

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2734**

BY DELEGATES KESSINGER, FAST, STAGGERS AND

ROBINSON

[Originating in the Committee on Finance; February 6,

2019.]



1 A BILL to amend and reenact §11-13-3f of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §11-13F-1, §11-13F-2 and §11-13F-3 of said code; to amend and  
3 reenact §11-24-11 of said code; to amend and reenact §24-2A-5 of said code; and to  
4 amend and reenact §24-3-2 of said code, all relating to reduced rates for low-income  
5 residential customers of privately owned sewer and combined water and sewer utilities;  
6 providing for application for reduced rates; and authorizing certain tax credits for cost of  
7 using reduced rates..

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

#### **§11-13-3f. Tax credit for reducing electric, natural gas, water, or sewer utility rates for low-income residential customers; regulations.**

1 (a) There shall be allowed as a credit against the tax imposed by this article, the cost of  
2 providing electric, or natural gas, or water utility service, or any combination of electric, natural  
3 gas, or water utility services, at reduced rates to qualified low-income residential customers which  
4 has not been reimbursed by any other means.

5 (b) For tax years beginning on or after January 1, 2019, there shall be allowed as a credit  
6 against the tax imposed by this article, the cost of providing sewer service or sewer and water  
7 service at reduced rates to qualified low-income residential customers which has not been  
8 reimbursed by any other means.

9 (c) The tax commissioner may prescribe such regulations as may be necessary to carry  
10 out the purposes of this section, of §11-13F-1 et seq. of this code and of §11-24-11 of this code.

### **ARTICLE 13F. BUSINESS AND OCCUPATION TAX CREDIT FOR REDUCING ELECTRIC, NATURAL GAS, WATER, AND SEWER UTILITY RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS.**

**§11-13F-1. Legislative Purpose.**

1           In order to reimburse public utilities for the revenue deficiencies that they incur in providing  
2 special reduced electric, natural gas, ~~or~~ water, or sewer utility rates to low-income residential  
3 customers in accordance with the provisions of §24-2A-1 *et seq.* of this code, there is hereby  
4 provided a business and occupation tax credit for reducing electric, natural gas, ~~or~~ water, or sewer  
5 utility rates for low-income residential customers.

**§11-13F-2. Definitions.**

1           (a) Any term used in this article shall have the same meaning as when used in a  
2 comparable context in §11-13-1 et seq. of this code, unless a different meaning is clearly required  
3 by the context of its use or by definition in this article.

4           (b) For purposes of this article, the term:

5           (1) "Eligible taxpayer" means a utility which has provided electric or natural gas service,  
6 or both electric and natural gas service; or water or sewer service, or both water and sewer  
7 service, to qualified low-income residential customers at special reduced rates.

8           (2) "Cost of providing ~~electric or natural gas~~, utility service ~~or both~~, at special reduced  
9 rates" means the amount certified by the Public Service Commission under the provisions of §24-  
10 2A-3 of this code as the revenue deficiency incurred by a public utility in providing special reduced  
11 rates for electric, ~~or~~ natural gas, sewer or water utility service as required by §24-2A-1 or approved  
12 pursuant to §24-2A-5 of this code.

13           (3) "Special reduced rates" means the rates ordered by the Public Service Commission  
14 under the authority of §24-2A-1 or §24-2A-5 of this code.

15           (4) "Qualified low-income residential customers" means those utility customers eligible to  
16 receive electric, ~~or~~ natural gas, water or sewer utility service, ~~or both~~, under special reduced rates.

**§11-13F-3. Amount of credit.**

1           (a) There shall be allowed to any eligible taxpayer a credit against the business and  
2 occupation taxes imposed by §24-13-1 et seq. of this code, for reducing electric and natural gas

3 utility rates. The amount of the credit available to any eligible taxpayer shall be equal to its cost  
4 of providing electric or natural gas service, or both, at special reduced rates as certified by the  
5 Public Service Commission under the provisions of §24-2A-3 of this code to qualified residential  
6 customers, less any reimbursement of said cost which the taxpayer has received through any  
7 other means.

8 (b) For tax years beginning on or after January 1, 2019, there shall be allowed to any  
9 eligible taxpayer a credit against the business and occupation taxes imposed by §24-13-1 et seq.  
10 of this code, for reducing rates for providing electric, natural gas, sewer or water service, or any  
11 combination of electric, natural gas, water or sewer services. The amount of the credit available  
12 to any eligible taxpayer shall be equal to its cost of providing utility service at special reduced  
13 rates to qualified residential customers, less any reimbursement of said cost which the taxpayer  
14 has received through any other means.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-11. Credit for reducing electric, natural gas, water, or sewer utility rates for low-income residential customers.**

1 (a) *General.* — A credit shall be allowed against the primary tax liability of an eligible  
2 taxpayer under this article for the cost of providing electric, ~~or~~ natural gas, ~~or~~ water, or sewer utility  
3 service, or any combination of electric, natural gas, ~~or~~ water, or sewer utility services, at special  
4 reduced rates to qualified low-income residential customers which has not been reimbursed by  
5 any other means.

6 (b) *Definitions.* — For purposes of this section, the term:

7 (1) “Eligible taxpayer” means a utility which has provided electric or natural gas or water  
8 or sewer utility service, or any combination of electric, or natural gas, or water, or sewer utility  
9 services, to qualified low-income residential customers at special reduced rates.

10 (2) “Cost of providing electric or natural gas or water or sewer utility service, or any  
11 combination of electric, natural gas, or water, or sewer utility services, at special reduced rates”

12 means the amount certified by the Public Service Commission under the provisions of §24-2A-2  
13 of this code, as the revenue deficiency incurred by a public utility in providing special reduced  
14 rates for electric<sub>1</sub> or natural gas<sub>1</sub> or water, or sewer utility service, or any combination of electric,  
15 natural gas<sub>1</sub> or water, or sewer utility services, as required by §24-2A-1 of this code or authorized  
16 by §24-2A-5 of this code.

17 (3) "Special reduced rates" means the rates ordered or approved by the Public Service  
18 Commission under the authority of §24-2A-1 or §24-2A-5 of this code.

19 (4) "Qualified low-income residential customers" means those utility customers eligible to  
20 receive electric<sub>1</sub> or natural gas<sub>1</sub> or water or sewer utility service, or any combination of electric,  
21 natural gas<sub>1</sub> or water or sewer utility services, under special reduced rates.

22 (c) *Amount of credit.* –

23 (1) For tax years beginning prior to January 1, 2019, the amount of the credit available to  
24 any eligible taxpayer shall be equal to its cost of providing electric<sub>1</sub> or natural gas<sub>1</sub> or water utility  
25 service, or any combination of electric, natural gas<sub>1</sub> or water utility services, at special reduced  
26 rates to qualified residential customers, less any reimbursement of said cost which the taxpayer  
27 has received through any other means.

28 (2) For tax years beginning on or after January 1, 2019, the amount of the credit available  
29 to any eligible taxpayer shall be equal to its cost of providing electric, or natural gas, or water or  
30 sewer utility service, or any combination of electric, natural gas, water or sewer utility services, at  
31 special reduced rates to qualified residential customers, less any reimbursement of said cost  
32 which the taxpayer has received through any other means.

33 (d) *When credit may be taken.* — An eligible taxpayer may claim a credit allowed under  
34 this section on its annual return for the taxable year in which it receives certification of the amount  
35 of its revenue deficiency from the Public Service Commission.

36 Notwithstanding the provisions of §11-24-16 of this code to the contrary, no credit may be  
37 claimed on any declaration of estimated tax filed for such taxable year prior to July 1 of such

38 taxable year. Such credit may be claimed on a declaration or amended declaration filed on or  
39 after that date but only if the amount certified will not be recovered by application of the business  
40 and occupation tax credit allowed by §11-13-3f of this code. In such event, only that amount not  
41 recovered by that credit may be considered or taken as a credit when estimating the tax due under  
42 this article. In no event may the eligible taxpayer recover more than 100 percent of its revenue  
43 deficiency as certified by the Public Service Commission.

44 (e) *Application of credit.* — The credit allowable by this section for a taxable year is not  
45 subject to the 50 percent limitation specified in §11-24-9 of this code. Notwithstanding the  
46 provisions of §11-13F-4 of this code, any unused credit may be carried over and applied against  
47 business and occupation taxes in the manner specified in §11-13F-5 of this code.

48 (f) *Copy of certification order.* — A copy of a certification order from the Public Service  
49 Commission shall be attached to any annual return under this article on which a credit allowed by  
50 this section is taken.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY, NATURAL GAS, WATER, OR SEWER.

#### §24-2A-5. Special rates for certain water, sewer, or combined water and sewer utility customers.

1 (a) The commission may authorize a privately owned water, sewer or combined water and  
2 sewer utility to voluntarily implement a rate design featuring reduced rates and charges for service  
3 for residential utility customers receiving:

4 (1) Social Security Supplemental Security Income (SSI);

5 (2) Temporary Assistance for Needy Families (TANF);

6 (3) Temporary Assistance for Needy Families-Unemployed Parent Program (TANF-UP);

7 or

8 (4) Assistance from the Supplemental Nutrition Assistance Program (SNAP) if they are  
9 sixty years of age or older.

10 (b) The special reduced rate offered by each water, sewer or combined water and sewer  
11 utility to its eligible customers shall be a percentage less, which shall be approved by the  
12 commission, than the rate that would be applicable to such customers if they were not receiving  
13 any of the four forms of assistance that confer eligibility for the special reduced rates approved  
14 by the commission: *Provided*, That such rate reduction shall not exceed 20 percent of the rate  
15 that would be otherwise applicable.

16 (c) Before any individual may qualify to receive the special reduced rates, the following  
17 requirements must be met:

18 (1) The special reduced rates may apply only to current customers or to those persons  
19 who subsequently become customers in their own right. If an SSI, TANF, TANF-UP or SNAP  
20 recipient is living in a household that is served under the name of a person who is not an SSI,  
21 TANF, TANF-UP or SNAP recipient, that service may not be changed or have been changed  
22 subsequent to July 1, 2011, to the name of the SSI, TANF, TANF-UP or SNAP recipient in order  
23 to qualify for service under the special reduced rates.

24 (2) The burden of proving eligibility for the special reduced rates shall be on the customer  
25 requesting such rates. The Department of Health and Human Resources shall establish by rules  
26 and procedures:

27 (A) To inform persons receiving any of the four forms of assistance that confer eligibility  
28 for the special reduced rates about the availability of the special reduced rates;

29 (B) To assist applicants for the special reduced rates in proving their eligibility therefor;  
30 and

31 (C) To assist water, sewer, or combined water and sewer utilities offering the special  
32 reduced rates in determining on a continuing basis the eligibility therefor of persons receiving or  
33 applying for such rates.

34           The commission shall establish rules and procedures for the application for and provision  
35 of service under the special reduced rates and for the determination and certification of revenue  
36 deficiencies resulting from the special reduced rates.

37           (3) In order to provide each eligible residential utility customer the special reduced rates,  
38 each utility providing the special reduced rates shall credit against amounts otherwise owed by  
39 each customer an amount equal to the difference between the total amount that each customer  
40 was actually billed during the previous month and the total amount that each customer would  
41 have been entitled to be billed under the special reduced rates. Each credit shall be fully reflected  
42 on the first bill issued to each customer after approval of each customer's application for the  
43 special reduced rates, except in cases where the interval between the approval and the issuance  
44 of the next bill is so short that it is administratively impracticable to do so, in which case, such  
45 credits shall be fully reflected on the second bill issued to each customer after approval of that  
46 customer's application. If the interval between the approval and the issuance of the next bill is 15  
47 days or more, it may not be deemed administratively impracticable to reflect the credit on the  
48 customer's first bill.

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

**§24-3-2. Discrimination prohibited.**

1           No public utility subject to the provisions of this chapter shall, directly or indirectly, by any  
2 special rate, rebate, drawback or other device or method, charge, demand, collect or receive from  
3 any person, firm or corporation, a greater or less compensation, for any service rendered or to be  
4 rendered, than it charges, demands, collects, or receives from any other person, firm or  
5 corporation for doing a like and contemporaneous service under the same or substantially similar  
6 circumstances and conditions.

7           It shall be unlawful for any public utility subject to the provisions of this chapter to make or  
8           give any undue or unreasonable preference or advantage to any particular person, company, firm,  
9           corporation or locality, or any particular character of traffic or service, in any respect whatsoever,  
10          or to subject any particular person, firm, corporation, company or locality, or any particular  
11          character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any  
12          respect whatsoever.

13          Nothing in this section shall be construed to prevent the commission from:

14          (a) Authorizing or requiring any rate design consistent with the purposes and policies set  
15          forth in §24-2A-1 *et seq.* of this code; or

16          (b) Authorizing a private water, sewer, or combined water and sewer utility to voluntarily  
17          implement a rate design featuring reduced rates and charges for service to qualifying low-income  
18          residential customers.