

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

Time 8:15 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

— ● —

## ENROLLED

*Committee Substitute for*

HOUSE BILL No. 1280

(By Mr. Martin (35<sup>th</sup> Dist.) & Mr. Caudle)

— ● —

Passed March 10, 1979

In Effect - from - Passage

No. 1280

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1280**

(By MR. MARTIN, 35TH DISTRICT, and MR. CAUDLE)

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[Passed March 10, 1979; in effect from passage.]

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AN ACT to amend and reenact article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, seven, eight, eleven, thirteen and fifteen, article two of said chapter twenty-four be amended and reenacted; that said article two be further amended by adding thereto three new sections, designated sections three-a, four-a and four-b; that sections six and seven, article three of said chapter twenty-four be amended and reenacted; that section one, article five of said chapter twenty-four be amended and reenacted; that section five, article two, chapter twenty-four-a of said code be amended and reenacted; that said article two be further amended by adding thereto a new section designated section two-a; that section six, article six of said chapter twenty-four-a be amended and reenacted; that section six; article four, chapter twenty-four-b of said code be amended and reenacted; and that sections one, two and three, article five of said chapter twenty-four-b be amended and reenacted, all relating to reorganization, composition, authority and operations of the public service commission; providing a legislative purpose and policy for regulating the operations of public utilities; requiring annual reports to the Legislature; creating a legislative oversight committee to monitor the public service commission; requiring that certain

studies be made relating to natural gas and electric utilities; requiring the public service commission to submit a reorganization plan to the Legislature; mandating certain items to be included in such plan; requesting information on whether certain staff members of public service commission should be exempt from present civil service pay plans; providing for the reorganization plan to be effective unless disapproved by the Legislature; definitions; defining customers; reconstituting the public service commission; providing for the appointment and reappointment of the public service commissioners and their qualifications and salaries; providing grounds for their removal from office; allowing the public service commission chairman to serve as chairman at the will and pleasure of the governor; requiring the general office of the commission to be located anywhere in the seat of government; deleting specified office hours for the commission; removing the decision making meetings of the public service commission from the state open meetings law; requiring that the orders of the commission include findings of fact and conclusions of law; allowing the commission to hire its own legal counsel; requiring hearing examiners to submit recommended orders to parties; allowing parties to a hearing before the commission an opportunity to submit proposed findings of fact, conclusions of law and briefs; allowing said parties the opportunity to file exceptions to the recommended orders and permitting oral arguments thereon; providing that the recommended order become the order of the commission if no exceptions have been timely filed; permitting pre-trial conferences, stipulations and depositions; limiting the authority of the commission to review and approve the rates and charges of municipally operated utilities; providing that a single hearing examiner decide public service district rate cases; requiring public utilities to give thirty days notice prior to filing for a rate increase unless the commission waives the requirement; providing a new procedure for public utilities to change rates including elimination of rates being put into effect subject to refund except in limited, specific situations; providing a procedure of receivership for utilities and the appointment of a receiver; providing for the return of the utility after receivership and for the liquidation of the assets in certain cases; mandating the establishment of a uniform

system of accounts and accounting for all public service districts and municipally owned utilities; requiring the public service commission to render a decision on applications for a certificate of public convenience and necessity within a certain time period; providing for the enforcement of certain federal acts; prohibiting rate increases based on automatic fuel adjustment clause; allowing the governor to designate the public service commission as the responsible or enforcing agency in this state for the enforcement of certain future federal acts; increasing the special license fees; requiring a permit from the public service commission prior to abandoning service; revising procedures for appeal; providing that all service penalties collected for violation of the gas pipeline safety provisions be paid into the state treasury; removing specific organizing references in the supervision of gas pipeline safety; prohibiting the filing for a rate increase when a previous application for an increase is still pending before the commission; and providing for certain penalties.

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

That article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, seven, eight, eleven, thirteen and fifteen, article two of said chapter twenty-four be amended and reenacted; that said article two be further amended by adding thereto three new sections, designated sections three-a, four-a and four-b; that sections six and seven, article three of said chapter twenty-four be amended and reenacted; that section one article five of said chapter twenty-four be amended and reenacted; that section five, article two, chapter twenty-four-a of said code be amended and reenacted; that said article two be further amended by adding thereto a new section designated section two-a; that section six, article six of said chapter twenty-four-a be amended and reenacted; that section six, article four, chapter twenty-four-b of said code be amended and reenacted; and that sections one, two and three, article five of said chapter twenty-four-b be amended and reenacted, all to read as follows:

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§24-1-1. Legislative purpose and policy; reports to the Legislature.**

1 (a) It is the purpose and policy of the Legislature in en-  
2 acting this chapter to confer upon the public service com-  
3 mission of this state the authority and duty to enforce and  
4 regulate the practices, services and rates of public utilities  
5 in order to:

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

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

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

14 (4) Ensure that rates and charges for utility services are  
15 just, reasonable, applied without unjust discrimination or  
16 preference and based primarily on the costs of providing these  
17 services; and

18 (5) Encourage energy conservation and the effective and  
19 efficient management of regulated utility enterprises.

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

27 (c) The Legislature encourages the public service com-  
28 mission to explore and consider the potential benefits or  
29 risks associated with the adoption in this state of emerging  
30 concepts in utility rate making, service standards and rate  
31 design. The commission is directed to conduct inquiries and hear-  
32 ings into such concepts as cost of service, declining block rates,

33 time-of-day rates, peak load pricing, seasonal rates, lifeline  
 34 rates, interruptible rates, load management techniques, master  
 35 metering automatic adjustment clauses, information to con-  
 36 sumers concerning rate schedules, procedures for termination  
 37 of service and advertising.

38 The public service commission shall report to the governor  
 39 and the Legislature regarding its policies and approach to  
 40 each of these areas not later than the first day of January,  
 41 one thousand nine hundred eighty-two.

42 (d) It is legislative policy to ensure that the Legislature and  
 43 the general public become better informed regarding the regu-  
 44 lation of public utilities in this state and the conduct of the  
 45 business of the public service commission. To aid in the  
 46 achievement of this policy, the public service commission an-  
 47 nually shall present to the joint committee on government and  
 48 finance, created by article three, chapter four of this code, or  
 49 a subcommittee designated by the joint committee, a manage-  
 50 ment summary report which describes in a concise manner:

51 (1) The major activities of the commission for the year  
 52 especially as such activities relate to the implementation of  
 53 the provisions of this chapter;

54 (2) Important policy decisions reached and initiatives un-  
 55 dertaken during the year;

56 (3) The current balance of supply and demand for natural  
 57 gas and electric utility services in the state and a forecast of the  
 58 probable balance for the next ten years; and

59 (4) Other information considered by the commission to  
 60 be important including recommendations for statutory reform  
 61 and the reasons for such recommendations.

62 (e) In addition to any other studies and reports required  
 63 to be conducted and made by the public service commission  
 64 pursuant to any other provision of this section, the commis-  
 65 sion shall study and initially report to the Legislature no later  
 66 than the first day of the regular session of the Legislature in  
 67 the year one thousand nine hundred eighty upon:

68 1. The extent to which natural gas wells or wells heretofore

69 supplying gas utilities in this state have been capped off or  
70 shut in; the number of such wells, their probable extent of  
71 future production and the reasons given and any justification  
72 for, capping off or shutting in such wells, the reasons if any,  
73 why persons engaged or heretofore engaged in the develop-  
74 ment of gas wells in this state or the appalachian areas have  
75 been discouraged from drilling, developing or selling the  
76 production of such wells and whether there are fixed policies  
77 by any utility or group of utilities to avoid the purchase of  
78 natural gas produced in the appalachian region of the United  
79 States generally and in West Virginia specifically:

80 2. The extent of the export and import of natural gas  
81 utility supplies in West Virginia.

82 3. The cumulative effect of the practices mentioned in  
83 subparagraphs (1) and (2) of this section upon rates heretofore  
84 and hereafter charged gas utility customers in West Virginia.

85 In carrying out the provisions of this section the commission  
86 shall have jurisdiction over such persons, whether public  
87 utilities or not, as may be in the opinion of the commission  
88 necessary to the exercise of its mandate and may compel  
89 attendance before it, take testimony under oath and compel the  
90 production of papers or other documents. Upon reasonable re-  
91 quest by the commission, all other state agencies shall cooper-  
92 ate with the commission in carrying out the provisions and  
93 requirements of this subsection.

94 (f) No later than the first day of the regular session of  
95 the Legislature in the year one thousand nine hundred eighty,  
96 the public service commission shall submit to the Legislature  
97 a plan for internal reorganization which plan shall specifically  
98 address the following:

99 (1) A division within the public service commission which  
100 shall include the office of the commissioners, the hearing  
101 examiners and such support staff as may be necessary to carry  
102 out the functions of decision making and general supervision  
103 of the commission, which functions shall not include advocacy  
104 in cases before the commission;

105 (2) The creation of a division which shall act as an advo-

106 cate for the position of and in the interest of all customers;

107 (3) The means and procedures by which the division to be  
108 created pursuant to the provisions of subdivision (2) of this  
109 subsection shall protect the interests of each class of custo-  
110 mers and the means by which the commission will assure that  
111 such division will be financially and departmentally indepen-  
112 dent of the division created by subdivision (1) of this subsec-  
113 tion;

114 (4) The creation of a division within the public service  
115 commission which shall assume the duties and responsibilities  
116 now charged to the commissioners with regard to motor  
117 carriers which division shall exist separately from those divi-  
118 sions set out in subdivisions (1) and (2) of this subsection and  
119 which shall relieve the commissioners of all except minimal  
120 administrative responsibilities as to motor carriers and which  
121 plan shall provide for a hearing procedure to relieve the  
122 commissioners from hearing motor carrier cases;

123 (5) Which members of the staff of the public service  
124 commission shall be exempted from the salary schedules or  
125 pay plan adopted by the civil service commission and identify  
126 such staff members by job classification or designation, to-  
127 gether with the salary or salary ranges for each such job  
128 classification or designation;

129 (6) The manner in which the commission will strengthen its  
130 knowledge and independent capacity to analyze key conditions  
131 and trends in the industries it regulates extending from general  
132 industry analysis and supply-demand forecasting to continuing  
133 and more thorough scrutiny of the capacity planning, con-  
134 struction management, operating performing and financial  
135 condition of the major companies within these industries.

136 Such plan shall be based on the concept that each of the  
137 divisions mentioned in subparagraphs (1), (2) and (4) of this  
138 subsection shall exist independently of the others and the  
139 plan shall discourage ex parte communications between them  
140 by such means as the commission shall direct, including, but  
141 not limited to, separate clerical and professional staffing for  
142 each division. Further, the public service commission is  
143 directed to incorporate within the said plan to the fullest



144 extent possible the recommendations presented to the sub-  
145 committee on the public service commission of the joint  
146 committee on government and finance in a final report dated  
147 February, one thousand nine hundred seventy-nine and en-  
148 titled "A Plan For Regulatory Reform and Management  
149 Improvement."

150 The commission shall before the fifth day of January, one  
151 thousand nine hundred eighty, adopt said plan by order which  
152 order shall promulgate the same as a rule of the commission to  
153 be effective upon the date specified in said order, which date  
154 shall be no later than the thirty-first day of December, one  
155 thousand nine hundred eighty. Certified copies of such order  
156 and rule shall be filed on the first day of the regular session  
157 of the Legislature, one thousand nine hundred eighty, by the  
158 chairman of the commission with the clerk of each house of  
159 the Legislature, the governor and the secretary of state. The  
160 chairman of the commission shall also file with the office of  
161 the secretary of state the receipt of the clerk of each house and  
162 of the governor, which receipt shall evidence compliance with  
163 this section.

164 Upon the filing of a certified copy of such order and rule,  
165 the clerk of each house of the Legislature shall report the  
166 same to their respective houses and the presiding officer  
167 thereof shall refer the same to appropriate standing com-  
168 mittee or committees.

169 Within the limits of funds appropriated therefor, the rule  
170 of the public service commission shall be effective upon the  
171 date specified in the order of the commission promulgating it  
172 unless an alternative plan be adopted by general law or unless  
173 the rule is disapproved by a concurrent resolution of the  
174 Legislature adopted prior to adjournment sine die of the  
175 regular session of the Legislature to be held in the year one  
176 thousand nine hundred eighty: *Provided*, That if such rule is  
177 approved in part and disapproved in part by a concurrent  
178 resolution of the Legislature adopted prior to such adjourn-  
179 ment, such rule shall be effective to the extent and only to the  
180 extent that the same is approved by such concurrent resolution.

181 The rules promulgated and made effective pursuant to this

182 section shall be effective notwithstanding any other provisions  
183 of this code for the promulgation of rules or regulations.

184 (g) The public service commission is hereby directed to  
185 cooperate with the joint committee on government and finance  
186 of the Legislature in its review, examination and study of the  
187 administrative operations and enforcement record of the rail-  
188 road safety division of the public service commission and  
189 any similar studies.

**§24-1-2. Definitions.**

1 Except where a different meaning clearly appears from the  
2 context the words "public utility" when used in this chapter  
3 shall mean and include any person or persons, or association  
4 of persons, however associated, whether incorporated or not,  
5 including municipalities, engaged in any business, whether  
6 herein enumerated or not, which is, or shall hereafter be held  
7 to be, a public service. Whenever in this chapter the words  
8 "commission" or "public service commission" occur such  
9 word or words shall, unless a different intent clearly appears  
10 from the context, be taken to mean the public service com-  
11 mission of West Virginia. Whenever used in this chapter,  
12 "customer" shall mean and include any person, firm, corpor-  
13 ation, municipality, public service district or any other entity  
14 who purchases a product or services of any utility and shall  
15 include any such person, firm, corporation, municipality, pub-  
16 lic service district or any other entity who purchases such  
17 services or product for resale.

**§24-1-3. Reconstitution and composition of the public service  
commission; appointment, qualifications, and disqualifi-  
cation of commissioners; removal from office; terms of  
office; vacancies.**

1 (a) The public service commission of West Virginia, hereto-  
2 fore established, is continued and directed as provided by this  
3 chapter, chapter twenty-four-a and chapter twenty-four-b. The  
4 public service commission may sue and be sued by that name.  
5 Such public service commission shall consist of three members  
6 who shall be appointed by the governor with the advice and  
7 consent of the Senate. The commissioners shall be citizens and

8 residents of this state and at least one of them shall be duly  
9 licensed to practice law in West Virginia, of not less than ten  
10 years' actual experience at the bar. No more than two of said  
11 commissioners shall be members of the same political party.  
12 Each commissioner shall, before entering upon the duties of his  
13 office, take and subscribe to the oath provided by section five,  
14 article four of the constitution, which oath shall be filed in the  
15 office of the secretary of state. The governor shall designate one  
16 of the commissioners to serve as chairman at the governor's will  
17 and pleasure. The chairman shall be the chief administrative of-  
18 ficer of the commission. The governor may remove any com-  
19 missioner only for incompetency, neglect of duty, gross immor-  
20 ality, malfeasance in office, or violation of subsection (c) of  
21 this section.

22 (b) The unexpired terms of members of the public service  
23 commission at the time this subsection becomes effective are  
24 continued through the thirtieth day of June, one thousand nine  
25 hundred seventy-nine. In accordance with the provisions of sub-  
26 section (a) of this section, the governor shall appoint three com-  
27 missioners, one for a term of two years, one for a term of four  
28 years and one for a term of six years, all the terms beginning on  
29 the first day of July, one thousand nine hundred seventy-nine.  
30 All future appointments are for terms of six years, except that  
31 an appointment to fill a vacancy is for the unexpired term only.  
32 The commissioners whose terms are terminated by the provi-  
33 sions of this subsection are eligible for reappointment.

34 (c) No person while in the employ of, or holding any of-  
35 ficial relation to, any public utility subject to the provisions  
36 of this chapter, or holding any stocks or bonds thereof, or who  
37 is pecuniarily interested therein, may serve as a member of the  
38 commission or as an employee thereof. Nor may any such com-  
39 missioners be a candidate for or hold public office, or be a  
40 member of any political committee, while acting as such  
41 commissioner; nor may any commissioner or employee of said  
42 commission receive any pass, free transportation or other thing  
43 of value, either directly or indirectly, from any public utility  
44 or motor carrier subject to the provisions of this chapter. In  
45 case any of the commissioners becomes a candidate for any  
46 public office or a member of any political committee, the

47 governor shall remove him from office and shall appoint a  
48 new commissioner to fill the vacancy created.

49 (d) For the administration of this chapter, chapter twenty-  
50 four-a and chapter twenty-four-b of this code, each commis-  
51 sioner shall receive a salary of twenty-six thousand five  
52 hundred dollars a year payable in equal monthly installments  
53 for the duration of the terms expiring the thirtieth day of June  
54 one thousand nine hundred seventy-nine. Effective the first  
55 day of July, one thousand nine hundred seventy-nine, for the  
56 administration of this chapter, chapter twenty-four-a and  
57 chapter twenty-four-b of this code, each commissioner shall  
58 receive a salary of thirty-two thousand five hundred dollars  
59 a year to be paid in monthly installments from the special  
60 funds in such amounts as follows:

61 (1) From the public service commission fund collected  
62 under the provisions of section six, article three of this chap-  
63 ter, twenty-five thousand one hundred forty dollars;

64 (2) From the public service commission motor carrier fund  
65 collected under the provisions of section six, article six, chap-  
66 ter twenty-four-a of this code, six thousand one hundred thirty-  
67 five dollars; and

68 (3) From the public service commission gas pipeline safety  
69 fund collected under the provisions of section three, article  
70 five, chapter twenty-four-b of this code, one thousand two  
71 hundred twenty-five dollars.

72 In addition to this salary provided for all commissioners,  
73 the chairman of the commission shall receive two thousand  
74 five hundred dollars a year to be paid in monthly installments  
75 from the public service commission fund collected under the  
76 provisions of section six, article three of this chapter.

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

1 The commission shall appoint a secretary and such other  
2 employees as may be necessary to carry out the provisions of  
3 this chapter and shall fix their respective salaries or compen-

4 sations. It shall be the duty of the secretary to keep a full and  
5 true record of all proceedings, acts, orders and judgments of  
6 the commission, to issue all necessary process, returns and  
7 notices, to keep all books, maps, documents and papers order-  
8 ed filed by the commission, and all orders made by the com-  
9 mission or approved and confirmed by it and ordered to be  
10 filed; and he shall be responsible to the commission for the  
11 safe custody and preservation of all such documents in his  
12 office. He may administer oaths in all parts of the state, so  
13 far as the exercise of such power is properly incidental to the  
14 performance of his duty or that of the commission.

15 The commission may designate such of its employees as it  
16 deems necessary to hold hearings, held or required by this  
17 chapter, and to take evidence at such hearings, which em-  
18 ployees are hereby empowered to subpoena witnesses, admin-  
19 ister oaths, take testimony, require the production of docu-  
20 mentary evidence and exercise such other powers and per-  
21 form such other duties as may be delegated to them and  
22 required by the commission, in any proceeding or examination  
23 instituted or conducted by the commission under this chapter,  
24 at any designated place of hearing within the state.

25 Any commissioner or person employed by the commis-  
26 sion other than on a part-time basis shall devote full time  
27 to the performance of his duties as such commissioner or  
28 employee during the regular working hours as set by the  
29 commission.

**§24-1-5. Seal to be adopted; collection and disposition of fees.**

1 The commission shall adopt a seal which shall be affixed  
2 to all papers under such regulations as the commission may  
3 prescribe. The commission shall likewise prescribe a schedule  
4 of fees to be charged for the certification of all records and  
5 papers, and sums to be paid witnesses and other costs neces-  
6 sary and incident to hearings before it and order the same paid  
7 by the unsuccessful party. All sums collected by the secretary,  
8 except witness fees, shall be paid by him into the state trea-  
9 sury and be credited to the public service commission fund  
10 provided for in section six, article three of this chapter. The  
11 witness fees shall be paid to the person to whom they are al-

12 lowed. The sums to be paid into the public service commission  
13 fund representing the collection of any month shall be so  
14 paid on or before the tenth of the following month.

**§24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.**

1 The general office of the commission shall be kept at the  
2 seat of government and in charge of the secretary or his de-  
3 puty. Hearings and the taking of evidence may be had at such  
4 times and places and in such manner in each particular case  
5 as the commission may designate.

6 The concurrent judgment of two of the commissioners,  
7 when in session as the commission, shall be deemed the action  
8 of the commission, and a vacancy in the commission shall not  
9 affect the right or duty of the remaining commissioners to  
10 function as a commission.

**§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; deliberations private; inscription on, use of and judicial notice of seal.**

1 The commission shall prescribe such rules and regulations  
2 as may be necessary to carry out the provisions of this chapter,  
3 including rules of procedure and for taking evidence in all  
4 matters that may come before it, and enter such orders as may  
5 be just and lawful: *Provided*, That no such rule or regulation  
6 shall be effective unless promulgated pursuant to the provi-  
7 sions of sections one through ten, article three, chapter twenty-  
8 nine-a of this code: *Provided, however*, That no such rule or  
9 regulation shall become effective until sixty days after its  
10 final adoption or until the effective date proposed by the com-  
11 mission, whichever is later: *Provided further*, That any rules  
12 and regulations promulgated prior to the effective date of this  
13 section shall remain in full force and effect unless changed,  
14 modified or repealed in accordance herewith. The rules and  
15 regulations promulgated hereunder by the public service com-  
16 mission shall not be subject to the legislative rule-making re-  
17 view procedures established in sections eleven through fifteen,  
18 article three, chapter twenty-nine-a of this code. In the investi-  
19 gations, preparations and hearings of cases, the commission

20 shall not be bound by the technical rules of pleading and evi-  
21 dence, but in that respect it may exercise such discretion as  
22 will facilitate its efforts to understand and learn all the facts  
23 bearing upon the right and justice of the matters before it.

24 Meetings of the commission during which it makes a deci-  
25 sion or deliberates toward a decision on any matter are exempt  
26 from the requirements of article nine-a, chapter six of this  
27 code, notwithstanding any other provisions of this code to the  
28 contrary.

29 All orders of the commission shall set forth separately  
30 findings of fact and conclusions of law, which findings of fact  
31 shall make specific reference to the evidence in the record  
32 which supports such findings.

33 The commission shall have a seal bearing the following  
34 inscription: "The Public Service Commission of West Virginia."  
35 The seal shall be affixed to all writs and authentications of  
36 copies of records, and to such other instruments as the com-  
37 mission shall direct. All courts shall take judicial notice of  
38 said seal.

**§24-1-8. Legal counsel for the commission.**

1 The commission may employ counsel to represent it in  
2 proceedings before it on application, complaint, or other-  
3 wise, and proceedings of any nature in any and all courts  
4 or before administrative or executive boards and to act as  
5 legal advisers to the commission in all matters for which their  
6 services, in the opinion of the commission, are required.  
7 The compensation of such counsel shall be fixed by the  
8 commission and shall be paid as are other employees of the  
9 commission. The commission shall notify the attorney general  
10 of any action or suit brought against the commission.

**§24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.**

1 (a) Any order recommended by a single hearing commis-  
2 sioner, a hearing examiner or a panel consisting of a hearing  
3 examiner and a single commissioner with respect to any matter  
4 referred for hearing shall be in writing and shall set forth  
5 separately findings of fact and conclusions of law, which

6 findings of fact shall make specific reference to the evidence  
7 in the record which supports such findings, and shall be filed  
8 with the commission. A copy of such recommended order  
9 shall be served upon the parties who have appeared in the  
10 proceeding.

11 (b) Before any order is recommended, the parties shall be  
12 afforded an opportunity to submit, within the time prescribed  
13 by the hearing commissioner, hearing examiner or panel  
14 proposed findings of fact and conclusions of law and briefs.

15 (c) Within the time prescribed, the parties shall be af-  
16 farded an opportunity to file exceptions to the recommended  
17 order and a brief in support thereof, provided the time so fixed  
18 shall be not less than fifteen days from the date of mail-  
19 ing by certified mail of such recommended order to the  
20 parties.

21 (d) In all proceedings in which exceptions have been filed  
22 to a recommended order, the commission, before issuing its  
23 final order, may afford the parties an opportunity for oral  
24 argument. When exceptions are filed, as herein provided, it  
25 shall be the duty of the commission to consider the same and  
26 if sufficient reason appears therefor, to grant such review or  
27 make such order or hold or authorize such further hearing  
28 or proceeding as may be necessary or proper to carry out  
29 the purposes of this chapter. The commission, after review,  
30 upon the whole record, or as supplemented by a further hear-  
31 ing, shall decide the matter in controversy and make ap-  
32 propriate order thereon.

33 (e) When no exceptions are filed within the time specified,  
34 such recommended order shall become the order of the com-  
35 mission five days following the expiration of the period for  
36 filing exceptions unless the order is stayed or postponed by the  
37 commission: *Provided*, That the commission may, on its own  
38 motion before such order becomes the order of the com-  
39 mission, review any such matter and take action thereon as if  
40 exceptions thereto had been filed.

41 (f) The commission, a hearing commissioner, a hearing  
42 examiner or panel to whom a matter is referred may expedite  
43 the hearing and decision of any case if the public interest so



44 requires by the use of pre-trial conferences, stipulations and  
45 agreements, prepared testimony, deposition, daily transcripts  
46 of evidence, trial briefs and oral argument in lieu of briefs,  
47 as appropriate.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COM-  
MISSION.**

**§24-2-1. Jurisdiction of commission.**

1 The jurisdiction of the commission shall extend to all  
2 public utilities in this state, and shall include any utility  
3 engaged in any of the following public services:  
  
4 Common carriage of passengers or goods, whether by air,  
5 railroad, street railroad, motor or otherwise, by express or  
6 otherwise, by land, water or air, whether wholly or partly  
7 by land, water or air; transportation of oil, gas or water by  
8 pipeline; transportation of coal and its derivatives and all  
9 mixtures and combinations thereof with other substances by  
10 pipeline; sleeping car or parlor car services; transmission of  
11 messages by telephone, telegraph or radio; generation and  
12 transmission of electrical energy by hydroelectric or other  
13 utilities for service to the public, whether directly or through  
14 a distributing utility; supplying water, gas or electricity, by  
15 municipalities or others; sewer systems servicing twenty-five or  
16 more persons or firms other than the owner of the sewer  
17 systems; any public service district created under the pro-  
18 visions of article thirteen-a, chapter sixteen of this code; toll  
19 bridges, wharves, ferries; and any other public service: *Pro-*  
20 *vided*, That the jurisdiction the commission may exercise  
21 over the rates and charges of municipally operated public  
22 utilities is limited to that authority granted the commission in  
23 section four-b of this article: *Provided, however*, That the  
24 decision making authority granted to the commission in sec-  
25 tions four and four-a of this chapter shall, in respect to an  
26 application filed by a public service district, be delegated to a  
27 single hearing examiner appointed from the commission staff,  
28 which hearing examiner shall be authorized to carry out all  
29 decision making duties assigned to the commission by said  
30 sections, and to issue orders having the full force and effect  
31 of orders of the commission.

32 The commission may, upon application, waive its jurisdic-  
33 tion and allow a utility operating in an adjoining state to  
34 provide service in West Virginia when:

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

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

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

43 (4) The number of customers to be served is not substantial.

44 The rates the out-of-state utility charges West Virginia  
45 customers shall be the same as the rate the utility is duly  
46 authorized to charge in the adjoining jurisdiction.

47 The commission, in the case of any such utility, may revoke  
48 its waiver of jurisdiction for good cause.

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

1 The commission shall have power to enforce, originate,  
2 establish, change and promulgate tariffs, rates, joint rates,  
3 tolls and schedules for all public utilities: *Provided*, That the  
4 commission may exercise such rate authority over municipal  
5 utilities only under the circumstances set forth in section  
6 four-b of this article. And whenever ~~the~~ commission shall,  
7 after hearing, find any existing rates, tolls, tariffs, joint  
8 rates or schedules unjust, unreasonable, insufficient or un-  
9 justly discriminatory or otherwise in violation of any of  
10 the provisions of this chapter, the commission shall by an  
11 order fix reasonable rates, joint rates, tariffs, tolls or schedules  
12 to be followed in the future in lieu of those found to be un-  
13 just, unreasonable, insufficient or unjustly discriminatory or  
14 otherwise in violation of any provisions of law, and the said  
15 commission, in fixing the rate of any railroad company, may  
16 fix a fair, reasonable and just rate to be charged on any branch  
17 line thereof, independent of the rate charged on the main line  
18 of such railroad.

**§24-2-3a. Advance notice of filing of general rate case required.**

1 All public utilities subject to the provisions of sections four  
2 or four-a of this article, intending to institute a general rate  
3 case, shall give the commission not less than thirty days'  
4 notice before proceeding under the provision of those sections  
5 unless the commission modifies or waives such notice re-  
6 quirement.

**§24-2-4. Procedure for changing rates.**

1 No public utility subject to this chapter, except those  
2 utilities subject to the provisions of section four-b of this  
3 article, shall change, suspend or annul any rate, joint rate,  
4 charge, rental or classification except after thirty days' notice  
5 to the commission and the public, which notice shall plainly  
6 state the changes proposed to be made in the schedule then  
7 in force and the time when the changed rates or charges  
8 shall go into effect; but the commission may enter an order  
9 suspending the proposed rate as hereinafter provided. The  
10 proposed changes shall be shown by printing new schedules,  
11 or shall be plainly indicated upon the schedules in force at  
12 the time, and kept open to public inspection: *Provided*, That  
13 the commission may, in its discretion, and for good cause  
14 shown, allow changes upon less time than the notice herein  
15 specified, or may modify the requirements of this section in  
16 respect to publishing, posting and filing of tariffs, either by  
17 particular instructions or by general order.

18 Whenever there shall be filed with the commission any  
19 schedule stating a change in the rates or charges, or joint  
20 rates or charges, or stating a new individual or joint rate  
21 or charge or joint classification or any new individual or  
22 joint regulation or practice affecting any rate or charge,  
23 the commission shall have authority, either upon complaint  
24 or upon its own initiative without complaint, to enter upon  
25 a hearing concerning the propriety of such rate, charge, classi-  
26 fication, regulation or practice; and, if the commission so  
27 orders, it may proceed without answer or other form of  
28 pleading by the interested parties, but upon reasonable notice,  
29 and, pending such hearing and the decision thereon, the  
30 commission, upon filing with such schedule and delivering to

31 the public utility affected thereby a statement in writing of  
32 its reasons for such suspension, may suspend the operation  
33 of such schedule and defer the use of such rate, charge,  
34 classification, regulation or practice, but not for a longer  
35 period than one hundred and twenty days beyond the time  
36 when such rate, charge, classification, regulation or practice  
37 would otherwise go into effect; and after full hearing, whether  
38 completed before or after the rate, charge, classification,  
39 regulation or practice goes into effect, the commission may  
40 make such order in reference to such rate, charge, classifica-  
41 tion, regulation or practice as would be proper in a pro-  
42 ceeding initiated after the rate, charge, classification, regula-  
43 tion or practice had become effective: *Provided*, That if  
44 any such hearing and decision thereon cannot be concluded  
45 within the period of suspension, as above stated, such rate,  
46 charge, classification, regulation or practice shall go into  
47 effect at the end of such period. In such case the com-  
48 mission may require such public utility to enter into a  
49 bond in an amount deemed by the commission to be reas-  
50 onable and conditioned for the refund to the persons or  
51 parties entitled thereto of the amount of the excess, plus  
52 interest at the rate of not less than seven percent per  
53 annum, as may be specified by the commission, if such  
54 rate so put into effect is subsequently determined to be  
55 higher than those finally fixed for such utility. In speci-  
56 fying the applicable interest rate, the commission shall be  
57 guided by the interest rate which such public utility would  
58 in all probability have to agree to pay if such public  
59 utility at that time borrowed in the marketplace a sum  
60 of money equivalent to the amount of money the com-  
61 mission estimates the increase in rates will produce  
62 between the effective date of such increase and the  
63 anticipated date the rates will be finally fixed for such public  
64 utility, it being intended that a public utility should be dis-  
65 couraged from imposing higher rates than it should reasonably  
66 anticipate will be finally fixed as a means in effect of bor-  
67 rowing money at a rate of interest less than such public  
68 utility would have to agree to pay if it borrowed money in the  
69 marketplace. No such accrued interest paid on any such  
70 refund shall be deemed part of the cost of doing business in

71 a subsequent application for changing rates or any decision  
72 thereon. At any hearing involving a rate sought to be in-  
73 creased or involving the change of any fare, charge, classifica-  
74 tion, regulation or practice, the burden of proof to show that  
75 the increased rate or proposed increased rate, or the proposed  
76 change of fare, charge, classification, regulation or practice  
77 is just and reasonable shall be upon the public utility making  
78 application for such change. When in any case pending  
79 before the commission all evidence shall have been taken,  
80 and the hearing completed, the commission shall, within  
81 three months, render a decision in such case.

82 Where more than twenty members of the public are affected  
83 by a proposed change in rates, it shall be a sufficient notice  
84 to the public within the meaning of this section if such  
85 notice is published as a Class II legal advertisement in com-  
86 pliance with the provision of article three, chapter fifty-nine  
87 of this code, and the publication area for such publication  
88 shall be the community where the majority of the resident  
89 members of the public affected by such change reside or,  
90 in case of nonresidents, have their principal place of business  
91 within this state. The provisions of this section shall expire  
92 on and be of no further force and effect after the thirtieth  
93 day of June, one thousand nine hundred eighty-one, except  
94 that as to any case pending on said date in which the sus-  
95 pension period has expired and rates are in effect under bond  
96 such case shall be proceeded with in accordance with this  
97 section; as to any other case pending on said date, the com-  
98 mission shall treat the case as filed anew on the first day of  
99 July, one thousand nine hundred eighty-one, except that it  
100 shall not be necessary for any new process or notice to be  
101 served or published.

**§24-2-4a. Procedure for changing rates.**

1 After the thirtieth day of June, one thousand nine hundred  
2 eighty-one, no public utility subject to this chapter except  
3 those utilities subject to the provisions of section four-b of  
4 this article, shall change, suspend or annul any rate, joint  
5 rate, charge, rental or classification except after thirty days'  
6 notice to the commission and the public, which notice shall  
7 plainly state the changes proposed to be made in the schedule

8 then in force and the time when the changed rates or charges  
9 shall go into effect; but the commission may enter an order  
10 suspending the proposed rate as hereinafter provided. The  
11 proposed changes shall be shown by printing new schedules,  
12 or shall be plainly indicated upon the schedules in force at the  
13 time, and kept open to public inspection: *Provided*, That the  
14 commission may, in its discretion, and for good cause shown,  
15 allow changes upon less time than the notice herein specified,  
16 or may modify the requirements of this section in respect to  
17 publishing, posting and filing of tariffs, either by particular in-  
18 structions or by general order.

19 Whenever there shall be filed with the commission any  
20 schedule stating a change in the rates or charges, or joint  
21 rates or charges, or stating a new individual or joint rate or  
22 charge or joint classification or any new individual or joint  
23 regulation or practice affecting any rate or charge, the com-  
24 mission may either upon complaint or upon its own initiative  
25 without complaint, enter upon a hearing concerning the pro-  
26 priety of such rate, charge, classification, regulation or practice;  
27 and, if the commission so orders, it may proceed without  
28 answer or other form of pleading by the interested parties, but  
29 upon reasonable notice, and, pending such hearing and the  
30 decisions thereon, the commission, upon filing with such  
31 schedule and delivering to the public utility affected thereby  
32 a statement in writing of its reasons for such suspension,  
33 may suspend the operation of such schedule and defer the use  
34 of such rate, charge, classification, regulation or practice,  
35 but not for a longer period than two hundred and seventy days  
36 beyond the time when such rate, charge, classification, regula-  
37 tion or practice would otherwise go into effect; and after full  
38 hearing, whether completed before or after the rate, charge,  
39 classification, regulation or practice goes into effect, the com-  
40 mission may make such order in reference to such rate, charge,  
41 classification, regulation or practice as would be proper in a  
42 proceeding initiated after the rate, charge, classification, regu-  
43 lation or practice had become effective: *Provided*, That in the  
44 case of a public utility having two thousand five hundred  
45 customers or less and which is not principally owned by any  
46 other public utility corporation or public utility holding

47 corporation, the commission may suspend the operation of  
48 such schedule and defer the use of such rate, charge, classi-  
49 fication, regulation or practice, but not for a longer period  
50 than one hundred twenty days, beyond the time when such  
51 rate, charge, classification, regulation or practice would other-  
52 wise go into effect; and in the case of a public utility  
53 having more than two thousand five hundred customers, but  
54 not more than five thousand customers, and which is not  
55 principally owned by any other public utility corporation or  
56 public utility holding corporation, the commission may suspend  
57 the operation of such schedule and defer the use of such rate,  
58 charge, classification, regulation or practice, but not for a  
59 longer period than one hundred fifty days, beyond the time  
60 when such rate, charge, classification, regulation or practice  
61 would otherwise go into effect; and in the case of a public  
62 utility having more than five thousand customers, but not  
63 more than seven thousand five hundred customers, and which  
64 is not principally owned by any other public utility corpora-  
65 tion or public utility holding corporation, the commission may  
66 suspend the operation of schedule and defer the use of such  
67 rate, charge, classification, regulation or practice, but not for  
68 a longer period than one hundred eighty days, beyond the  
69 time when such rate, charge, classification, regulation or  
70 practice would otherwise go into effect; and after full hearing,  
71 whether completed before or after the rate, charge, classifi-  
72 cation, regulation or practice goes into effect, the commission  
73 may make such order in reference to such rate, charge, classi-  
74 fication, regulation or practice as would be proper in a pro-  
75 ceeding initiated after the rate, charge, classification, regula-  
76 tion or practice had become effective: *Provided, however,* That  
77 if any such hearing and decision thereon is not concluded with-  
78 in the periods of suspension, as above stated, such rate, charge,  
79 classification, regulation or practice shall go into effect at the  
80 end of such period not subject to refund: *Provided further,*  
81 That if any such rate, charge, classification, regulation or  
82 practice goes into effect because of the failure of the commis-  
83 sion to reach a decision, the same shall not preclude the com-  
84 mission from rendering a decision with respect thereto which  
85 would disapprove, reduce or modify any such proposed rate,  
86 charge, classification, regulation or practice, in whole or in

87 part, but any such disapproval, reduction or modification shall  
88 not be deemed to require a refund to the customers of such  
89 utility as to any rate, charge, classification, regulation or prac-  
90 tice so disapproved, reduced or modified. The fact of any rate,  
91 charge, classification, regulation or practice going into effect  
92 by reason of the commission's failure to act thereon shall not  
93 affect the commission's power and authority to subsequently  
94 act with respect to any such application or change in any rate,  
95 charge, classification, regulation or practice. Any rate, charge,  
96 classification, regulation or practice which shall be approved,  
97 disapproved, modified or changed, in whole or in part, by  
98 decision of the commission shall remain in effect as so ap-  
99 proved, disapproved, modified or changed during the period  
100 or pendency of any subsequent hearing thereon or appeal there-  
101 from. Orders of the commission affecting rates, charges, classi-  
102 fications, regulations or practices which have gone into effect  
103 automatically at the end of the suspension period are prospec-  
104 tive in effect only.

105 At any hearing involving a rate sought to be increased or  
106 involving the change of any rate, charge, classification, regu-  
107 lation or practice, the burden of proof to show that the in-  
108 creased rate or proposed increased rate, or the proposed  
109 change of rate, charge, classification, regulation or practice  
110 is just and reasonable shall be upon the public utility making  
111 application for such change. When in any case pending before  
112 the commission all evidence shall have been taken and the  
113 hearing completed, the commission shall render a decision in  
114 such case. The failure of the commission to render a decision  
115 with respect to any such proposed change in any such rate,  
116 charge, classification, regulation or practice within the various  
117 time periods specified in this section after the application there-  
118 fore shall constitute neglect of duty on the part of the commis-  
119 sion and each member thereof.

120 Where more than twenty members of the public are affected  
121 by a proposed change in rates, it shall be a sufficient notice  
122 to the public within the meaning of this section if such notice  
123 is published as Class II legal advertisement in compliance  
124 with the provisions of article three, chapter fifty-nine of this  
125 code, and the publication area for such publication shall be



126 the community where the majority of the resident members of  
127 the public affected by such change reside or, in case of nonresi-  
128 dents, have their principal place of business within this state.

129 The commission may order rates into effect subject to  
130 refund, plus interest in the discretion of the commission, in  
131 cases in which the commission determines that a temporary  
132 or interim rate increase is necessary for the utility to avoid  
133 financial distress, or in which the costs upon which these  
134 rates are based are subject to modification by the commission  
135 or another regulatory commission and to refund to the public  
136 utility. In such case the commission may require such public  
137 utility to enter into a bond in an amount deemed by the com-  
138 mission to be reasonable and conditioned upon the refund to  
139 the persons or parties entitled thereto of the amount of the  
140 excess if such rates so put into effect are subsequently deter-  
141 mined to be higher than those finally fixed for such utility.

142 No utility may make application for a general rate increase  
143 while another general rate application is pending before the  
144 commission and not finally acted upon, except pursuant to the  
145 provisions of the next preceding paragraph of this section. The  
146 provisions of this paragraph shall not be construed so as to  
147 prohibit any such rate application from being made while a  
148 previous application which has been finally acted upon by the  
149 commission is pending before or upon appeal to the West Vir-  
150 ginia supreme court of appeals.

**§24-2-4b. Procedures for changing rates of municipally operated  
public utilities; filing requirements; limited public  
service commission authority.**

1 (a) Municipally operated public utilities are not subject to  
2 the rate approval provisions of sections four or four-a of this  
3 chapter but are subject to the limited rate provisions of this  
4 section.

5 (b) All rates and charges set by municipally operated public  
6 utilities shall be just, reasonable, applied without unjust dis-  
7 crimination or preference and based primarily on the costs of  
8 providing these services. Such rates and charges shall be adopt-

9 ed by municipal ordinance to be effective not sooner than  
10 forty-five days after adoption. Such rates and charges shall be  
11 filed with the commission together with such information show-  
12 ing the basis of such rates and charges as the commission con-  
13 siderers necessary. Any change in such rates and charges with  
14 updated information shall be filed with the commission. The  
15 municipality shall set the date when any new rate or charge is  
16 to go into effect.

17 Any customer aggrieved by the changed rate or charge may,  
18 within thirty days of the adoption of the ordinance changing  
19 said rate or charge, present to the commission a petition sign-  
20 ed by not less than twenty-five percent of the customers served  
21 by such municipally operated public utility. The filing of said  
22 petition with the commission shall suspend the adoption of the  
23 rate change contained in the ordinance for a period of one  
24 hundred twenty days, or until an order is issued as provided  
25 herein. The commission shall forthwith appoint a hearing  
26 examiner from its staff to review the grievances raised by the  
27 petitioners. Said hearing examiner shall conduct a public  
28 hearing, and shall within one hundred twenty days from the  
29 date of filing of the petition, issue an order approving, dis-  
30 approving or modifying in whole or in part, the rate or charge  
31 contained in the ordinance. Such an order shall have the full  
32 force and effect of an order issued by the commission.

33 (c) If a municipally operated public utility serves customers  
34 outside its municipal corporate limits and these customers are  
35 charged at rates different from those which customers within  
36 its corporate limits are charged, the public service commission  
37 shall review and approve or order changes in such rates if the  
38 following conditions are met:

39 (1) The complaining customers are those who reside outside  
40 the boundaries of the municipality which set the rates;

41 (2) These customers allege that the rates to which they  
42 object are discriminatory; and

43 (3) The request for a review of the rate or charge to which  
44 objection has been made is received by the public service  
45 commission within thirty days of the effective date of the  
46 adoption of the ordinance changing such rate or charge.

47 (d) Upon receipt of a request for a review of the rates under  
48 the provisions of subsection (b) or (c) of this section, the com-  
49 mission may exercise the power granted to it under the pro-  
50 visions of section three of this article. The commission may  
51 determine the method by which such rates are reviewed and  
52 may grant and conduct a de novo hearing on the matter if the  
53 customer or municipality requests such a hearing.

**§24-2-7. Unreasonable, etc., regulations, practices and services;  
receivership; procedures respecting receivership; ap-  
pointment and compensation of receiver; liquidation.**

1 (a) Whenever, under the provisions of this chapter, the  
2 commission shall find any regulations, measurements, prac-  
3 tices, acts or service to be unjust, unreasonable, insufficient  
4 or unjustly discriminatory, or otherwise in violation of any  
5 provisions of this chapter, or shall find that any service is  
6 inadequate, or that any service which is demanded cannot be  
7 reasonably obtained, the commission shall determine and  
8 declare, and by order fix, reasonable measurement, regula-  
9 tions, acts, practices or service, to be furnished, imposed,  
10 observed and followed in the state in lieu of those found to  
11 be unjust, unreasonable, insufficient, or unjustly discrimina-  
12 tory, inadequate or otherwise in violation of this chapter, and  
13 shall make such other order respecting the same as shall be  
14 just and reasonable.

15 (b) If the public service commission shall determine that  
16 any utility is unable or unwilling to adequately serve its  
17 customers or has been actually or effectively abandoned by  
18 its owners, or that its management is grossly and willfully  
19 inefficient, irresponsible or unresponsive to the needs of its  
20 customers, the commission may petition to the circuit court  
21 of any county wherein the utility does business for an order  
22 attaching the assets of the utility and placing such utility  
23 under the sole control and responsibility of a receiver. If  
24 the court determines that the petition is proper in all respects  
25 and finds, after a hearing thereon, that the allegations  
26 contained in the petition are true, it shall grant the same  
27 and shall order that the utility be placed in receivership.  
28 The court, in its discretion and in consideration of the

29 recommendation of the commission, shall appoint a receiver  
30 who shall be a responsible individual, partnership or corpora-  
31 tion knowledgeable in public utility affairs and who shall  
32 maintain control and responsibility for the running and man-  
33 agement of the affairs of such utility. In so doing, the receiver  
34 shall operate the utility so as to preserve the assets of the  
35 utility and to serve the best interests of its customers. The  
36 receiver shall be compensated from the assets of said utility  
37 in an amount to be determined by the court.

38 Control of and responsibility for said utility shall remain  
39 in the receiver until the same can, in the best interest of the  
40 customers, be returned to the owners, transferred to other  
41 owners or assumed by another utility or public service cor-  
42 poration: *Provided*, That if the court after hearing, deter-  
43 mines that control of and responsibility for the affairs of the  
44 utility should not, in the best interests of its customers, be  
45 returned to the legal owners thereof, the receiver shall proceed  
46 to liquidate the assets of such utility in the manner provided  
47 by law.

48 The laws generally applicable to receivership shall govern  
49 receiverships created pursuant to this section.

**§24-2-8. System of accounts to be kept by public utilities; uniform  
accounting system for public service districts and  
municipally owned public utilities.**

1 (a) The commission may establish a system of accounts to  
2 be kept by public utilities or classify public utilities and  
3 establish a system of accounts for each class, and prescribe  
4 the manner in which such accounts shall be kept. It may  
5 also in its discretion prescribe the forms of accounts, records  
6 and memoranda to be kept by such public utilities, including  
7 the accounts, records and memoranda of the movement of  
8 traffic as well as the receipt and expenditure of moneys, and  
9 any another forms, records and memoranda which in the  
10 judgment of the commission may be necessary to carry out  
11 any of the provisions of this chapter. In the case of utilities  
12 subject to the provisions of the act of Congress entitled "An  
13 act to regulate commerce," approved February four, eighteen  
14 hundred and eighty-seven, and the acts amendatory thereof

15 and supplemental thereto, the system of accounts established  
16 by the commission and the forms of accounts, records and  
17 memoranda prescribed by it shall not be inconsistent with  
18 the systems and forms from time to time established for  
19 such utilities by the interstate commerce commission. But  
20 nothing herein contained shall affect the power of the com-  
21 mission to prescribe forms of accounts, records and memo-  
22 randa covering information in addition to that required by  
23 the interstate commerce commission. The commission may,  
24 after hearing had upon its own motion or upon complaint,  
25 prescribe by order the accounts in which particular outlays  
26 and receipts shall be entered, charged or credited.

27 (b) The commission shall, on or before the thirty-first day  
28 of December, one thousand nine hundred seventy-nine, adopt  
29 rules and regulations prescribing and establishing a uniform  
30 system of accounts and accounting to be kept by all public  
31 service districts and municipally owned public utilities, and,  
32 in so doing, the commission shall confer with and seek the  
33 assistance of the tax commissioner in order to coordinate  
34 any such accounting systems and procedures with any such  
35 procedures or systems adopted by the state tax department  
36 governing the fiscal affairs of municipalities. Such rules  
37 and regulations shall establish a date by which all utilities are  
38 to conform with any such accounting procedures and systems  
39 adopted by the commission. Any such rules and regulations  
40 prescribing a system or procedure of accounting to be kept by  
41 such public utilities may classify such utilities and establish  
42 a system or procedure of accounts for each class and prescribe  
43 the manner of keeping such accounts. The commission may  
44 also ascertain, determine and prescribe what are proper and  
45 adequate charges for depreciation of the several classes of  
46 property for each utility and may prescribe such changes as  
47 it may deem appropriate in charges made for depreciation  
48 as it finds necessary.

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

1 No public utility, person or corporation, shall begin the  
2 construction of any plant, equipment, property or facility for

3 furnishing to the public any of the services enumerated in  
 4 section one, article two of this chapter, nor apply for, nor  
 5 obtain any franchise, license or permit from any municipality  
 6 or other governmental agency, except ordinary extensions of  
 7 existing systems in the usual course of business, unless and  
 8 until it shall obtain from the public service commission a  
 9 certificate of public convenience and necessity requiring such  
 10 construction, franchise, license or permit. Upon the filing  
 11 of any application for such certificate, and after hearing, the  
 12 commission may, in its discretion, issue or refuse to issue, or  
 13 issue in part and refuse in part, such certificate of convenience  
 14 and necessity: *Provided*, That any public utility, person or  
 15 corporation subject to the provisions of this section shall  
 16 give the commission at least thirty days' notice of the filing  
 17 of any such application for a certificate of public convenience  
 18 and necessity under this section. The commission shall render  
 19 its final decision on any application filed after the thirtieth day  
 20 of June, one thousand nine hundred eighty-one under the pro-  
 21 visions of this section or section eleven-a of this article within  
 22 two hundred seventy days of the filing of the application and  
 23 within ninety days after final submission of any such applica-  
 24 tion for decision following a hearing: *Provided*, That if the  
 25 projected total cost of the project is greater than fifty million  
 26 dollars, the commission shall render its final decision on any  
 27 such application filed under the provisions of this section or  
 28 section eleven-a of this article within four hundred days of the  
 29 filing of the application and within ninety days after final sub-  
 30 mission of any such application for decision after a hearing. If  
 31 such decision is not rendered within the aforementioned two  
 32 hundred seventy days, four hundred days or ninety days, the  
 33 commission shall issue a certificate of convenience and neces-  
 34 sity as applied for in the application. The commission shall  
 35 prescribe such rules and regulations as it may deem proper for  
 36 the enforcement of the provisions of this section; and, in  
 37 establishing that public convenience and necessity do exist,  
 38 the burden of proof shall be upon the applicant.

**§24-2-13. Enforcement of federal acts.**

1 In addition to all other powers and duties conferred upon  
 2 the public service commission herein, the commission shall be

3 charged with the duty of enforcing the provisions of the United  
4 States "Federal Railroad Safety Act" and the "Uniform Motor  
5 Carrier Identification Act" in this state under the federal  
6 requirements contained therein requiring state enforcement of  
7 such acts, insofar as the same are not repugnant to the laws  
8 of this state or contrary to the rules and regulations of the  
9 commission.

10 The commission shall also perform those duties expressly  
11 conferred upon a state regulatory authority by the "National  
12 Energy Conservation Policy Act of 1978," "Power Plant and  
13 Industrial Fuel Use Act of 1978," and the "Public Utilities  
14 Regulatory Policy Act of 1978," insofar as the same are not  
15 repugnant to the laws of this state or contrary to the rules  
16 and regulations of the commission, unless the governor, exer-  
17 cising authority reserved to him in said acts, designates another  
18 agency to perform such duties, in whole or in part. The term  
19 "state regulatory authority" as used in this paragraph shall  
20 have the same meaning as such term is defined by said federal  
21 acts.

22 In addition, the commission shall carry out other federal  
23 acts, including appropriate portions of the "Natural Gas Policy  
24 Act of 1978," for which the governor designates it as the  
25 responsible agency in this state.

**§24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.**

1 The commission shall not enforce, originate, continue, es-  
2 tablish, change or otherwise authorize or permit an increase  
3 in the charge or charges for electric energy over and above the  
4 established and published tariff, rate, joint rate, charge, toll or  
5 schedule through any automatic adjustment clause or fuel  
6 adjustment clause.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUB-  
JECT TO REGULATIONS OF COMMISSION.**

**§24-3-6. Special license fee; "public service commission fund."**

1 (a) All public utilities subject to the provisions of this  
2 chapter shall pay a special license fee in addition to those  
3 now required by law. The amount of such fees shall be fixed

4 by the public service commission and such fee shall not  
5 exceed ten cents on each one hundred dollars of value and  
6 shall be levied by it upon each of such public utilities accord-  
7 ing to the value of its property as ascertained by the last as-  
8 sessment, and shall be apportioned among such public utilities  
9 upon the basis of such valuation, which fees shall be paid on  
10 or before the twentieth day of January in each year. Such  
11 sum, together with that provided in subsection (b) hereof shall  
12 be paid into the state treasury and kept as a special fund  
13 designated "public service commission fund," to be appropriat-  
14 ed as provided by law for the purpose of paying the salaries of  
15 the commission, as fixed by this chapter, its expenses and  
16 salaries, compensations, costs and expenses of its employees.

17 (b) All public utilities subject to the provisions of this  
18 chapter shall pay a special license fee in addition to any and all  
19 fees now required by law. The amount of such fees shall be  
20 fixed by the public service commission and such fee shall not  
21 exceed forty cents on each one hundred dollars of total gross  
22 revenue and shall be levied by it upon each of such public  
23 utilities, in the proportion which the total gross revenue de-  
24 rived from intrastate business done by each of such public  
25 utilities in the calendar year next preceding bears to the total  
26 gross revenue derived from intrastate business done in such  
27 year by all public utilities subject to regulation by the public  
28 service commission, in addition to such fees as may be fixed  
29 by the public service commission under the provisions of sub-  
30 section (a) hereof and which fees shall be paid on or before  
31 the first day of July in each year. Such sum shall be paid into  
32 the state treasury and be kept, appropriated and used as pro-  
33 vided in subsection (a) hereof.

34 (c) Any balance remaining in said fund at the end of any  
35 fiscal year shall not revert to the treasury but shall remain in  
36 said fund and may be appropriated and used as provided in  
37 subsection (a) hereof in the ensuing fiscal years.

**§24-3-7. Permit to abandon service; certificate.**

1 No railroad or other public utility shall abandon all or any  
2 portion of its service to the public or the operation of any of  
3 its lines which would affect the service it is rendering the  
4 public unless and until there shall first have been filed with



5 the public service commission of this state an application for  
6 a permit to abandon service and obtained from the commis-  
7 sion an order stating that the present and future public con-  
8 venience and necessity permits such abandonment.

**§24-5-1. Review of final orders of commission.**

1 Any party feeling aggrieved by the entry of a final order by  
2 the commission, affecting him or it, may present a petition in  
3 writing to the supreme court of appeals, or to a judge thereof  
4 in vacation, within thirty days after the entry of such order,  
5 praying for the suspension of such final order. The applicant  
6 shall deliver a copy of such petition to the secretary of the  
7 commission on or before the date the same is presented to the  
8 court or the judge, and it shall be the duty of the secretary  
9 promptly to file with the clerk of said court all papers, docu-  
10 ments, evidence and other records constituting the complete  
11 record in the case, or certified copies thereof, as were before  
12 the commission at the time of the entry of the order from  
13 which the appeal is taken. The court or judge shall fix a time  
14 for the hearing on the application, but such hearing, unless by  
15 agreement of the parties, shall not be held sooner than five  
16 days after its presentation; and notice of the time and place of  
17 such hearing shall be forthwith delivered to the secretary of  
18 the commission, so that the commission may be represented  
19 at such hearing by one or more of its members or by counsel.  
20 If the court or the judge after such hearing be of the opinion  
21 that a suspending order should issue, the court or the judge  
22 may require bond, upon such conditions and in such penalty,  
23 and impose such terms and conditions upon the petitioner, as  
24 are just and reasonable. The commission shall file with the  
25 court before the day fixed for the final hearing a written state-  
26 ment of its reasons for the entry of such order, and after  
27 arguments by counsel the court shall decide the matter in con-  
28 troversy as may seem to be just and right.

**CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS  
AND PROPERTY FOR HIRE.**

**ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

**§24A-2-2a. Certificate not required of certain carriers; other pro-  
visions applicable.**

1 (a) On and after July one, one thousand nine hundred

2 eighty-two, common carriers by motor vehicles engaged in the  
3 business of towing, hauling or carrying wrecked or disabled  
4 vehicles shall, notwithstanding any other provision of the  
5 laws of the state of West Virginia to the contrary, be regulated  
6 by the provisions of this section and this section shall not be  
7 applicable to said carriers until such date.

8 (b) No common carrier by motor vehicle engaged in the  
9 business of towing, hauling or carrying wrecked or disabled  
10 vehicles and mobile homes shall be required to obtain a com-  
11 mon carrier certificate or other certificate of authority from  
12 the commission prior to engaging in such business, however,  
13 such carrier shall not engage in such business unless and until  
14 such carrier shall have registered as a carrier with the com-  
15 mission in accordance with the provisions of this section.

16 (c) A person may not act as a common carrier by motor  
17 vehicle by engaging in the business of towing, hauling or  
18 carrying wrecked or disabled motor vehicles for hire unless  
19 that person has registered as a carrier with the public service  
20 commission as provided in this section; nor, may a person  
21 continue to act as a carrier by engaging in the business of  
22 towing, hauling or carrying wrecked or disabled motor vehicles  
23 for hire if his registration is revoked or suspended by the com-  
24 mission. A person registered as a carrier under the provisions  
25 of this section may not charge, demand, collect or receive a  
26 greater remuneration for the towing, hauling or carrying of any  
27 wrecked or disabled motor vehicle than the rates, fares and  
28 charges established by the provisions of this section.

29 The commission shall register all carriers as may make  
30 application for registration as a common carrier by motor  
31 vehicle for the purpose of engaging in the business of towing,  
32 hauling or carrying wrecked or disabled motor vehicles for hire  
33 upon satisfactory evidence to the commission that the carrier  
34 has complied with all applicable requirements of this chapter  
35 and all applicable rules and regulations of the commission.  
36 The commission shall by general order, applicable to all car-  
37 riers registered under this section, fix, alter and determine  
38 just, fair, reasonable and sufficient maximum statewide or  
39 regional schedules of rates, fares and charges, and it shall

40 establish reasonable classifications of carriers for which the  
41 schedules are applicable, but before the rates, fares and charges  
42 are fixed, altered or determined, the commission shall hold  
43 hearings in order to give all interested parties an opportunity  
44 to be heard, and it shall give reasonable notice of the hearings  
45 in the manner as the commission shall by rule prescribe.  
46 Carriers registered under the provisions of this section are  
47 subject to the regulatory powers of the commission as provided  
48 in section three of this article.

49 Upon the complaint of any aggrieved party, the commission  
50 may suspend or revoke the registration of any person registered  
51 with the commission under the provisions of this section for  
52 the violation of any rule or regulation established by the  
53 commission and applicable to that person or for the violation  
54 of any provision of this article applicable to persons registered  
55 under the provisions of this section: *Provided*, That for the  
56 first violation, suspension of registration shall be for a period  
57 of not more than thirty days; and, for a second violation the  
58 commission may revoke the registration for a period of one  
59 year; and, for a third violation the commission may revoke the  
60 registration permanently. But before any suspension or revo-  
61 cation is effected, the person registered under this section shall  
62 first be given reasonable notice of the charges against him  
63 and shall be granted an opportunity to be heard by the com-  
64 mission or its designee in accordance with the rules and regula-  
65 tions for hearings as may be by rule established by the  
66 commission.

**§24A-2-5. Certificate of convenience and necessity.**

1 (a) *Required; application; hearing; granting.*—It shall be  
2 unlawful for any common carrier by motor vehicle to operate  
3 within this state without first having obtained from the com-  
4 mission a certificate of convenience and necessity. Upon the  
5 filing of an application for such certificate, the commission  
6 shall set a time and place for a hearing on the application:  
7 *Provided*, That the commission may, after giving proper notice  
8 and if no protest is received, waive formal hearing on the  
9 application. Notice shall be by publication which shall state  
10 that a formal hearing may be waived in the absence of a

11 protest to such application. The notice shall be published as  
 12 a Class I legal advertisement in compliance with the provi-  
 13 sions of article three, chapter fifty-nine of this code and the  
 14 publication area for such publication shall be the proposed  
 15 area of operation. The notice shall be published at least ten  
 16 days prior to the date of the hearing. After the hearing or  
 17 waiver by the commission of the hearing, if the commission  
 18 finds from the evidence that the public convenience and  
 19 necessity require the proposed service or any part thereof, it  
 20 shall issue the certificate as prayed for, or issue it for the  
 21 partial exercise only of the privilege sought, and may attach  
 22 to the exercise of the right granted by such certificate such  
 23 terms and conditions as in its judgment the public convenience  
 24 and necessity may require, and if the commission shall be of  
 25 the opinion that the service rendered by any common carrier  
 26 holding a certificate of convenience and necessity over any  
 27 route or routes in this state is in any respect inadequate or  
 28 insufficient to meet the public needs, such certificate holder  
 29 shall be given reasonable time and opportunity to remedy such  
 30 inadequacy or insufficiency before any certificate shall be  
 31 granted to an applicant proposing to operate over such route  
 32 or routes as a common carrier. Before granting a certificate to  
 33 a common carrier by motor vehicle the commission shall take  
 34 into consideration existing transportation facilities in the  
 35 territory for which a certificate is sought, and in case it finds  
 36 from the evidence that the service furnished by existing trans-  
 37 portation facilities is reasonably efficient and adequate, the  
 38 commission shall not grant such certificate.

**CHAPTER 24A.**  
**MOTOR CARRIERS OF PASSENGERS AND PROPERTY**  
**FOR HIRE.**

**ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUB-  
 JECT TO REGULATION OF THE COMMISSION.**

**§24A-6-6. Special annual assessment against motor carriers for  
 expenses of administering chapter; "public service  
 commission motor carrier fund."**

1 In addition to the license fees, registration fees, or any  
 2 other taxes required by law to be collected from motor

3 carriers subject to this chapter, each such motor carrier  
 4 shall be subject to, and shall pay to the public service  
 5 commission, a special annual assessment for the purpose of  
 6 paying the salaries, compensation, costs and expenses of  
 7 administering and enforcing this chapter. All proceeds or  
 8 funds derived from such assessment shall be paid into the  
 9 state treasury and credited to a special fund designated  
 10 public service commission motor carrier fund, to be appro-  
 11 priated as provided by law for the purposes herein stated.  
 12 Each member of the commission shall receive a salary in  
 13 the amount set forth in section three, article one, chapter  
 14 twenty-four of this code as compensation for the administra-  
 15 tion of this chapter in addition to all other salary or com-  
 16 pensation otherwise provided by law, to be paid in monthly  
 17 installments from said fund. The special assessment against  
 18 each motor carrier shall be apportioned upon the number  
 19 and capacity of motor vehicles used by said carrier, computed  
 20 as hereinafter provided.

21 (a) For each uniform identification card \_\_\_\_\_ \$ 3.00

22 (b) Upon each power unit of such carriers of  
 23 property, in accordance with its capacity as rated by  
 24 its manufacturer, in addition to amount of subdivision  
 25 (a):

26	of one ton or less capacity _____	\$ 9.00
27	of over one to one and one-half tons capacity ____	13.50
28	of over one and one-half tons to two tons capacity	18.00
29	of over two tons to three tons capacity _____	22.50
30	of over three tons to four tons capacity _____	27.00
31	of over four tons to five tons capacity _____	31.50
32	of over five tons to six tons capacity _____	36.00
33	of over six tons to seven tons capacity _____	40.50
34	of over seven tons to eight tons capacity _____	45.00
35	of over eight tons to nine tons capacity ____	49.50
36	of over nine tons to ten tons capacity _____	54.00
37	of over ten tons capacity, \$54.00 plus \$4.50 for each	
38	additional ton of capacity in excess of ten tons.	

39 (c) Upon each trailer and semitrailer of such carriers of  
 40 property, in accordance with its capacity as rated by its

41 manufacturer, in an amount of two thirds of the amount  
 42 provided for vehicles of its capacity in subdivision (b) of  
 43 this section.

44 (d) Upon each power unit of such carriers of passengers,  
 45 in accordance with the seating capacity thereof, in addition  
 46 to amount in subdivision (a):

47	of ten passengers or less .....	\$13.50
48	of eleven to twenty passengers, inclusive .....	22.50
49	of twenty-one to thirty passengers, inclusive .....	31.50
50	of thirty-one to forty passengers, inclusive .....	45.00
51	of over forty passengers .....	54.00

52 (e) The annual assessment of each motor carrier shall  
 53 be paid on or before the first day of July of each year.  
 54 Additional assessments shall be collected upon the placing in  
 55 use of any additional motor vehicle: *Provided*, That such  
 56 additional assessments shall be subject to a reduction in  
 57 the amounts shown in subdivisions (b), (c), and (d) corres-  
 58 ponding to the unexpired quarterly periods of the fiscal year,  
 59 but shall not in any event be less than one fourth of such  
 60 amount plus the sum of three dollars provided in subdivi-  
 61 sion (a).

62 (f) Upon payment by any motor carrier of the assessment  
 63 provided for, the public service commission shall advise the  
 64 department of motor vehicles by notice in writing that such  
 65 assessment has been paid, whereupon the department of motor  
 66 vehicles may issue motor vehicle license for the vehicles  
 67 described in said notice.

68 (g) Prior to the beginning of any fiscal year the public  
 69 service commission, after taking into consideration any un-  
 70 expended balance in the motor carrier fund, the probable  
 71 receipts to be received in the ensuing fiscal year, and the  
 72 probable costs of administering and enforcing this chapter  
 73 for the ensuing fiscal year, may fix the assessments provided  
 74 for in this section for the ensuing fiscal year in amounts  
 75 which, in the commission's judgment, will produce sufficient  
 76 revenue to administer and enforce this chapter for said fiscal  
 77 year: *Provided*, That in no event shall such assessments  
 78 exceed the amounts set up in this section.

## **CHAPTER 24B. GAS PIPELINE SAFETY.**

### **ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.**

#### **§24B-4-6. Penalties.**

1 (a) Any person who violates any provision of this chapter  
2 or any valid regulation or order issued thereunder, shall be  
3 subject to a civil penalty to be imposed by the commission  
4 of not to exceed one thousand dollars for each violation for  
5 each day that the violation persists: *Provided*, That the  
6 maximum civil penalty shall not exceed two hundred thousand  
7 dollars for any related series of violations.

8 (b) Any civil penalty may be compromised by the com-  
9 mission. In determining the amount of penalty, or the amount  
10 agreed upon in compromise, the appropriateness of the pen-  
11 alty to the size of the business of the person charged, the  
12 gravity of the violation, and the good faith of the person  
13 charged in attempting to achieve compliance, after notifica-  
14 tion of the violation, shall be considered. The amount of  
15 the penalty, when finally determined, or the amount agreed  
16 upon in compromise, may be deducted from any sums owing  
17 by the state to the person charged or may be recovered in a  
18 civil action in the state courts.

19 (c) Civil penalties collected under this section shall be  
20 paid into the state treasury.

### **ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.**

#### **§24B-5-1. Employees.**

1 The commission shall appoint such employees as may be  
2 necessary to carry out the provisions of this chapter, and shall  
3 fix their respective salaries or compensation. The commission  
4 may designate such employees as it deems necessary to take  
5 evidence at any hearing held or required by the provisions  
6 of this chapter, which employees are hereby empowered to  
7 administer oaths in all parts of this state so far as the exercise  
8 of such power is properly incidental to the performance of  
9 their duties in connection with the provisions of this chapter.

**§24B-5-2. Compensation to commissioners.**

1 Each member of the commission shall receive a salary in  
2 the amount set forth in section three, article one, chapter  
3 twenty-four of this code as compensation for the administra-  
4 tion of this chapter in addition to all other salary or compen-  
5 sation otherwise provided for by law, to be paid in monthly  
6 installments from the public service commission gas pipeline  
7 safety fund.

**§24B-5-3. Funding; property and revenue license fees.**

1 (a) Every pipeline company shall pay a special license fee  
2 in addition to those now required by law. The amount of  
3 such fees shall be fixed by the public service commission  
4 and levied by it upon each of such pipeline companies accord-  
5 ing to the number of three inch equivalent pipeline miles  
6 included in its pipeline facilities, and shall be apportioned  
7 among such pipeline companies upon the basis of the pipe-  
8 line companies' reports submitted to the commission in such  
9 form as the commission may prescribe, so as to produce a  
10 revenue of not more than one hundred fifty thousand dollars  
11 per annum, which fees shall be paid on or before the first day  
12 of July in each year.

13 (b) Such sums collected under subsection (a) of this section  
14 shall be paid into the state treasury and kept as a special fund,  
15 designated "public service commission gas pipeline safety  
16 fund," to be appropriated as provided by law for the purpose  
17 of paying the salaries of the commission, as fixed by this  
18 chapter, its expenses and salaries, compensation, costs and  
19 expenses of its employees. Any balance in said fund at the  
20 end of any fiscal year shall not revert to the treasury, but  
21 shall remain in said fund and may be appropriated as pro-  
22 vided in this subsection.



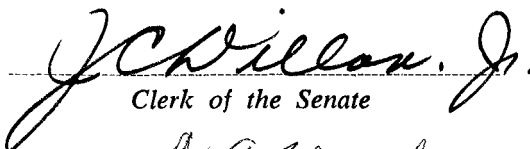
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

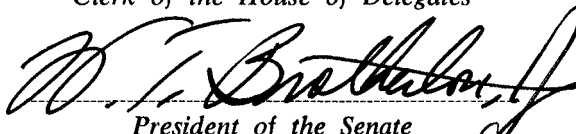
  
Chairman House Committee

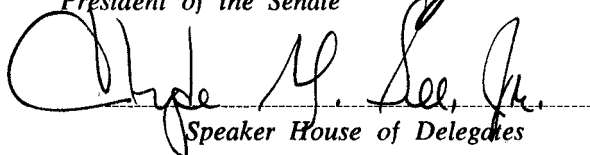
Originated in the House.

Takes effect from passage.

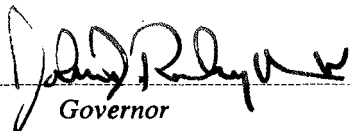
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 28  
day of March, 1979.

  
Governor

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