

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 10

BY SENATORS SYPOLT, CLEMENTS, RUCKER, SMITH,

MARONEY, CLINE AND GAUNCH

[Introduced January 10, 2018; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §8-19-2 of the Code of West Virginia, 1931, as amended; to amend
 2 said code by adding thereto a new section, designated §8-19-2b; and to amend and
 3 reenact §24-2-1, §24-2-2, §24-2-3, and §24-2-4b of said code, all relating generally to the
 4 jurisdiction of the Public Service Commission; excluding the setting and adjustment of
 5 rates, fees, and charges of municipal power systems from the jurisdiction of the Public
 6 Service Commission; and clarifying the commission's jurisdiction as modified by chapters
 7 161 and 209, Acts of the Legislature, regular session, 2017, over Internet protocol-enabled
 8 service, voice-over Internet protocol-enabled service, storm water services by a public
 9 service district, political subdivisions providing separate or combined water and/or sewer
 10 services, and certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

1 (a) For the purposes of this section:

2 (1) "Contract" means an agreement entered into by a municipality with any other party for
 3 the purchase of electric output, capacity or energy from a project as defined herein.

4 (2) "Any other party" means any other legal entity, including, but not limited to, another
 5 municipality, political subdivision, public authority, agency or instrumentality of any state or the
 6 United States, a partnership, a limited partnership, a limited liability company, a corporation, an
 7 electric cooperative or an investor-owned utility existing under the laws of any state; and

8 (3) "Project" or "projects" means systems or facilities owned by another party and used for
9 the generation, transmission, transformation or supply of electric power, or any interest in them,
10 whether an undivided interest as a tenant in common or otherwise, or any right to the output,
11 capacity or services thereof.

12 (b) In addition to the general authority to purchase electricity on a wholesale basis for
13 resale to its customers, any municipality that owns and operates an electric power system under
14 the provisions of this article may enter into a contract with any other party for the purchase of
15 electricity from one or more projects located in the United States that provide that the contracting
16 municipality is obligated to make payments required by the contract whether or not a project is
17 completed, operable or operating and notwithstanding the suspension, interruption, interference,
18 reduction or curtailment of the output of a project or the power and energy contracted for, and that
19 the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not
20 be conditioned upon performance or nonperformance by any other party. The contract may
21 provide that, in the event of a default by the municipality or any other party to the contract in the
22 performance of each entities' obligations under the contract, any nondefaulting municipality or
23 any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and
24 assume the obligations of, the defaulting party.

25 (c) Notwithstanding any other provisions of law, ordinance or charter provision to the
26 contrary, a contract under subsection (b) of this section may extend for more than fifty years or
27 fifty years from the date a project is estimated to be placed into normal continuous operation and
28 the execution and effectiveness of the contract is not subject to any authorizations or approvals
29 by the state or any agency, commission, instrumentality or political subdivision thereof except as
30 otherwise specifically required by law.

31 (d) A contract under subsection (b) of this section may provide that payments by the
32 municipality are made solely from and may be secured by a pledge of and lien upon revenues
33 derived by the municipality from ownership and operation and that payments shall constitute an

34 operating expense of the electric power system. No obligation under the contract shall constitute
35 a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or
36 upon any of its income, receipts or revenues, except the revenues of the municipality's electric
37 power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged
38 for the payment of any obligation under the contract.

39 (e) A municipality contracting under the provisions of subsection (b) of this section is
40 obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy
41 and other services it sells, furnishes or supplies through its electric power system in an amount
42 sufficient to provide revenues adequate to meet its obligations under the contract and to pay any
43 and all other amounts payable from or constituting a charge and lien upon the revenues, including
44 the amounts necessary to pay the principal and interest on any municipal bonds issued related to
45 its electric power system: *Provided*, That any change in the rates and charges of the municipality
46 to the customers of the electric power system under the provisions of this section are subject to
47 the provisions and requirements of ~~section four-b, article two, chapter twenty-four~~ §8-19-2b of this
48 code and the obligations of the municipality under the contract are costs of providing electric
49 service within the meaning of that section.

§8-19-2b. Procedures for changing rates of municipal electric power systems; legislative finding.

1 All rates, fees, and charges set by municipal electric power systems shall be just,
2 reasonable, applied without unjust discrimination between or preference for any customer or class
3 of customer and based primarily on the costs of providing these services. All rates and charges
4 shall be based upon the measured or reasonably estimated cost of service and the equitable
5 sharing of those costs between customers based upon the cost of providing the service received
6 by the customer, including a reasonable slant-in-service depreciation expense. The rates and
7 charges shall be adopted by the power system's governing board by municipal ordinance to be
8 effective not sooner than forty-five days after adoption. The forty-five-day waiting period may be

9 waived by public vote of the governing body if that body finds and declares the public utility that
 10 is a political subdivision of the state to be in financial distress such that the forty-five-day waiting
 11 period would be detrimental to the ability of the utility to deliver continued and compliant public
 12 services: *Provided*, That notice of intent to effect a rate change shall be specified on the monthly
 13 billing statement of the customers of the utility for the month next preceding the month in which
 14 the rate change is to become effective, and the governing body shall give its customers other
 15 reasonable notices as will allow filing of timely objections to the proposed rate change and full
 16 participation in municipal rate legislation through the provision of a public forum in which
 17 customers may comment upon the proposed rate change prior to an enactment vote.
 18 Notwithstanding the exclusion of municipal power systems' rates, fees, charges and ratemaking
 19 process from the jurisdiction of the Public Service Commission, municipal power systems shall
 20 submit information regarding their rates, fees and charges to the commission as set forth in §24-
 21 2-9 of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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 extends to all public utilities in this state and includes
 2 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, water
 5 or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and
 6 all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor
 7 car services; transmission of messages by telephone, telegraph or radio; generation and
 8 transmission of electrical energy by hydroelectric or other utilities for service to the public, whether
 9 directly or through a distributing utility; supplying water, gas or electricity by municipalities or

10 others; sewer systems servicing twenty-five or more persons or firms other than the owner of the
11 sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide
12 sewer service by an innovative, alternative method, as defined by the federal Environmental
13 Protection Agency, the innovative, alternative method is a public utility function and subject to the
14 jurisdiction of the Public Service Commission regardless of the number of customers served by
15 the innovative, alternative method; any public service district created under the provisions of §16-
16 13A-1 *et seq.* of this code, except that the Public Service Commission has no jurisdiction over the
17 provision of storm water services by a public service district; toll bridges, wharves, ferries; solid
18 waste facilities; and any other public service: *Provided, however*, That natural gas producers who
19 provide natural gas service to not more than twenty-five residential customers are exempt from
20 the jurisdiction of the commission with regard to the provisions of such residential service:
21 *Provided further*, That upon request of any of the customers of such natural gas producers, the
22 commission may, upon good cause being shown, exercise authority the commission considers
23 appropriate over the operation, rates and charges of the producer and for the time the commission
24 considers to be proper.

25 (b) The jurisdiction of the commission over political subdivisions of this state providing
26 separate or combined water and/or sewer services and having at least four thousand five hundred
27 customers and annual combined gross revenues of \$3 million or more that are political
28 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 thirty days of the act or omission of the political subdivision and
45 the commission shall resolve the dispute within one hundred twenty days of filing. The one
46 hundred twenty day period for resolution of the dispute may be tolled by the commission until the
47 necessary information showing the basis of the rates, fees and charges or other information as
48 the commission considers necessary is filed: *Provided further*, That the disputed rates, fees and
49 charges so fixed by the political subdivision providing separate or combined water and/or sewer
50 services shall remain in full force and effect until set aside, altered or amended by the commission
51 in an order to be followed in the 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.

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

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

62 (1) An area of West Virginia cannot be practicably and economically served by a utility
63 licensed to operate within the State of West Virginia;

64 (2) The area can be provided with utility service by a utility which operates in a state
65 adjoining West Virginia;

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

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

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

73 (1) An owner or operator of an electric generating facility located or to be located in this
74 state that has been designated as an exempt wholesale generator under applicable federal law,
75 or shall be so designated prior to commercial operation of the facility, and for which the facility,
76 the owner or operator holds a certificate of public convenience and necessity issued by the
77 commission on or before July 1, 2003, shall be subject to §24-2-11c (e), (f), (g), (h), (i) and (j), of
78 this code as if the certificate of public convenience and necessity for such facility were a siting
79 certificate issued under that section and are not otherwise subject to the jurisdiction of the
80 commission or to the provisions of this chapter with respect to the facility except for the making
81 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

82 (2) Any person, corporation or other entity that intends to construct or construct and
83 operate an electric generating facility to be located in this state that has been designated as an
84 exempt wholesale generator under applicable federal law, or will be so designated prior to
85 commercial operation of the facility, and for which facility the owner or operator does not hold a
86 certificate of public convenience and necessity issued by the commission on or before July 1,
87 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from

88 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
89 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
90 operator of an electric generating facility as is described in this subdivision for which a siting
91 certificate has been issued by the commission shall be subject to §24-2-11c (e), (f), (g), (h), (i)
92 and (j), of this code, and are not otherwise subject to the jurisdiction of the commission or to the
93 provisions of this chapter with respect to the facility except for the making or constructing of a
94 material modification thereof as provided in subdivision (5) of this subsection.

95 (3) An owner or operator of an electric generating facility located in this state that had not
96 been designated as an exempt wholesale generator under applicable federal law prior to
97 commercial operation of the facility that generates electric energy solely for sale at retail outside
98 this state or solely for sale at wholesale in accordance with any applicable federal law that
99 preempts state law or solely for both such sales at retail and such sales at wholesale and that
100 had been constructed and had engaged in commercial operation on or before July 1, 2003, are
101 not subject to the jurisdiction of the commission or to the provisions of this chapter with respect
102 to such facility, regardless of whether the facility subsequent to its construction has been or will
103 be designated as an exempt wholesale generator under applicable federal law: *Provided, That*
104 the owner or operator is subject to subdivision (5) of this subsection if a material modification of
105 the facility is made or constructed.

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

114 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
115 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
116 operator of an electric generating facility as is described in this subdivision for which a siting
117 certificate has been issued by the commission is subject to §24-2-11c (e), (f), (g), (h), (i) and (j),
118 of this code, and are not otherwise subject to the jurisdiction of the commission or to the provisions
119 of this chapter with respect to the facility except for the making or constructing of a material
120 modification thereof as provided in subdivision (5) of this subsection.

121 (5) An owner or operator of an electric generating facility described in this subsection shall,
122 before making or constructing a material modification of the facility that is not within the terms of
123 any certificate of public convenience and necessity or siting certificate previously issued for the
124 facility, or an earlier material modification thereof, obtain a siting certificate for the modification
125 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
126 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
127 this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the
128 jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

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

135 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
136 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
137 by and described in this subsection do not affect or limit the commission's jurisdiction over
138 contracts or arrangements between the owner or operator of the facility and any affiliated public
139 utility subject to the provisions of this chapter.

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

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

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

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

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

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

153 (f) Notwithstanding any other provisions of this article, the commission does not have
154 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
155 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
156 ownership.

157 (g) The Legislature finds that the rates, fees, charges and ratemaking of municipal .power
158 systems are most fairly and effectively regulated by the local governing body. Therefore,
159 notwithstanding any other provisions of this article, the commission shall not have jurisdiction over
160 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
161 jurisdiction of the Public Service Commission over municipal power systems is limited to that
162 granted specifically in this code.

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

1 (a) The commission is hereby given power to may investigate all rates, methods and
2 practices of public utilities subject to the provisions of this chapter; to require them to conform to

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

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

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

31 (c) Notwithstanding any other provision of this code to the contrary, 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 four thousand five hundred customers and
34 annual combined gross revenues of \$3 million or more ~~shall be~~ is limited to those powers
35 enumerated in §24-2-1(b) of this code.

36 (d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
37 commission does not extend over the setting or adjustment of rates, fees, and charges of
38 municipal power systems. The rates, fees, charges and ratemaking process of municipal power
39 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) The commission ~~shall have power to~~ may enforce, originate, establish, change and
2 promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for municipal
3 power systems and water and/or sewer utilities that are political subdivisions of this state providing
4 a separate or combined services and having at least four thousand five hundred customers and
5 annual combined gross revenues of \$3 million or more: *Provided*, That the commission may
6 exercise such rate authority over municipally owned ~~electric or~~ natural gas utilities or a municipally
7 owned water and/or sewer utility having less than four thousand five hundred customers or annual
8 combined gross revenues of less than \$3 million, only under the circumstances and limitations
9 set forth in §24-2-4b of this code, and subject to the provisions set forth in subsection (b) of this
10 section. And whenever the commission, ~~shall~~ after hearing, ~~find~~ finds any existing rates, tolls,
11 tariffs, joint rates or schedules enacted or maintained by a utility regulated under the provisions
12 of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in
13 violation of any of the provisions of this chapter, the commission shall, by an order, fix reasonable
14 rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be

15 unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any
16 provisions of law, and the ~~said~~ commission, in fixing the rate of any railroad company, may fix a
17 fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate
18 charged on the main line of ~~such~~ the 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 four thousand five hundred
21 customers or annual combined gross revenue of less than \$3 million concerning rates, fees or
22 charges applicable to such resale or wholesale customer, shall be filed within thirty days of the
23 enactment by the governing body of the political subdivision of an ordinance changing rates, fees
24 or charges for such service. The commission shall resolve said complaint within one hundred-
25 twenty days of filing. The one hundred-twenty day period for resolution of the complaint may be
26 tolled by the commission until the necessary information showing the basis of the rates, fees,
27 charges and other information as the commission considers necessary is filed: *Provided, That*
28 rates, fees and charges so fixed by the political subdivision providing separate or combined water
29 and/or sewer services shall remain in full force and effect until set aside, altered or amended by
30 the commission in an order to be followed in the future: *Provided, however, That* the commission
31 shall have no authority to order refunds for amounts collected during the pendency of the
32 complaint proceeding unless the rates, fees, or charges so enacted by the governing body were
33 enacted subject to refund under the provisions of §24-2-4b (d)(2) or (g) of this code.

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

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

**§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) The rates and charges of electric cooperatives, natural gas cooperatives and municipal
2 water and/or sewer utilities that are political subdivisions of the state having less than four
3 thousand five hundred customers or annual combined gross revenues of less than \$3 million,
4 except for municipally operated commercial solid waste facilities as defined in §22-15-2 of this
5 code, and the rates and charges for local exchange services provided by telephone cooperatives
6 are not subject to the rate approval provisions of §24-2-4 or §24-2-4a of this code, but are subject
7 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, ~~electric~~ and/or natural gas services that are subject to the provisions of this section and all
11 rates and charges for local exchange services set by telephone cooperatives shall be just,
12 reasonable, applied without unjust discrimination between or preference for any customer or class
13 of customer and based primarily on the costs of providing these services. All rates and charges
14 shall be based upon the measured or reasonably estimated cost of service and the equitable
15 sharing of those costs between customers based upon the cost of providing the service received
16 by the customer, including a reasonable plant-in-service depreciation expense. The rates and
17 charges shall be adopted by the electric, natural gas, telephone cooperative or political
18 subdivision's governing board or body and, in the case of the municipally operated public utility,
19 by municipal ordinance to be effective not sooner than forty-five days after adoption. The forty-

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

42 (c) The commission shall review and approve or modify the rates and charges of electric
43 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal ~~electric or~~ natural
44 gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of
45 the state and having less than four thousand five hundred customers or annual combined

46 revenues of less than \$3 million upon the filing of a petition within thirty days of the adoption of
47 the ordinance or resolution changing the rates or charges by:

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

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

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

63 (d) (1) The filing of a petition with the commission signed by not less than twenty-five
64 percent of the customers served by the municipally owned ~~electric or~~ natural gas public utility or
65 a municipally owned water and/or sewer utility having less than four thousand five hundred
66 customers or annual combined gross revenues of less than \$3 million or twenty-five percent of
67 the membership of the electric, natural gas or telephone cooperative residing within the state
68 under subsection (c) of this section shall suspend the adoption of the rate change contained in
69 the ordinance or resolution for a period of one hundred twenty days from the date the rates or
70 charges would otherwise go into effect or until an order is issued as provided herein.

71 (2) Upon sufficient showing of discrimination by customers outside the municipal

72 boundaries or a customer or a group of customers within the municipal boundaries under a petition
73 filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the
74 adoption of the rate change contained in the ordinance for a period of one hundred twenty days
75 from the date the rates or charges would otherwise go into effect or until an order is issued as
76 provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and
77 municipal charter or state code that establishes or proposes a rate increase that results in an
78 increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid
79 and rates shall be allowed to go into effect, subject to refund, upon the date stated in that
80 ordinance. Any refund determined to be due and owing as a result of any difference between any
81 final rates approved by the commission and the rates placed into effect subject to refund shall be
82 refunded as a credit against each customer's account for a period of up to six months after entry
83 of the commission's final order. Any remaining balance which is not fully credited by credit within
84 six months after entry of the commission's final order shall be directly refunded to the customer
85 by check. In the case of rates established or proposed that increase by more than twenty-five
86 percent of the gross revenue of the municipally operated public utility, the utility may apply for,
87 and the commission may grant, a waiver of the suspension period and allow rates to be effective
88 upon enactment.

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

95 (f) Upon receipt of a petition for review of the rates under the provisions of subsection (c)
96 of this section, the commission may exercise the power granted to it under the provisions of §24-
97 2-3 of this code, consistent with the applicable rate provisions of §8-10-2, §8-19-4 and §16-13-16

98 of this code. The commission may determine the method by which the rates are reviewed and
99 may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or
100 telephone cooperative or municipality requests a hearing.

101 (g) The commission may, upon petition by an electric, natural gas or telephone
102 cooperative or municipal ~~electric or~~ natural gas public utility or a municipally owned water and/or
103 sewer utility having less than four thousand five hundred customers or annual combined gross
104 revenues of less than \$3 million, allow an interim or emergency rate to take effect, subject to
105 refund or future modification, if it is determined that the interim or emergency rate is necessary to
106 protect the municipality from financial hardship attributable to the purchase of the utility commodity
107 sold, or the commission determines that a temporary or interim rate increase is necessary for the
108 utility to avoid financial distress. In such cases, the commission shall waive the forty-five day
109 waiting period provided for in subsection (b) of this section and the one hundred twenty-day
110 suspension period provided for in subsection (d) of this section.

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

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

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

121 (k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
122 commission does not extend over the setting and adjustment of the rates, fees, and charges of
123 municipal power systems. The rates, fees, charges and ratemaking process of municipal power

124 systems shall be governed by the provisions of §8-19-2a of this code.

NOTE: The purpose of this bill is to allow more local review and control over the setting rates, fees and charges for, municipal electrical power systems. It also clarifies the Public Service Commission's jurisdiction as modified by chapters one hundred sixty-one and two hundred nine, Acts of the Legislature, Regular Session, 2017 (HB3096 and SB180).

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

§24-2-1 has been rewritten; therefore it has been completely underscored.