to~~ may require any agents or employees of the public
141 service districts to accept payment at the customer's premises in lieu of discontinuing service for
142 a delinquent bill.

143 (c) Any district furnishing sewer facilities within the district may require or may, by petition
144 to the circuit court of the county in which the property is located, compel or may require the Bureau
145 for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and
146 buildings located near any sewer facilities where sewage will flow by gravity or be transported by

147 other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
148 and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
149 dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to
150 cease the use of all other means for the collection, treatment, and disposal of sewage and waste
151 matters from the houses, dwellings, and buildings where there is gravity flow or transportation by
152 any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
153 and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,
154 dwellings, and buildings can be adequately served by the sewer facilities of the district and it is
155 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary
156 and essential for the health and welfare of the inhabitants and residents of the districts and of the
157 state. If the public service district requires the property owner to connect with the sewer facilities
158 even when sewage from dwellings may not flow to the main line by gravity and the property owner
159 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the
160 main sewer line, the public service district board shall authorize the district to pay all reasonable
161 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,
162 maintenance, and purchase of a pump or any other method approved by the Bureau for Public
163 Health. Maintenance and operation costs for the extra installation should be reflected in the users
164 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
165 of the petition by summary hearing to be held not later than 30 days after service of petition to the
166 appropriate owners, tenants, or occupants.

167 (d) Whenever any district has made available sewer facilities to any owner, tenant, or
168 occupant of any house, dwelling, or building located near the sewer facility and the engineer for
169 the district has certified that the sewer facilities are available to and are adequate to serve the
170 owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods
171 approved by the Bureau for Public Health from the house, dwelling, or building into the sewer
172 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and

173 charges for services established under this article only after 30 days' notice of the availability of
174 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
175 services shall be based upon actual water consumption or the average monthly water
176 consumption based upon the owner's, tenant's, or occupant's specific customer class.

177 (e) The owner, tenant, or occupant of any real property may be determined and declared
178 to be served by a stormwater system only after each of the following conditions is met: (1) The
179 district has been designated by the Environmental Protection Agency as an entity to serve a West
180 Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the
181 district's authority has been properly expanded to operate and maintain a stormwater system; (3)
182 the district has made available a stormwater system where stormwater from the real property
183 affects or drains into the stormwater system; and (4) the real property is located in the Municipal
184 Separate Storm Sewer System's designated service area. It is further hereby found, determined,
185 and declared that the mandatory use of the stormwater system is necessary and essential for the
186 health and welfare of the inhabitants and residents of the district and of the state. The district may
187 charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater
188 services established under this article only after 30 days' notice of the availability of the
189 stormwater system has been received by the owner. An entity providing stormwater service shall
190 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
191 that portion of the fee to be assessed to the tenant.

192 (f) All delinquent fees, rates, and charges of the district for either water facilities, sewer
193 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
194 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
195 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
196 Commission ~~shall be deemed to~~ may require any agents or employees of the public service
197 districts to accept payment at the customer's premises in lieu of discontinuing service for a
198 delinquent bill. In addition to the other remedies provided in this section, public service districts

199 are granted a deferral of filing fees or other fees and costs incidental to the bringing and
200 maintenance of an action in magistrate court for the collection of delinquent water, sewer,
201 stormwater, or gas bills. If the district collects the delinquent account, plus reasonable costs, from
202 its customer or other responsible party, the district shall pay to the magistrate the normal filing fee
203 and reasonable costs which were previously deferred. In addition, each public service district may
204 exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner
205 of real property may not be held liable for the delinquent rates or charges for services or facilities
206 of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges
207 for services or facilities of a tenant of the real property unless the owner has contracted directly
208 with the public service district to purchase the services or facilities.

209 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined
210 in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to
211 a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of
212 this code, is exempt from the provisions of this section.

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

218 (i) ~~(h)~~ Notwithstanding any code provision to the contrary, a public service district may
219 accept payment for all fees and charges due, in the form of a payment by a credit or check card
220 transaction or a direct withdrawal from a bank account. The public service district may set a fee
221 to be added to each transaction equal to the charge paid by the public service district for use of
222 the credit or check card or direct withdrawal by the payor. The amount of ~~such~~ the fee shall be
223 disclosed to the payor prior to the transaction and no other fees for the use of a credit or check
224 card or direct withdrawal may be imposed upon the payor and the whole of ~~such~~ the charge or

225 convenience fee shall be borne by the payor: *Provided*, That to the extent a public service district
226 desires to accept payments in the forms described in this subsection and does not have access
227 to the equipment or receive the services necessary to do so, the public service district shall first
228 obtain three bids for services and equipment necessary to affect the forms of transactions
229 described in this subsection and use the lowest qualified bid received. Acceptance of a credit or
230 check card or direct withdrawal as a form of payment shall comport with the rules and
231 requirements set forth by the credit or check card provider or banking institution.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

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

1 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon
2 the Public Service Commission of this state the authority and duty to enforce and regulate the
3 practices, services and rates of public utilities in order to:

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

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

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

11 (4) Ensure that rates and charges for utility services are just, reasonable, applied without
12 unjust discrimination or preference, applied in a manner consistent with the purposes and policies
13 set forth in §24-2A-1 *et seq.* of this code and based primarily on the costs of providing these
14 services;

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

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

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

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

32 (d) It is legislative policy to ensure that the Legislature and the general public become
33 better informed regarding the regulation of public utilities in this state and the conduct of the
34 business of the Public Service Commission. To aid in the achievement of this policy, the Public
35 Service Commission annually shall present to the Joint Committee on Government and Finance,
36 created by §4-3-1 *et seq.* of this code, or a subcommittee designated by the joint committee, a
37 management summary report which describes in a concise manner:

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

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

41 (3) The current balance of supply and demand for natural gas and electric utility services
42 in the state and forecast of the probable balance for the next 10 years; and

43 (4) Other information considered by the commission to be important including
44 recommendations for statutory reform and the reasons for ~~such~~ the recommendations.

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

49 (1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this
50 state have been capped off or shut in; the number of ~~such~~ the wells; their probable extent of future
51 production and the reasons given and any justification for capping off or shutting in ~~such~~ the wells;
52 the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells
53 in this state or the Appalachian areas have been discouraged from drilling, developing or selling
54 the production of ~~such~~ the wells; and whether there are fixed policies by any utility or group of
55 utilities to avoid the purchase of natural gas produced in the Appalachian region of the United
56 States generally and in West Virginia specifically.

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

58 (3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this
59 subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.
60 In carrying out the provisions of this section the commission shall have jurisdiction over ~~such~~ the
61 persons, whether public utilities or not, as may be in the opinion of the commission necessary to
62 the exercise of its mandate and may compel attendance before it, take testimony under oath and
63 compel the production of papers or other documents. Upon reasonable request by the
64 commission, all other state agencies shall cooperate with the commission in carrying out the
65 provisions and requirements of this subsection.

66 (f) No later than the first day of the regular session of the Legislature in the year 1980, the

67 Public Service Commission shall submit to the Legislature a plan for internal reorganization which
68 plan shall specifically address the following:

69 (1) A division within the Public Service Commission which shall include the office of the
70 commissioners, the hearing examiners and such support staff as may be necessary to carry out
71 the functions of decision making and general supervision of the commission, which functions shall
72 not include advocacy in cases before the commission;

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

75 (3) The means and procedures by which the division to be created pursuant to the
76 provisions of subdivision (2) of this subsection shall protect the interests of each class of
77 customers and the means by which the commission will assure that ~~such~~ the division will be
78 financially and departmentally independent of the division created by subdivision (1) of this
79 subsection;

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

86 (5) Which members of the staff of the Public Service Commission shall be exempted from
87 the salary schedules or pay plan adopted by the Civil Service Commission and identify ~~such~~ the
88 staff members by job classification or designation, together with the salary or salary ranges for
89 each such job classification or designation;

90 (6) The manner in which the commission will strengthen its knowledge and independent
91 capacity to analyze key conditions and trends in the industries it regulates extending from general
92 industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the

93 capacity planning, construction management, operating performance and financial condition of
94 the major companies within these industries.

95 ~~Such~~ The plan shall be based on the concept that each of the divisions mentioned in
96 subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan
97 shall discourage ex parte communications between them by such means as the commission shall
98 direct, including, but not limited to, separate clerical and professional staffing for each division.
99 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest
100 extent possible the recommendations presented to the subcommittee on the Public Service
101 Commission of the Joint Committee on Government and Finance in a final report dated February,
102 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

103 The commission shall, before January 5, 1980, adopt said plan by order, which order shall
104 promulgate the same as a rule of the commission to be effective upon the date specified in said
105 order, which date shall be no later than December 31, 1980. Certified copies of ~~such~~ the order
106 and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the
107 chairman of the commission with the clerk of each house of the Legislature, the Governor and the
108 Secretary of State. The chairman of the commission shall also file with the office of the Secretary
109 of State the receipt of the clerk of each house and of the Governor, which receipt shall evidence
110 compliance with this section.

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

114 Within the limits of funds appropriated therefor, the rule of the Public Service Commission
115 shall be effective upon the date specified in the order of the commission promulgating it unless
116 an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent
117 resolution of the Legislature adopted prior to adjournment sine die of the regular session of the
118 Legislature to be held in the year 1980: *Provided*, That if ~~such~~ the rule is approved in part and

119 disapproved in part by a concurrent resolution of the Legislature adopted prior to ~~such~~ the
120 adjournment, ~~such~~ the rule shall be effective to the extent and only to the extent that the same is
121 approved by ~~such~~ the concurrent resolution.

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

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

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

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

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

142 (i) The Legislature further finds that transactions between utilities and affiliates are a
143 contributing factor to the increase in natural gas and electricity prices and tend to confuse
144 consideration of a proper rate of return calculation. The Legislature therefore finds that it is

145 imperative that the Public Service Commission have the opportunity to properly study the issue
146 of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper
147 level when compared to return or profit that affiliates earn on transactions with sister utilities.

148 (j) The Legislature further finds that water and sewer utilities that are political subdivisions
149 of the state providing separate or combined services and having at least 4,500 customers and
150 annual gross revenues of \$3 million or more effective July 1, 2019, water and sewer utilities that
151 are political subdivisions of the state providing separate or combined services and having annual
152 gross revenues of \$1 million or more from either water or sewer services or from a combination
153 of both water and sewer services; and, effective July 1, 2021, water and sewer utilities that are
154 political subdivisions of the state providing separate or combined services and having annual
155 gross revenues of \$200,000 or more from either water or sewer services or from a combination
156 of both water and sewer services; and, effective July 1, 2023, all water and sewer utilities that are
157 political subdivisions of the state are most fairly and effectively regulated by the local governing
158 body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any
159 contrary provisions of this section, the jurisdiction of the Public Service Commission over water
160 and sewer utilities that are political subdivisions of the state is limited to that granted specifically
161 in this code.

162 (k) The Legislature further finds that an adequate cash working capital fund is essential to
163 allow water and sewer utilities that are political subdivisions of the state to deliver continuous and
164 compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount
165 of no less than one eighth of actual annual operation and maintenance expense. This reserve
166 shall be separate and distinct from and in addition to any repair and replacement fund that may
167 be required by bond covenants.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

1 (a) The jurisdiction of the commission shall extend to all public utilities in this state and

2 shall include any utility engaged in any of the following public services:

3 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor,
4 or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land,
5 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its
6 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping
7 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation
8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,
9 whether directly or through a distributing utility; supplying water, gas, or electricity by
10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the
11 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision
12 intends to provide sewer service by an innovative, alternative method, as defined by the federal
13 Environmental Protection Agency, the innovative, alternative method is a public utility function
14 and subject to the jurisdiction of the Public Service Commission regardless of the number of
15 customers served by the innovative, alternative method; any public service district created under
16 the provisions of §16-13A-1, *et seq.* of this code, except that the Public Service Commission will
17 have no jurisdiction over the provision of stormwater services by a public service district; toll
18 bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*,
19 That natural gas producers who provide natural gas service to not more than 25 residential
20 customers are exempt from the jurisdiction of the commission with regard to the provisions of
21 ~~such~~ the residential service: *Provided further*, That upon request of any of the customers of ~~such~~
22 the natural gas producers, the commission may, upon good cause being shown, exercise ~~such~~
23 authority as the commission may deem appropriate over the operation, rates, and charges of ~~such~~
24 the producer and for such length of time as the commission may consider to be proper.

25 (b) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2019,
26 the jurisdiction of the commission over political subdivisions of this state providing separate or
27 combined water and/or sewer services and having at least 4,500 customers and annual combined

28 gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

29 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

30 (2) Regulation of measurements, practices, acts, or services, as granted and described in
31 §24-2-7 of this code;

32 (3) Regulation of a system of accounts to be kept by a public utility that is a political
33 subdivision of the state, as granted and described in §24-2-8 of this code;

34 (4) Submission of information to the commission regarding rates, tolls, charges, or
35 practices, as granted and described in §24-2-9 of this code;

36 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
37 in any proceeding before or conducted by the commission, as granted and described in §24-2-10
38 of this code; and

39 (6) Investigation and resolution of disputes between a political subdivision of the state
40 providing wholesale water and/or wastewater treatment or other services, whether by contract or
41 through a tariff, and its customer or customers, including, but not limited to, rates, fees and
42 charges, service areas and contested utility combinations: *Provided*, That any request for an
43 investigation related to such a dispute that is based on the act or omission of the political
44 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
45 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
46 of the dispute may be tolled by the commission until the necessary information showing the basis
47 of the rates, fees, and charges or other information as the commission considers necessary is
48 filed: *Provided, however*, That the disputed rates, fees, and charges so fixed by the political
49 subdivision providing separate or combined water and/or sewer services shall remain in full force
50 and effect until set aside, altered or, amended by the commission in an order to be followed in the
51 future.

52 (7) Customers of water and sewer utilities operated by a political subdivision of the state
53 may bring formal or informal complaints regarding the commission's exercise of the powers

54 enumerated in this section and the commission shall resolve these complaints: Provided, That
55 any formal complaint filed under this section that is based on the act or omission of the political
56 subdivision shall be filed within 30 days of the act or omission complained of and the commission
57 shall resolve the complaint within 120 days of filing. The 120-day period for resolution of the
58 dispute may be tolled by the commission until the necessary information showing the basis of the
59 matter complained of is filed by the political subdivision: *Provided, however, That whenever the*
60 commission finds any rules, regulations, measurements, practices, acts or service to be unjust,
61 unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of
62 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
63 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
64 measurement, rules, regulations, acts, practices or services, to be furnished, imposed, observed
65 and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly
66 discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other
67 order respecting the same as shall be just and reasonable: *Provided further, That if the matter*
68 complained of would affect rates, fees and charges so fixed by the political subdivision providing
69 separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full
70 force and effect until set aside, altered or amended by the commission in an order to be followed
71 in the future.

72 (8) ~~In the event that~~ If a political subdivision has a deficiency in either its bond revenue or
73 bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may
74 petition the Public Service Commission for such redress as will bring the accounts to current
75 status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to
76 fully resolve the alleged deficiency or breach.

77 (c) The commission may, upon application, waive its jurisdiction and allow a utility
78 operating in an adjoining state to provide service in West Virginia when:

79 (1) An area of West Virginia cannot be practicably and economically served by a utility

80 licensed to operate within the State of West Virginia;

81 (2) ~~Said~~ The area can be provided with utility service by a utility which operates in a state
82 adjoining West Virginia;

83 (3) The utility operating in the adjoining state is regulated by a regulatory agency or
84 commission of the adjoining state; and

85 (4) The number of customers to be served is not substantial. The rates the out-of-state
86 utility charges West Virginia customers shall be the same as the rate the utility is duly authorized
87 to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke
88 its waiver of jurisdiction for good cause.

89 (d) Any other provisions of this chapter to the contrary notwithstanding:

90 (1) An owner or operator of an electric generating facility located or to be located in this
91 state that has been designated as an exempt wholesale generator under applicable federal law,
92 or will be so designated prior to commercial operation of the facility, and for which such facility
93 the owner or operator holds a certificate of public convenience and necessity issued by the
94 commission on or before July 1, 2003, ~~shall be~~ is subject to §24-2-11c(e) through §24-2-11c(j) of
95 this code as if the certificate of public convenience and necessity for ~~such~~ the facility were a siting
96 certificate issued under §24-2-11c of this code ~~and shall~~ is not ~~otherwise be~~ subject to the
97 jurisdiction of the commission or to the provisions of this chapter with respect to ~~such~~ the facility
98 except for the making or constructing of a material modification thereof as provided in §24-2-
99 1(d)(5) of this code.

100 (2) Any person, corporation, or other entity that intends to construct or construct and
101 operate an electric generating facility to be located in this state that has been designated as an
102 exempt wholesale generator under applicable federal law, or will be so designated prior to
103 commercial operation of the facility, and for which facility the owner or operator does not hold a
104 certificate of public convenience and necessity issued by the commission on or before July 1,
105 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from

106 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
107 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
108 operator of an electric generating facility as is described in this subdivision for which a siting
109 certificate has been issued by the commission shall be is subject to §24-2-11c(e) through §24-2-
110 11c(j) of this code ~~and shall is not otherwise be~~ subject to the jurisdiction of the commission or to
111 the provisions of this chapter with respect to ~~such the~~ facility except for the making or constructing
112 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

113 (3) An owner or operator of an electric generating facility located in this state that had not
114 been designated as an exempt wholesale generator under applicable federal law prior to
115 commercial operation of the facility that generates electric energy solely for sale at retail outside
116 this state or solely for sale at wholesale in accordance with any applicable federal law that
117 preempts state law or solely for both such sales at retail and such sales at wholesale and that
118 had been constructed and had engaged in commercial operation on or before July 1, 2003, ~~shall~~
119 is not ~~be~~ subject to the jurisdiction of the commission or to the provisions of this chapter with
120 respect to ~~such the~~ facility, regardless of whether ~~such the~~ facility subsequent to its construction
121 has been or will be designated as an exempt wholesale generator under applicable federal law:
122 *Provided, That ~~such the~~ owner or operator shall ~~be~~ is subject to §24-2-1(d)(5) of this code if a*
123 material modification of ~~such the~~ facility is made or constructed.

124 (4) Any person, corporation, or other entity that intends to construct or construct and
125 operate an electric generating facility to be located in this state that has not been or will not be
126 designated as an exempt wholesale generator under applicable federal law prior to commercial
127 operation of the facility that will generate electric energy solely for sale at retail outside this state
128 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
129 law or solely for both such sales at retail and such sales at wholesale and that had not been
130 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
131 prior to commencement of construction of the facility, obtain a siting certificate from the

132 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
133 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
134 operator of an electric generating facility as is described in this subdivision for which a siting
135 certificate has been issued by the commission ~~shall be~~ is subject to §24-2-11c(e) through §24-2-
136 11c(j) of this code and ~~shall is not otherwise be~~ subject to the jurisdiction of the commission or to
137 the provisions of this chapter with respect to ~~such the~~ the facility except for the making or constructing
138 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

139 (5) An owner or operator of an electric generating facility described in this subsection shall,
140 before making or constructing a material modification of the facility that is not within the terms of
141 any certificate of public convenience and necessity or siting certificate previously issued for the
142 facility or an earlier material modification thereof, obtain a siting certificate for the modification
143 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
144 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
145 this code and, except for the provisions of §24-2-11c of this code, ~~shall is not otherwise be~~ subject
146 to the jurisdiction of the commission or to the provisions of this chapter with respect to ~~such the~~
147 modification.

148 (6) The commission shall consider an application for a certificate of public convenience
149 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
150 described in this subsection or to make or construct a material modification of ~~such the~~ the electric
151 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
152 application for the certificate of public convenience and necessity was filed with the commission
153 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

154 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
155 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
156 by and described in this subsection ~~shall not be deemed to~~ do not affect or limit the commission's
157 jurisdiction over contracts or arrangements between the owner or operator of ~~such the~~ the facility and

158 any affiliated public utility subject to the provisions of this chapter.

159 (e) The commission ~~shall~~ does not have jurisdiction of Internet protocol-enabled service
160 or voice-over Internet protocol-enabled service. As used in this subsection:

161 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
162 application provided using Internet protocol, or any successor protocol, that enables an end user
163 to send or receive a communication in Internet protocol format, or any successor format,
164 regardless of whether the communication is voice, data, or video.

165 (2) "Voice-over Internet protocol service" means any service that:

166 (i) Enables real-time two-way voice communications that originate or terminate from the
167 user's location using Internet protocol or a successor protocol; and

168 (ii) Uses a broadband connection from the user's location.

169 (3) The term "voice-over Internet protocol service" includes any service that permits users
170 to receive calls that originate on the public-switched telephone network and to terminate calls on
171 the public-switched telephone network.

172 (f) Notwithstanding any other provisions of this article, the commission ~~shall have~~ has
173 ~~jurisdiction to~~ may review or approve any transaction involving a telephone company otherwise
174 subject to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under
175 common ownership.

176 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
177 systems are most fairly and effectively regulated by the local governing body. Therefore,
178 notwithstanding any other provisions of this article, the commission ~~shall have~~ has ~~jurisdiction~~
179 ~~over the setting or adjustment of~~ may set or adjust rates, fees, and charges of municipal power
180 systems. Further, the jurisdiction of the Public Service Commission over municipal power systems
181 is limited to that granted specifically in this code.

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

1 (a) The commission may investigate all rates, methods, and practices of public utilities

2 subject to the provisions of this chapter; to require them to conform to the laws of this state and
3 to all rules, regulations and orders of the commission not contrary to law; and to require copies of
4 all reports, rates, classifications, schedules, and timetables in effect and used by the public utility
5 or other person to be filed with the commission, and all other information desired by the
6 commission relating to the investigation and requirements, including inventories of all property in
7 the form and detail as the commission prescribes. The commission may compel obedience to its
8 lawful orders by mandamus or injunction or other proper proceedings in the name of the state in
9 any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court
10 of Appeals directly, and the proceedings shall have priority over all pending cases. The
11 commission may change any intrastate rate, charge, or toll which is unjust or unreasonable or
12 any interstate charge with respect to matters of a purely local nature which have not been
13 regulated, by or pursuant to, an act of Congress and may prescribe a rate, charge, or toll that is
14 just and reasonable, and change or prohibit any practice, device, or method of service in order to
15 prevent undue discrimination or favoritism between persons and between localities and between
16 commodities for a like and contemporaneous service. But in no case may the rate, toll, or charge
17 be more than the service is reasonably worth, considering the cost of the service. Every order
18 entered by the commission shall continue in force until the expiration of the time, if any, named
19 by the commission in the order, or until revoked or modified by the commission, unless the order
20 is suspended, modified, or revoked by order or decree of a court of competent jurisdiction:
21 *Provided*, That in the case of utilities used by emergency shelter providers, the commission shall
22 prescribe rates, charges or tolls that are the lowest available. "Emergency shelter provider" means
23 any nonprofit entity which provides temporary emergency housing and services to the homeless
24 or to victims of domestic violence or other abuse.

25 (b) Notwithstanding any other provision of this code to the contrary, rates are not
26 discriminatory if, when considering the debt costs associated with a future water or sewer project
27 which would not benefit existing customers, the commission establishes rates which ensure that

28 the future customers to be served by the new project are solely responsible for the debt costs
29 associated with the project.

30 (c) Notwithstanding any other provision of this code to the contrary, in accordance with the
31 provisions set forth in §24-1-1(j) of this code, effective July 1, 2019, the jurisdiction of the
32 commission over water and/or sewer utilities that are political subdivisions of the state providing
33 a separate or combined services and having at least 4,500 customers and annual combined gross
34 revenues of \$3 million or more is limited to those powers enumerated in §24-2-1(b) of this code.

35 (d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
36 commission does not extend over the setting or adjustment of rates, fees, and charges of
37 municipal power systems. The rates, fees, charges and rate-making process of municipal power
38 systems is governed by the provisions of §8-19-2a of this code.

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

1 (a) As provided in §24-1-1(j) of this code, the commission may enforce, originate,
2 establish, change, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public
3 utilities except for municipal power systems and water and/or sewer utilities that are political
4 subdivisions of this state providing a separate or combined services and having at least 4,500
5 customers and annual combined gross revenues of \$3 million or more: *Provided, That as provided*
6 in §24-1-1(j) of this code the commission may exercise such rate authority over municipally owned
7 natural gas utilities or a municipally owned water and/or sewer utility having less than 4,500
8 customers or annual combined gross revenues of less than \$3 million only under the
9 circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions set
10 forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing
11 rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the
12 provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or
13 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix
14 reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those

15 found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation
16 of any provisions of law, and the commission, in fixing the rate of any railroad company, may fix
17 a fair, reasonable, and just rate to be charged on any branch line thereof, independent of the rate
18 charged on the main line of that railroad.

19 (b) Any complaint filed with the commission by a resale or wholesale customer of a
20 municipally owned water and/or sewer utility having less than 4,500 customers or annual
21 combined gross revenue of less than \$3 million concerning rates, fees, or charges applicable to
22 such resale or wholesale customer over which the commission has jurisdiction under the
23 provisions of §24-1-1(j) of this code shall be filed within 30 days of the enactment by the governing
24 body of the political subdivision of an ordinance changing rates, fees, or charges for ~~such~~ the
25 service. The commission shall resolve said complaint within 120 days of filing. The 120-day period
26 for resolution of the complaint may be tolled by the commission until the necessary information
27 showing the basis of the rates, fees, charges, and other information as the commission considers
28 necessary is filed: *Provided*, That rates, fees, and charges so fixed by the political subdivision
29 providing separate or combined water and/or sewer services shall remain in full force and effect
30 until set aside, altered, or amended by the commission in an order to be followed in the future:
31 *Provided, however*, That the commission ~~shall have no authority to~~ may not order refunds for
32 amounts collected during the pendency of the complaint proceeding unless the rates, fees, or
33 charges so enacted by the governing body were enacted subject to refund under the provisions
34 of §24-2-4b(d)(2) or §24-2-4b(g) of this code.

35 (c) In determining just and reasonable rates, the commission may audit and investigate
36 management practices and policies, or have performed an audit and investigation of ~~such~~ the
37 practices and policies, in order to determine whether the utility is operating with efficiency and is
38 utilizing sound management practices. The commission shall adopt rules and regulations setting
39 forth the scope, frequency, and application of ~~such~~ the audits and investigations to the various
40 utilities subject to its jurisdiction. The commission may include the cost of conducting the

41 management audit in the cost of service of the utility.

42 (d) In determining just and reasonable rates, the commission shall investigate and review
43 transactions between utilities and affiliates. The commission shall limit the total return of the utility
44 to a level which, when considered with the level of profit or return the affiliate earns on transactions
45 with the utility, is just and reasonable.

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

1 (a) After June 30, 1981, ~~no~~ a public utility subject to this chapter, except for water and/or
2 sewer utilities that are political subdivisions of the state providing separate or combined services
3 and having at least 4,500 customers and annual gross revenue of \$3 million or more from its
4 separate or combined services, ~~shall~~ water or sewer utilities that are political subdivisions of this
5 state as provided in §24-1-1(j) of this code may not change, suspend or annul any rate, joint rate,
6 charge, rental or classification except after 30 days' notice to the commission and the public,
7 which notice shall plainly state the changes proposed to be made in the schedule then in force
8 and the time when the changed rates or charges shall go into effect; but the commission may
9 enter an order suspending the proposed rate as hereinafter provided. The proposed changes
10 shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in
11 force at the time, and kept open to public inspection: *Provided*, That the commission may, ~~in its~~
12 ~~discretion,~~ and for good cause shown, allow changes upon less time than the notice herein
13 specified, or may modify the requirements of this section in respect to publishing, posting and
14 filing of tariffs, either by particular instructions or by general order.

15 (b) Whenever there ~~shall be~~ is filed with the commission any schedule stating a change in
16 the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge
17 or joint classification or any new individual or joint regulation or practice affecting any rate or
18 charge, the commission may, either upon complaint or upon its own initiative without complaint,
19 enter upon a hearing concerning the propriety of ~~such~~ the rate, charge, classification, regulation
20 or practice; and, if the commission so orders, it may proceed without answer or other form of

21 pleading by the interested parties, but upon reasonable notice, and, pending ~~such~~ the hearing
22 and the decisions thereon, the commission, upon filing with ~~such~~ the schedule and delivering to
23 the public utility affected thereby a statement in writing of its reasons for ~~such~~ the suspension,
24 may suspend the operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge,
25 classification, regulation or practice, but not for a longer period than 270 days beyond the time
26 when ~~such~~ the rate, charge, classification, regulation or practice would otherwise go into effect;
27 and after full hearing, whether completed before or after the rate, charge, classification, regulation
28 or practice goes into effect, the commission may make ~~such~~ the order in reference to ~~such~~ the
29 rate, charge, classification, regulation or practice as would be proper in a proceeding initiated
30 after the rate, charge, classification, regulation or practice had become effective: *Provided*, That
31 in the case of a public utility having 2,500 customers or less and which is not a political subdivision
32 and which is not principally owned by any other public utility corporation or public utility holding
33 corporation, the commission may suspend the operation of ~~such~~ the schedule and defer the use
34 of ~~such~~ the rate, charge, classification, regulation or practice, but not for a longer period than 120
35 days beyond the time when ~~such~~ the rate, charge, classification, regulation or practice would
36 otherwise go into effect; and in the case of a public utility having more than 2,500 customers, but
37 not more than 5,000 customers, and which is not a political subdivision and which is not principally
38 owned by any other public utility corporation or public utility holding corporation, the commission
39 may suspend the operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge,
40 classification, regulation or practice, but not for a longer period than 150 days beyond the time
41 when ~~such~~ the rate, charge, classification, regulation or practice would otherwise go into effect;
42 and in the case of a public utility having more than 5,000 customers, but not more than 7,500
43 customers, and which is not a political subdivision and which is not principally owned by any other
44 public utility corporation or public utility holding corporation, the commission may suspend the
45 operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge, classification,
46 regulation or practice, but not for a longer period than 180 days beyond the time when ~~such~~ the

47 rate, charge, classification, regulation or practice would otherwise go into effect; and after full
48 hearing, whether completed before or after the rate, charge, classification, regulation or practice
49 goes into effect, the commission may make ~~such~~ the order in reference to ~~such~~ the rate, charge,
50 classification, regulation or practice as would be proper in a proceeding initiated after the rate,
51 charge, classification, regulation or practice had become effective: *Provided, however,* That in the
52 case of rates established or proposed that increase by less than 25 percent of the gross revenue
53 of the regulated public service district, there shall be no suspension period in the case of rates
54 established by a public service district pursuant to §16-13A-9 of this code and the proposed rates
55 of public service districts shall go into effect upon the date of filing with the commission, subject
56 to refund modification at the conclusion of the commission proceeding. In the case of rates
57 established or proposed that increase by more than 25 percent of the gross revenue of the public
58 service district, the district may apply for, and the commission may grant, a waiver of the
59 suspension period and allow rates to be effective upon the date of filing with the commission.
60 Notwithstanding the provisions of subsection (e) of this section, the public service district shall
61 provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service
62 territory of the percentage increase in rates at least 14 days prior to the effective date of the
63 increased rates. Any refund determined to be determined to be due and owing as a result of any
64 difference between any final rates approved by the commission and the rates placed into effect
65 subject to refund shall be refunded by the public service district as a credit against each
66 customer's account for a period of up to six months after entry of the commission's final order.
67 Any remaining balance which is not fully credited by credit within six months after entry of the
68 commission's final order shall be directly refunded to the customer by check: *Provided further,*
69 That if any such hearing and decision thereon is not concluded within the periods of suspension,
70 as above stated, ~~such~~ the rate, charge, classification, regulation or practice shall go into effect at
71 the end of ~~such~~ the period not subject to refund: *And provided further,* That if any such rate,
72 charge, classification, regulation or practice goes into effect because of the failure of the

73 commission to reach a decision, the same shall not preclude the commission from rendering a
74 decision with respect thereto which would disapprove, reduce or modify any such proposed rate,
75 charge, classification, regulation or practice, in whole or in part, but any such disapproval,
76 reduction or modification shall not be deemed to require a refund to the customers of ~~such~~ the
77 utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or
78 modified. The fact of any rate, charge, classification, regulation or practice going into effect by
79 reason of the commission's failure to act thereon ~~shall~~ does not affect the commission's power
80 and authority to subsequently act with respect to any such application or change in any rate,
81 charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice
82 which shall be approved, disapproved, modified or changed, in whole or in part, by decision of
83 the commission shall remain in effect as so approved, disapproved, modified or changed during
84 the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the
85 commission affecting rates, charges, classifications, regulations or practices which have gone
86 into effect automatically at the end of the of the suspension period are prospective in effect.

87 (c) At any hearing involving a rate sought to be increased or involving the change of any
88 rate, charge, classification, regulation or practice, the burden of proof to show the justness and
89 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
90 charge, classification, regulation or practice shall be upon the public utility making application for
91 ~~such~~ the change. The commission shall, whenever practicable and within budgetary constraints,
92 conduct one or more public hearings within the area served by the public utility making application
93 for ~~such~~ the increase or change, for the purpose of obtaining comments and evidence on the
94 matter from local ratepayers.

95 (d) Each public utility subject to the provisions of this section shall be required to establish,
96 in a written report which shall be incorporated into each general rate case application, that it has
97 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
98 management, rate design and conservation as reported by the commission under §24-1-1(c) of

99 this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain
100 as to each concept considered the reasons for adoption or rejection of each. When in any case
101 pending before the commission all evidence shall have been taken and the hearing completed,
102 the commission shall render a decision in ~~such~~ the case. The failure of the commission to render
103 a decision with respect to any such proposed change in any such rate, charge, classification,
104 regulation or practice within the various time periods specified in this section after the application
105 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

106 (e) Other than as provided in subsection (b) of this section relating to public service
107 districts, where more than 20 members of the public are affected by a proposed change in rates,
108 it shall be a sufficient notice to the public within the meaning of this section if ~~such~~ the notice is
109 published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.*
110 of this code and the publication area for ~~such~~ the publication shall be the community where the
111 majority of the resident members of the public affected by ~~such~~ the change reside or, in case of
112 nonresidents, have their principal place of business within this state.

113 (f) The commission may order rates into effect subject to refund, plus interest in the
114 discretion of the commission, in cases in which the commission determines that a temporary or
115 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
116 upon which these rates are based are subject to modification by the commission or another
117 regulatory commission and to refund to the public utility. In ~~such~~ that case the commission may
118 require ~~such~~ the public utility to enter into a bond in an amount deemed by the commission to be
119 reasonable and conditioned upon the refund to the persons or parties entitled thereto of the
120 amount of the excess if ~~such~~ the rates so put into effect are subsequently determined to be higher
121 than those finally fixed for ~~such~~ the utility.

122 (g) No utility regulated under the provisions of this section may make application for a
123 general rate increase while another general rate application is pending before the commission
124 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The

125 provisions of this subsection shall not be construed so as to prohibit any such rate application
126 from being made while a previous application which has been finally acted upon by the
127 commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

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

1 (a) Subject to the provisions of §24-1-1(j) of this code, the rates and charges of electric
2 cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political
3 subdivisions of the state having less than 4,500 customers or annual combined gross revenues
4 of less than \$3 million, except for municipally operated commercial solid waste facilities as defined
5 in §22-15-2 of this code, and the rates and charges for local exchange services provided by
6 telephone cooperatives are not subject to the rate approval provisions of §24-2-4 or §24-2-4a of
7 this code, but are subject to the limited rate provisions of this section.

8 (b) All rates and charges set by electric cooperatives, natural gas cooperatives, and
9 municipally operated public utilities that are political subdivisions of the state providing water,
10 sewer, and/or natural gas services that are subject to the provisions of this section and all rates
11 and charges for local exchange services set by telephone cooperatives shall be just, reasonable,
12 applied without unjust discrimination between or preference for any customer or class of customer
13 and based primarily on the costs of providing these services. All rates and charges shall be based
14 upon the measured or reasonably estimated cost of service and the equitable sharing of those
15 costs between customers based upon the cost of providing the service received by the customer,
16 including a reasonable plant-in-service depreciation expense. The rates and charges shall be
17 adopted by the electric, natural gas, telephone cooperative, or political subdivision's governing
18 board or body and, in the case of the municipally operated public utility, by municipal ordinance
19 to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived
20 by public vote of the governing body if that body finds and declares the public utility that is a

21 political subdivision of the state to be in financial distress such that the 45-day waiting period
22 would be detrimental to the ability of the utility to deliver continued and compliant public services:
23 *Provided*, That notice of intent to effect a rate change shall be specified on the monthly billing
24 statement of the customers of the utility for the month next preceding the month in which the rate
25 change is to become effective and the utility governing body shall give its customers and, in the
26 case of a cooperative, its customers, members, and stockholders, other reasonable notices as
27 will allow filing of timely objections to the proposed rate change and full participation in municipal
28 rate legislation through the provision of a public forum in which customers may comment upon
29 the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall
30 be filed with the commission, together with any information showing the basis of the rates and
31 charges and other information as the commission considers necessary. Any change in the rates
32 and charges with updated information shall be filed with the commission. If a petition, as set out
33 in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this code, is received and the electric
34 cooperative, natural gas cooperative, or telephone cooperative or municipality has failed to file
35 with the commission the rates and charges with information showing the basis of rates and
36 charges and other information as the commission considers necessary, the suspension period
37 limitation of 120 days and the 100-day period limitation for issuance of an order by a hearing
38 examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of this code, is tolled until the necessary
39 information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or
40 municipality shall set the date when any new rate or charge is to go into effect.

41 (c) The commission shall review and approve or modify the rates and charges of electric
42 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal natural gas utilities
43 and municipally owned water and/or sewer utilities that are political subdivisions of the state and
44 having less than 4,500 customers or annual combined revenues of less than \$3 million not subject
45 to the provisions of §24-1-1(j) of this code, upon the filing of a petition within 30 days of the
46 adoption of the ordinance or resolution changing the rates or charges by:

47 (1) Any customer aggrieved by the changed rates or charges who presents to the
48 commission a petition signed by not less than 25 percent of the customers served by the
49 municipally operated natural gas public utility or municipally owned water and/or sewer utility or
50 25 percent of the membership of the electric, natural gas, or telephone cooperative residing within
51 the state;

52 (2) Any customer who is served by a municipally owned natural gas public utility and who
53 resides outside the corporate limits and who is affected by the change in the rates or charges and
54 who presents to the commission a petition alleging discrimination between customers within and
55 without the municipal boundaries. The petition shall be accompanied by evidence of
56 discrimination; or

57 (3) Any customer or group of customers of the municipally owned natural gas public utility
58 who is affected by the change in rates who reside within the municipal boundaries and who
59 present a petition to the commission alleging discrimination between a customer or group of
60 customers and other customers of the municipal utility. The petition shall be accompanied by
61 evidence of discrimination.

62 (d) (1) Subject to the provisions of §24-1-1(j) of this code, the filing of a petition with the
63 commission signed by not less than 25 percent of the customers served by the municipally owned
64 natural gas public utility or a municipally owned water and/or sewer utility having less than 4,500
65 customers or annual combined gross revenues of less than \$3 million or 25 percent of the
66 membership of the electric, natural gas, or telephone cooperative residing within the state under
67 §24-2-4b(c) of this code shall suspend the adoption of the rate change contained in the ordinance
68 or resolution for a period of 120 days from the date the rates or charges would otherwise go into
69 effect or until an order is issued as provided herein.

70 (2) Upon sufficient showing of discrimination by customers outside the municipal
71 boundaries or a customer or a group of customers within the municipal boundaries under a petition
72 filed under §24-2-4b(c)(2) or §24-2-4b(c)(3) of this code, the commission shall suspend the

73 adoption of the rate change contained in the ordinance for a period of 120 days from the date the
74 rates or charges would otherwise go into effect or until an order is issued as provided herein. A
75 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter
76 or state code that establishes or proposes a rate increase that results in an increase of less than
77 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed
78 to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined
79 to be due and owing as a result of any difference between any final rates approved by the
80 commission and the rates placed into effect subject to refund shall be refunded as a credit against
81 each customer's account for a period of up to six months after entry of the commission's final
82 order. Any remaining balance which is not fully credited by credit within six months after entry of
83 the commission's final order shall be directly refunded to the customer by check. In the case of
84 rates established or proposed that increase by more than 25 percent of the gross revenue of the
85 municipally operated public utility, the utility may apply for, and the commission may grant, a
86 waiver of the suspension period and allow rates to be effective upon enactment.

87 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the
88 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and
89 shall, within 100 days from the date the rates or charges would otherwise go into effect, unless
90 otherwise tolled as provided in §24-2-4b(b) of this code, issue an order approving, disapproving,
91 or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas, or
92 telephone cooperative or by the municipally operated public utility pursuant to this section.

93 (f) Upon receipt of a petition for review of the rates under the provisions of §24-2-4b(c) of
94 this code, the commission may exercise the power granted to it under the provisions of §24-2-3
95 of this code, consistent with the applicable rate provisions of §8-19-4, §8-20-10 and §16-13-16 of
96 this code. The commission may determine the method by which the rates are reviewed and may
97 grant and conduct a de novo hearing on the matter if the customer, electric, natural gas, or
98 telephone cooperative or municipality requests a hearing.

99 (g) Subject to the provisions of §24-1-1(j) of this code, the commission may, upon petition
100 by an electric, natural gas, or telephone cooperative or municipal natural gas public utility or a
101 municipally owned water and/or sewer utility, having less than 4,500 customers or annual
102 combined gross revenues of less than \$3 million allow an interim or emergency rate to take effect,
103 subject to refund or future modification, if it is determined that the interim or emergency rate is
104 necessary to protect the municipality from financial hardship attributable to the purchase of the
105 utility commodity sold, or the commission determines that a temporary or interim rate increase is
106 necessary for the utility to avoid financial distress. In such cases, the commission shall waive the
107 45-day waiting period provided for in §24-2-4b(b) of this code and the 120-day suspension period
108 provided for in §24-2-4b(d) of this code.

109 (h) The commission shall, upon written request of the governing body of a political
110 subdivision, provide technical assistance to the governing body in its deliberations regarding a
111 proposed rate increase.

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

115 (j) Notwithstanding any other provision of this code to the contrary, and subject to the
116 provisions of §24-1-1(j) of this code, the jurisdiction of the commission over water and/or sewer
117 utilities that are political subdivisions of the state and having at least 4,500 customers and annual
118 gross combined revenues of \$3 million or more shall be is limited to those powers enumerated in
119 §24-2-1(b) of this code.

120 (k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
121 commission does not extend over the setting and adjustment of the rates, fees, and charges of
122 municipal power systems. The rates, fees, charges, and rate-making process of municipal power
123 systems shall be governed by the provisions of §8-19-2a of this code.

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

1 (a) Subject to the provisions of §24-1-1(j) of this code, a public utility, person or corporation
2 other than a political subdivision of the state providing water or sewer services and having at least
3 4,500 customers and annual gross combined revenues of \$3 million or more may not begin the
4 construction of any plant, equipment, property or facility for furnishing to the public any of the
5 services enumerated in section one, article two of this chapter, nor apply for, nor obtain any
6 franchise, license or permit from any municipality or other governmental agency, except ordinary
7 extensions of existing systems in the usual course of business, unless and until it shall obtain
8 from the Public Service Commission a certificate of public convenience and necessity authorizing
9 ~~such~~ the construction franchise, license or permit.

10 (b) Upon the filing of any application for the certificate, and after hearing, the commission
11 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
12 convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no
13 substantial protest is received within 30 days after the notice is given, may waive formal hearing
14 on the application. Notice shall be given by publication which shall state that a formal hearing may
15 be waived in the absence of substantial protest, made within 30 days, to the application. The
16 notice shall be published as a Class I legal advertisement in compliance with the provisions of
17 §59-3-1 *et seq.* of this code. The publication area shall be the proposed area of operation.

18 (c) Subject to the provisions of §24-1-1(j) of this code, any public utility, person or
19 corporation subject to the provisions of this section other than a political subdivision of the state
20 providing water and/or sewer services having at least 4,500 customers and combined annual
21 gross revenue of \$3 million dollars or more shall give the commission at least 30 days' notice of
22 the filing of any application for a certificate of public convenience and necessity under this section:
23 *Provided*, That the commission may modify or waive the 30-day notice requirement and shall
24 waive the 30-day notice requirement for projects approved by the Infrastructure and Jobs
25 Development Council.

26 (d) The commission shall render its final decision on any application filed under the

27 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application
28 and within 90 days after final submission of any such application for decision following a hearing:
29 *Provided*, That if the application is for authority to construct a water and sewer project and the
30 projected total cost is less than \$10 million, the commission shall render its final decision within
31 225 days of the filing of the application.

32 (e) The commission shall render its final decision on any application filed under the
33 provisions of this section that has received the approval of the Infrastructure and Jobs
34 Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the
35 application: *Provided*, That if a substantial protest is received within 30 days after the notice is
36 provided pursuant to subsection (b) of this section, the commission shall render its final decision
37 within 270 days or 225 days of the filing of the application, whichever is applicable as determined
38 in subsection (d) of this section.

39 (f) If the projected total cost of a project which is the subject of an application filed pursuant
40 to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render
41 its final decision on any such application filed under the provisions of this section or §24-2-11a of
42 this code within 400 days of the filing of the application and within 90 days after final submission
43 of any such application for decision after a hearing.

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

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

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

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

54 (2) Natural gas produced by the person.

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

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

64 (l) Subject to the provisions of §24-1-1(j) of this code, water or sewer utilities that are
65 political subdivisions of the state and having at least 4,500 customers and combined gross
66 revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the
67 ordinary course of business shall provide adequate prior public notice of the contemplated
68 construction and proposed changes to rates, fees and charges, if any, as a result of ~~such~~ the
69 construction to both current customers and those persons who will be affected by the proposed
70 construction as follows:

71 (1) Adequate prior public notice of the contemplated construction by causing a notice of
72 intent to pursue a project that is not in the ordinary course of business to be specified on the
73 monthly billing statement of the customers of the utility for the month immediately preceding the
74 month in which an ordinance or resolution approving the proposed construction and proposed
75 changes to rates, fees and charges, if any, is to be before the governing body for the public
76 hearing on the ordinance or resolution approving the proposed construction and proposed
77 changes to rates, fees and charges, if any.

78 (2) Adequate prior public notice of the contemplated construction by causing to be

79 published as a Class I legal advertisement of the proposed public hearing on the ordinance or
80 resolution approving the proposed construction and proposed changes to rates, fees and charges,
81 if any, in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for
82 publication shall be all territory served by the political subdivision. If the political subdivision
83 provides service in more than one county, publication shall be made in a newspaper of general
84 circulation in each county that the political subdivision provides service.

85 (3) The public notice of the proposed construction shall state the scope of the proposed
86 construction; a summary of the current rates, fees and charges, and proposed changes to said
87 rates, fees and charges, if any; the date, time and place of the public hearing on the ordinance or
88 resolution approving the proposed construction and proposed changes to rates, fees and charges,
89 if any; and the place or places within the political subdivision where the ordinance or resolution
90 approving the proposed construction and proposed changes to rates, fees and charges, if any,
91 may be inspected by the public. A reasonable number of copies of the ordinance or resolution
92 shall be kept at the place or places and be made available for public inspection. The notice shall
93 also advise that interested parties may appear at the public hearing before the political subdivision
94 and be heard with respect to the proposed construction and the proposed rates, fees and charges,
95 if any.

96 (4) The ordinance or resolution on the proposed construction and the proposed rates, fees
97 and charges shall be read at two meetings of the governing body with at least two weeks
98 intervening between each meeting. The public hearing may be conducted prior to, or at, the
99 meeting of the governing body at which the ordinance or resolution approving the proposed
100 construction is considered on second reading.

101 (5) Enactment or adoption of the ordinance or resolution approving the proposed
102 construction and the proposed rates, fees and charges shall follow an affirmative vote of the
103 governing body and the approved rates shall go into effect no sooner than 45 days following the
104 action of the governing body. If the political subdivision proposes rates that will go into effect prior

105 to the completion of construction of the proposed project, the 45-day waiting period may be waived
106 by public vote of the governing body only if the political subdivision finds and declares the political
107 subdivision to be in financial distress such that the 45-day waiting period would be detrimental to
108 the ability of the political subdivision to deliver continued and compliant public services: *Provided,*
109 That if the political subdivision is a public service district, in no event ~~shall~~ may the rate become
110 effective prior to the date that the county commission has entered an order approving or modifying
111 the action of the public service district board.

112 (6) Rates, fees and charges approved by an affirmative vote of the public service district
113 board shall be forwarded in writing to the county commission with the authority to appoint the
114 members of the public service board of the public service district. The county commission shall,
115 within 45 days of receipt of the proposed rates, fees and charges, take action to approve, modify,
116 or reject the proposed rates, fees and charges, in its sole discretion. If, after 45 days, the county
117 commission has not taken final action to approve, modify, or reject the proposed rates, fees and
118 charges, the proposed rates, fees and charges, as presented to the county commission, shall be
119 effective with no further action by the board or county commission. In any event this 45-day period
120 may be extended by official action of both the board proposing the rates, fees and charges and
121 the appointing county commission.

122 (7) The county commission shall provide notice to the public by a Class I legal
123 advertisement of the proposed action, in compliance with the provisions of §59-3-1 *et seq.* of this
124 code, of the meeting where it shall consider the proposed increases in rates, fees and charges
125 no later than one week prior to the meeting date.

126 (8) A public service district, or a customer aggrieved by the changed rates or charges who
127 presents to the circuit court a petition signed by at least 750 or 25 percent of the customers served
128 by the public service district, whichever is fewer, when dissatisfied by the approval, modification,
129 or rejection by the county commission of the proposed rates, fees and charges under the
130 provisions of this subsection (l) may file a complaint regarding the rates, fees and charges

131 resulting from the action of, or failure to act by, the county commission in the circuit court of the
132 county in which the county commission sits: *Provided*, That any complaint or petition filed
133 hereunder shall be filed within 30 days of the county commission's final action approving,
134 modifying or rejecting ~~such~~ the rates, fees and charges, or the expiration of the 45 day period
135 from the receipt by the county commission, in writing, of the rates, fees and charges approved by
136 resolution of the board, without final action by the county commission to approve, modify or reject
137 ~~such~~ the rates, fees and charges, and the circuit court shall resolve ~~said~~ the complaint: *Provided*,
138 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted
139 by the district upon which the county commission failed to act, shall remain in full force and effect,
140 until set aside, altered or amended by the circuit court in an order to be followed in the future.

NOTE: The purpose of this bill is to clarify PublicService Commission jurisdiction over water and sewer utilities owned by political subdivisions; establish uniformity in the Class of publications required by municipalities and public service districts for the revision in rates; to provide a time period for the filing of and resolution of complaints filed at the public service commission regarding actions of municipalities; to clean up language in Code §24-2-4b regarding reference to other sections of the code regarding notice requirements for municipal utilities; and, regarding the time period pertaining to the filing of appeals and the resolution of such appeals of rate and construction projects decided by county commissions.

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