

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2663**

4 (By Delegates Moye, T. Campbell, Manchin,  
5 Shaver, Stephens, Barker, M. Poling and Doyle)

6  
7 (Originating in the Committee on the Judiciary.)

8 [February 3, 2011]

9  
10 A BILL to amend and reenact §24-1-3 and §24-1-4 of the Code of West  
11 Virginia, 1931, as amended, all relating to the conduct of  
12 hearings by the Public Service Commission and its designated  
13 hearing examiners; requiring the Commission to preside en banc  
14 over any hearings conducted with respect to any case in which  
15 the Commission retains to sit en banc as the initial finder of  
16 fact; and deleting obsolete language.

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

18 That §24-1-3 and §24-1-4 of the Code of West Virginia, 1931,  
19 as amended, be amended and reenacted to read as follows:

20 **ARTICLE 1. GENERAL PROVISIONS.**

21 **§24-1-3. Commission continued; membership; chairman; compensation;**  
22 **quorum.**

23 (a) The Public Service Commission of West Virginia is continued  
24 and directed as provided by this chapter, chapter twenty-four-a,  
25 chapter twenty-four-b and chapter twenty-four-d of this code. ~~After~~  
26 ~~having conducted a performance audit through its joint committee on~~

1 ~~government operations, pursuant to section nine, article ten,~~  
2 ~~chapter four of this code, the Legislature hereby finds and declares~~  
3 ~~that the Public Service Commission should be continued and~~  
4 ~~reestablished. Accordingly, notwithstanding the provisions of~~  
5 ~~section five, article ten, chapter four of this code, the Public~~  
6 ~~Service Commission shall continue to exist until July 1, two~~  
7 ~~thousand three.~~ The Public Service Commission may sue and be sued  
8 by that name.

9       **(b)** The Public Service Commission shall consist of three  
10 members who shall be appointed by the Governor, with the advice and  
11 consent of the Senate. The commissioners shall be citizens and  
12 residents of this state and at least one of them shall be duly  
13 licensed to practice law in West Virginia, with not less than ten  
14 years' actual work experience in the legal profession as a member  
15 of a State Bar.

16       **(c)** No more than two of the commissioners shall be members of  
17 the same political party.

18       **(d)** Each commissioner shall, before entering upon the duties  
19 of his or her office, take and subscribe to the oath provided by  
20 section five, article IV of the Constitution of this state. The  
21 oath shall be filed in the office of the Secretary of State.

22       **(e)** The Governor shall designate one of the commissioners to  
23 serve as chairman at the Governor's will and pleasure. The chairman  
24 shall be the chief administrative officer of the commission. The  
25 Governor may remove any commissioner only for incompetency, neglect  
26 of duty, gross immorality, malfeasance in office or violation of

1 ~~subsection (c)~~ subsections (g) and (h) of this section.

2 ~~(b) (f)~~ (f) ~~The unexpired terms of members of the Public Service~~  
3 ~~Commission at the time this subsection becomes effective are~~  
4 ~~continued.~~ Upon expiration of the terms, appointments are for terms  
5 of six years, except that an appointment to fill a vacancy is for  
6 the unexpired term only. ~~The commissioners whose terms are~~  
7 ~~terminated by the provisions of this subsection are eligible for~~  
8 ~~reappointment.~~

9 ~~(e) (g)~~ (g) No person while in the employ of, or holding any  
10 official relation to, any public utility subject to the provisions  
11 of this chapter or holding any stocks or bonds of a public utility  
12 subject to the provisions of this chapter or who is pecuniarily  
13 interested in a public utility subject to the provisions of this  
14 chapter may serve as a member of the commission or as an employee  
15 of the commission.

16 (h) Nor may any commissioner be a candidate for or hold public  
17 office or be a member of any political committee while acting as a  
18 commissioner; nor may any commissioner or employee of the commission  
19 receive any pass, free transportation or other thing of value,  
20 either directly or indirectly, from any public utility or motor  
21 carrier subject to the provisions of this chapter. In case any of  
22 the commissioners becomes a candidate for any public office or a  
23 member of any political committee, the Governor shall remove him or  
24 her from office and shall appoint a new commissioner to fill the  
25 vacancy created.

26 ~~(d) (i)~~ (i) ~~The salaries of members of the Public Service~~

~~1 Commission and the manner in which they are paid established by the~~  
~~2 prior enactment of this section are continued. Effective July 1,~~  
~~3 2001,~~ The annual salary of each commissioner provided in section  
4 two-a, article seven, chapter six of this code shall be paid in  
5 monthly installments from the special funds in the percentages that  
6 follow:

7 (1) From the Public Service Commission Fund collected under the  
8 provisions of section six, article three of this chapter, eighty  
9 percent;

10 (2) From the Public Service Commission Motor Carrier Fund  
11 collected under the provisions of section six, article six, chapter  
12 twenty-four-a of this code, seventeen percent; and

13 (3) From the Public Service Commission Gas Pipeline Safety Fund  
14 collected under the provisions of section three, article five,  
15 chapter twenty-four-b of this code, three percent.

16 (j) In addition to the salary provided for all commissioners  
17 in section two-a, article seven, chapter six of this code, the  
18 chairman of the commission shall receive \$5,000 per annum to be paid  
19 in monthly installments from the Public Service Commission Fund  
20 collected under the provisions of section six, article three of this  
21 chapter.

22 **§24-1-4. Appointment, duties and compensation of secretary and**  
23 **other employees; hearings generally; outside**  
24 **employment by certain employees prohibited.**

25 The commission shall appoint a secretary and such other

1 employees as may be necessary to carry out the provisions of this  
2 chapter and shall fix their respective salaries or compensations.  
3 It shall be the duty of the secretary to keep a full and true record  
4 of all proceedings, acts, orders and judgments of the commission,  
5 to issue all necessary process, returns and notices, to keep all  
6 books, maps, documents and papers ordered filed by the commission,  
7 and all orders made by the commission or approved and confirmed by  
8 it and ordered to be filed; and he shall be responsible to the  
9 commission for the safe custody and preservation of all such  
10 documents in his office. He may administer oaths in all parts of  
11 the state, so far as the exercise of such power is properly  
12 incidental to the performance of his duty or that of the commission.

13       The commission may designate such of its employees as it deems  
14 necessary to hold hearings, held or required by this chapter, and  
15 to take evidence at such hearings, which employees are hereby  
16 empowered to subpoena witnesses, administer oaths, take testimony,  
17 require the production of documentary evidence and exercise such  
18 other powers and perform such other duties as may be delegated to  
19 them and required by the commission, in any proceeding or  
20 examination instituted or conducted by the commission under this  
21 chapter, at any designated place of hearing within the state.

22       On any matter the Commission retains to hear en banc as the  
23 initial finder of fact, the Commission shall preside en banc over  
24 all hearings that are conducted with respect to that matter,  
25 including any associated public protest hearings.

26       Any commissioner or person employed by the commission other

1 than on a part-time basis shall devote full time to the performance  
2 of his duties as such commissioner or employee during the regular  
3 working hours as set by the commission.

NOTE: The purpose of this bill is to require the Commission to sit en banc over all hearings conducted with respect any matter in which the Public Service Commission has retained to decide en banc as the initial finder of fact, including any associated public protest hearings. The bill also deletes obsolete language.

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