

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

**Introduced**

### **Senate Bill 515**

**FISCAL  
NOTE**

BY SENATORS GAUNCH, STOLLINGS, BOSO, AND CLINE

[Introduced February 9, 2018; Referred  
to the Committee on Government Organization; and then  
to the Committee on Finance]

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

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

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **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.**

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest,

the time and place of payment and other details in connection with the issuance of the bonds. The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or order, specify. All the bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by the municipality or county: *Provided*, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: *Provided, however*, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad valorem property taxation. The

bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding 50 years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying the bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of the revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from the waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds: Provided, That, the notice given by the municipality or county commission for a change in rates or charges to be charged for the services from the waterworks or electric power system, shall be provided by Class I legal advertisement in a newspaper of general circulation in its service territory not less than one week prior to the public hearing of the governing body of the municipality or the county commission required for the

approval of the change in rates or 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.**

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

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

rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article: Provided, That, the notice given by the municipality for a change in rates or charges to be charged for the services from the waterworks or electric power system, shall be provided by Class I legal advertisement in the a newspaper of general circulation in its service territory not less than one week prior to the public hearing of the governing body of the municipality required for the approval of the change in rates or charges.

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

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of \$100 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After 12 months of

prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate to be set by the Public Service Commission: *Provided*, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of 20 days after they become due, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may terminate water services to a delinquent user of either water or sewage facilities, or both, 10 days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

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

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

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

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

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

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

municipal stormwater system, as long as such rules, regulations, fines or acts are not contrary to any rules or orders of the Public Service Commission.

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

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater 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 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 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 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 rates, fees or charges from time  
10 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 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 agents or employees of the governing body  
37 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

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

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

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

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

56 fees or charges established for any class of users or property served shall be extended to cover  
57 any additional premises thereafter served which fall within the same class, without the necessity  
58 of any hearing or notice.

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

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

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

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

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

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

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

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

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

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

(E) Any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and

extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2018, the board of a public service district providing water or sewer service separately or in combination ~~with at least four thousand five hundred customers and annual combined gross revenue of \$3 million or more from its separate or combined water and sewer services~~ may make, enact and enforce all needful rules in connection with the enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall provide for:

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

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

service.

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

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

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

(F) Enactment of the proposed or modified rates, fees and charges shall follow an affirmative vote by the county commission and shall be effective no sooner than 45-days following action. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45- day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by ~~at least 750 customers~~ or 25 percent of the customers served by the public service district ~~whichever is fewer~~ when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subdivision (2) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future.

(3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by

the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of §24-3-8 or this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or \$50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has been remitted to the district. After 12 months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of 20 days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided*,

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

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

districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the

petition by summary hearing to be held not later than 30 days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only after 30 days' notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

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

stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

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

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

**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 activities relate  
39 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 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 wells; their probable extent of future  
51 production and the reasons given and any justification for capping off or shutting in such 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 wells; and whether there are fixed policies by any utility or group of utilities  
55 to avoid the purchase of natural gas produced in the Appalachian region of the United States  
56 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  
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 division will be financially  
78 and departmentally independent of the division created by subdivision (1) of this subsection;

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

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

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

94           Such plan shall be based on the concept that each of the divisions mentioned in  
95 subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan  
96 shall discourage ex parte communications between them by such means as the commission shall  
97 direct, including, but not limited to, separate clerical and professional staffing for each division.  
98 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest

99 extent possible the recommendations presented to the subcommittee on the Public Service  
100 Commission of the Joint Committee on Government and Finance in a final report dated February,  
101 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

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

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

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

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

123 (g) The Public Service Commission is hereby directed to cooperate with the Joint  
124 Committee on Government and Finance of the Legislature in its review, examination and study of

125 the administrative operations and enforcement record of the Railroad Safety Division of the Public  
126 Service Commission and any similar studies.

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

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

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

141 (i) The Legislature further finds that transactions between utilities and affiliates are a  
142 contributing factor to the increase in natural gas and electricity prices and tend to confuse  
143 consideration of a proper rate of return calculation. The Legislature therefore finds that it is  
144 imperative that the Public Service Commission have the opportunity to properly study the issue  
145 of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper  
146 level when compared to return or profit that affiliates earn on transactions with sister utilities.

147 (j) The Legislature further finds that, effective July 1, 2018, water and sewer utilities that  
148 are political subdivisions of the state providing separate or combined services and having annual  
149 gross revenues of \$1 million or more from either water or sewer services or from a combination  
150 of both water and sewer services; and, effective July 1, 2020, water and sewer utilities that are

151 political subdivisions of the state providing separate or combined services and having annual  
 152 gross revenues of \$200,000 or more from either water or sewer services or from a combination  
 153 of both water and sewer services; and, effective July 1, 2022, all water and sewer utilities that are  
 154 political subdivisions of the state ~~water and sewer utilities that are political subdivisions of the~~  
 155 ~~state providing separate or combined services and having at least four thousand five hundred~~  
 156 ~~customers and annual gross revenues of \$3 million or more~~ are most fairly and effectively  
 157 regulated by the local governing body with respect to rates, borrowing and capital projects.  
 158 Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public  
 159 Service Commission over water and sewer utilities that are political subdivisions of the state is  
 160 limited to that granted specifically in this code.

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

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

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

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether

directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: *Provided further*, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper.

(b) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2018, ~~the~~ jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services ~~and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is~~ shall be limited to:

- (1) General supervision of public utilities, (1, as granted and described in §24-2-5 of this code;
- (2) Regulation of measurements, practices, acts or services, as granted and described in §24-2-7 of this code;

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

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

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

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

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints: *Provided, That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission*

shall resolve said complaint within 120 days of filing. The 120 day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however,* That whenever the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable: *Provided further,* That if the matter complained of would affect rates, fees and charges so fixed by the political subdivision providing separate or combined water and/or sewer services, such rates, fees, or charges shall remain in full force and effect until set aside, altered or amended by the commission in an order to be followed in the future.

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

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

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

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

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

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

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

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

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

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

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

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been

constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to §24-2-11c (e)(f)(g)(h)(i) and (j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The commission is hereby given power to investigate all rates, methods and practices  
2 of public utilities subject to the provisions of this chapter; to require them to conform to the laws  
3 of this state and to all rules, regulations and orders of the commission not contrary to law; and to  
4 require copies of all reports, rates, classifications, schedules and timetables in effect and used by  
5 the public utility or other person to be filed with the commission, and all other information desired  
6 by the commission relating to the investigation and requirements, including inventories of all  
7 property in such form and detail as the commission may prescribe. The commission may compel  
8 obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name  
9 of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the  
10 Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases.  
11 The commission may change any intrastate rate, charge or toll which is unjust or unreasonable  
12 or 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 just  
14 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 shall 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 such rates, charges or tolls that are the lowest available. "Emergency shelter provider"  
23 means any nonprofit entity which provides temporary emergency housing and services to the  
24 homeless 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, 2018, 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 limited to those powers  
35 enumerated in §24-2-1(b) of this code.

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

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

17 said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just  
18 rate to be charged on any branch line thereof, independent of the rate charged on the main line  
19 of such railroad.

20 (b) Any complaint filed with the commission by a resale or wholesale customer of a  
21 municipally owned water and/or sewer utility over which the commission has jurisdiction under  
22 the provisions of §24-1-1(j) of this code ~~having less than four thousand five hundred customers~~  
23 ~~or annual combined gross revenue of less than \$3 million dollars concerning rates, fees or~~  
24 ~~charges applicable to such resale or wholesale customer~~ shall be filed within 30 days of the  
25 enactment by the governing body of the political subdivision of an ordinance changing rates, fees  
26 or charges for such service. The commission shall resolve said complaint within 120 days of filing.  
27 The 120 day period for resolution of the complaint may be tolled by the commission until the  
28 necessary information showing the basis of the rates, fees, charges and other information as the  
29 commission considers necessary is filed: *Provided*, That rates, fees and charges so fixed by the  
30 political subdivision providing separate or combined water and/or sewer services shall remain in  
31 full force and effect until set aside, altered or amended by the commission in an order to be  
32 followed in the future: *Provided, however*, That the commission shall have no authority to order  
33 refunds for amounts collected during the pendency of the complaint proceeding unless the rates,  
34 fees, or charges so enacted by the governing body were enacted subject to refund under the  
35 provisions of §24-2-4b(d)(2) or §214-2-4b(g) of this code.

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

43 (d) In determining just and reasonable rates, the commission shall investigate and review  
44 transactions between utilities and affiliates. The commission shall limit the total return of the utility  
45 to a level which, when considered with the level of profit or return the affiliate earns on transactions  
46 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 public utility subject to this chapter, except for water or sewer  
2 utilities that are political subdivisions of this state as provided in §24-1-1(j) of this code, water  
3 and/or sewer utilities that are political subdivisions of the state providing separate or combined  
4 services and having at least four thousand five hundred customers and annual gross revenue of  
5 \$3 million or more from its separate or combined services shall change, suspend or annul any  
6 rate, joint rate, charge, rental or classification except after 30 days' notice to the commission and  
7 the public, which notice shall plainly state the changes proposed to be made in the schedule then  
8 in force and the time when the changed rates or charges shall go into effect; but the commission  
9 may 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 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 rate, charge, classification, regulation or  
20 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 hearing and

22 the decisions thereon, the commission, upon filing with such schedule and delivering to the public  
23 utility affected thereby a statement in writing of its reasons for such suspension, may suspend the  
24 operation of such schedule and defer the use of such rate, charge, classification, regulation or  
25 practice, but not for a longer period than 270 days beyond the time when such rate, charge,  
26 classification, regulation or practice would otherwise go into effect; and after full hearing, whether  
27 completed before or after the rate, charge, classification, regulation or practice goes into effect,  
28 the commission may make such order in reference to such rate, charge, classification, regulation  
29 or practice as would be proper in a proceeding initiated after the rate, charge, classification,  
30 regulation or practice had become effective: *Provided*, That in the case of a public utility having  
31 2500 customers or less and which is not a political subdivision and which is not principally owned  
32 by any other public utility corporation or public utility holding corporation, the commission may  
33 suspend the operation of such schedule and defer the use of such rate, charge, classification,  
34 regulation or practice, but not for a longer period than 120 days beyond the time when such rate,  
35 charge, classification, regulation or practice would otherwise go into effect; and in the case of a  
36 public utility having more than 2500 customers, but not more than 5000 customers, and which is  
37 not a political subdivision and which is not principally owned by any other public utility corporation  
38 or public utility holding corporation, the commission may suspend the operation of such schedule  
39 and defer the use of such rate, charge, classification, regulation or practice, but not for a longer  
40 period than 150 days beyond the time when such rate, charge, classification, regulation or  
41 practice would otherwise go into effect; and in the case of a public utility having more than 5000  
42 customers, but not more than 7500 customers, and which is not a political subdivision and which  
43 is not principally owned by any other public utility corporation or public utility holding corporation,  
44 the commission may suspend the operation of such schedule and defer the use of such rate,  
45 charge, classification, regulation or practice, but not for a longer period than 180 days beyond the  
46 time when such rate, charge, classification, regulation or practice would otherwise go into effect;  
47 and after full hearing, whether completed before or after the rate, charge, classification, regulation

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

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

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

94 (d) Each public utility subject to the provisions of this section shall be required to establish,  
95 in a written report which shall be incorporated into each general rate case application, that it has  
96 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility  
97 management, rate design and conservation as reported by the commission under §24-1-1(c) of  
98 this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain  
99 as to each concept considered the reasons for adoption or rejection of each. When in any case

100 pending before the commission all evidence shall have been taken and the hearing completed,  
101 the commission shall render a decision in such case. The failure of the commission to render a  
102 decision with respect to any such proposed change in any such rate, charge, classification,  
103 regulation or practice within the various time periods specified in this section after the application  
104 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

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

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

121 (g) No utility regulated under the provisions of this section may make application for a  
122 general rate increase while another general rate application is pending before the commission  
123 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The  
124 provisions of this subsection shall not be construed so as to prohibit any such rate application  
125 from being made while a previous application which has been finally acted upon by the

126 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 four thousand five hundred customers or annual~~  
4 ~~combined gross revenues of less than \$3 million dollars,~~ except for municipally operated  
5 commercial solid waste facilities as defined in §22-15-2 of this code, and the rates and charges  
6 for local exchange services provided by telephone cooperatives are not subject to the rate  
7 approval provisions of 24-2-4 or §24-2-4a of this code, but are subject to the limited rate provisions  
8 of this section.

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

23 day waiting period would be detrimental to the ability of the utility to deliver continued and  
24 compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified  
25 on the monthly billing statement of the customers of the utility for the month next preceding the  
26 month in which the rate change is to become effective and the utility governing body shall give its  
27 customers and, in the case of a cooperative, its customers, members and stockholders, other  
28 reasonable notices as will allow filing of timely objections to the proposed rate change and full  
29 participation in municipal rate legislation through the provision of a public forum in which  
30 customers may comment upon the proposed rate change prior to an enactment vote. The rates  
31 and charges or ordinance shall be filed with the commission, together with any information  
32 showing the basis of the rates and charges and other information as the commission considers  
33 necessary. Any change in the rates and charges with updated information shall be filed with the  
34 commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is  
35 received and the electric cooperative, natural gas cooperative or telephone cooperative or  
36 municipality has failed to file with the commission the rates and charges with information showing  
37 the basis of rates and charges and other information as the commission considers necessary, the  
38 suspension period limitation of 120 days and the 100-day period limitation for issuance of an order  
39 by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the  
40 necessary information is filed. The electric cooperative, natural gas cooperative, telephone  
41 cooperative or municipality shall set the date when any new 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 not subject to the provisions of §24-1-1(j) of this code and having less than four thousand  
46 ~~five hundred customers or annual combined revenues of less than \$3 million dollars~~ upon the  
47 filing of a petition within 30 days of the adoption of the ordinance or resolution changing the rates  
48 or charges by:

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

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

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

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

73 (2) Upon sufficient showing of discrimination by customers outside the municipal  
74 boundaries or a customer or a group of customers within the municipal boundaries under a petition

75 filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the  
76 adoption of the rate change contained in the ordinance for a period of 120 days from the date the  
77 rates or charges would otherwise go into effect or until an order is issued as provided herein. A  
78 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter  
79 or state code that establishes or proposes a rate increase that results in an increase of less than  
80 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed  
81 to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined  
82 to be due and owing as a result of any difference between any final rates approved by the  
83 commission and the rates placed into effect subject to refund shall be refunded as a credit against  
84 each customer's account for a period of up to six months after entry of the commission's final  
85 order. Any remaining balance which is not fully credited by credit within six months after entry of  
86 the commission's final order shall be directly refunded to the customer by check. In the case of  
87 rates established or proposed that increase by more than 25 percent of the gross revenue of the  
88 municipally operated public utility, the utility may apply for, and the commission may grant, a  
89 waiver of the suspension period and allow rates to be effective upon enactment.

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

96 (f) Upon receipt of a petition for review of the rates under the provisions of subsection (c)  
97 of this section, the commission may exercise the power granted to it under the provisions of §24-  
98 2-3 of this code, consistent with the applicable rate provisions of §8-10-20 of this code, §8-19-4  
99 of this code and §16-13-16 of this code. The commission may determine the method by which  
100 the rates are reviewed and may grant and conduct a de novo hearing on the matter if the

101 customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

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

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

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

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

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

1 (a) A public utility, person or corporation other than a political subdivision of the state  
 2 providing water or sewer services and subject to the provisions of §24-1-1(j) of this code ~~having~~  
 3 ~~at least four thousand five hundred customers and annual gross combined revenues of \$3 million~~

4 ~~dollars or more~~ may not begin the construction of any plant, equipment, property or facility for  
5 furnishing to the public any of the services enumerated in §24-2-1 et seq. of this code, nor apply  
6 for, nor obtain any franchise, license or permit from any municipality or other governmental  
7 agency, except ordinary extensions of existing systems in the usual course of business, unless  
8 and until it shall obtain from the Public Service Commission a certificate of public convenience  
9 and necessity authorizing such 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) Any public utility, person or corporation subject to the provisions of this section other  
19 than a political subdivision of the state providing water and/or sewer services subject to the  
20 provisions of §24-1-1(j) of this code ~~having at least four thousand five hundred customers and~~  
21 ~~combined annual gross revenue of \$3 million dollars or more~~ shall give the commission at least  
22 30 days' notice of the filing of any application for a certificate of public convenience and necessity  
23 under this section: *Provided*, That the commission may modify or waive the 30-day notice  
24 requirement and shall waive the 30-day notice requirement for projects approved by the  
25 Infrastructure and Jobs 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 proper for the enforcement of  
47 the provisions of this section; and, in establishing that public convenience and necessity do exist,  
48 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 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 ~~having at least four thousand five hundred customers and~~  
66 ~~combined gross revenues of \$3 million dollars or more~~ desiring to pursue construction projects  
67 that are not in the ordinary course of business shall provide adequate prior public notice of the  
68 contemplated construction and proposed changes to rates, fees and charges, if any, as a result  
69 of such construction to both current customers and those persons who will be affected by the  
70 proposed 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 the 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 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 rates, fees and charges, or the expiration of the 45 day period from  
135 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 rates, fees and charges, and the circuit court shall resolve said 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 Public Service 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 clarify 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.