

SB 656

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OFFICE OF THE CLERK OF THE WEST VIRGINIA SENATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 656

(SENATORS McCABE, HALL, KESSLER, DEEM, JENKINS,
GREEN, STOLLINGS AND BOLEY, *original sponsors*)

[Passed March 9, 2010; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1j, relating to special rates for energy-intensive industrial consumers of electric power; setting forth legislative findings on energy-intensive industrial consumers of electric power; defining certain terms; enabling the Public Service Commission to establish special rates for energy-intensive industrial consumers of electric power; setting forth factors that the Public Service Commission may take into consideration in establishing special rates for energy-intensive industrial consumers of electric power, in addition to factors that may already be considered by the Public Service Commission in its rate-setting process; authorizing the Public Service Commission to adopt mechanisms reasonably designed to assure appropriate flexibility and predictability of special rates; establishing procedures for application to the Public Service Commission for a special rate; setting forth data and information

to be included in an application for a special rate; establishing qualifications for eligibility for a special rate; and requiring Public Service Commission to determine whether any excess revenue or revenue shortfall created by a special rate authorized pursuant to this section should be allocated among any other customers of the utility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-1j, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1j. Special rates for energy intensive industrial consumers of electric power.

1 (a) The Legislature hereby finds that:

2 (1) West Virginia enjoys relatively low cost electric
3 power rates for residential customers, business and
4 industry and these relatively low rates constitute a
5 competitive economic advantage for West Virginia;

6 (2) West Virginia has many energy intensive industrial
7 consumer of electric power, and has the ability to retain its
8 existing energy intensive industrial consumers of electric
9 power and attract additional energy intensive industrial
10 consumers of electric power in the future, through the
11 adoption of policies and the establishment of rates that
12 enhance and preserve the attractiveness of West Virginia
13 as a place for energy intensive industrial consumers to do
14 business;

15 (3) Energy intensive industrial consumers of electric
16 power create jobs, provide a substantial tax base and
17 enhance the productive capacity, competitiveness and
18 economic opportunities of West Virginia and all of its
19 citizens;

20 (4) Energy intensive industrial consumers of electric
21 power help keep power rates low for all consumers of
22 electric power, including residential customers, by provid-
23 ing a large consumption base over which the cost of
24 producing electric power may be spread from time to time;

25 (5) It is in the best interests of West Virginia, the citizens
26 of West Virginia, electric public utilities in West Virginia,
27 and all consumers of electric power in West Virginia,
28 including residential customers, to encourage the contin-
29 ued development, construction, operation, maintenance
30 and expansion in West Virginia of industrial plants and
31 facilities which are energy intensive consumers of electric
32 power, thereby increasing the creation, preservation and
33 retention of jobs, expanding the tax base, helping keep
34 power rates low for all consumers of electric power, and
35 enhancing the productive capacity, competitiveness and
36 economic opportunities of all citizens of West Virginia;
37 and

38 (6) To encourage the continued development, construc-
39 tion, operation, maintenance and expansion in West
40 Virginia of industrial plants and facilities which are
41 energy intensive consumers of electric power, the commis-
42 sion may establish special rates under this section that in
43 its judgment are necessary or appropriate for the contin-
44 ued, new or expanded operation of energy intensive
45 industrial consumers and that can reasonably be expected
46 to support the long-term operation of energy intensive
47 industrial consumers, and that do not impose an unreason-
48 able burden upon electric public utilities or their other
49 customers.

50 (b) As used in this section:

51 (1) "Energy intensive industrial consumer" means an
52 industrial facility, plant or enterprise that has a contract
53 demand of at least fifty thousand kilowatts of electric

54 power at its West Virginia facilities under normal operat-
55 ing conditions.

56 (2) "Special rate" means a rate set for an energy inten-
57 sive industrial consumer pursuant to this section.

58 (c) In addition to any authority of the Commission to
59 allow special rates or contracts under any other provision
60 of the code or rule, and in addition to all other factors
61 which the commission may consider in setting rates for
62 consumers of electric power, including, but not limited to
63 the Commission's responsibilities under subsection (b),
64 section one, article one of this chapter, and notwithstand-
65 ing any other provisions of this code to the contrary, in
66 setting a special rate the commission may take into
67 consideration fluctuations in market prices for the goods
68 or products produced by the energy intensive industrial
69 consumer of electric power, or other variables or factors
70 which may be relevant to or affect the continuing vitality
71 of the energy intensive industrial consumer of electric
72 power in dynamic markets. In setting a special rate by
73 reference to fluctuations in market prices for the goods
74 and products produced by an energy intensive industrial
75 consumer of electric power, the commission may establish
76 variable rates including, but not limited to, ceilings and
77 floors on the special rate, banking or crediting mecha-
78 nisms, caps, limits or other similar types of safeguards that
79 are intended by the commission, in its reasonable judg-
80 ment, to provide appropriate flexibility and predictability
81 in the special rate over time, to permit the energy intensive
82 industrial customer the ability to make the capital invest-
83 ments and other commitments necessary to support the
84 continued operation of the facility.

85 (d) An energy intensive industrial consumer wishing to
86 apply for a special rate shall first enter into negotiations
87 with the utility that provides it with electric power,

88 regarding the terms and conditions of a mutually agree-
89 able special rate. If the negotiations result in an agree-
90 ment between the energy intensive industrial consumer
91 and the utility, the energy intensive industrial consumer
92 and the utility shall make a joint filing with the commis-
93 sion seeking approval of the proposed special rate. If the
94 negotiations are unsuccessful, the energy intensive indus-
95 trial consumer may file a petition with the commission to
96 consider establishing a special rate. The commission shall
97 have the authority to establish a special rate upon the
98 filing of either a joint filing or a petition pursuant to this
99 section.

100 (e) In order to qualify for a special rate, an energy
101 intensive industrial consumer shall:

102 (1) Have a contract demand of at least fifty thousand
103 kilowatts of electric power at its West Virginia facilities
104 under normal operating conditions;

105 (2) Create or retain at least twenty-five full time jobs in
106 West Virginia;

107 (3) Have invested not less than \$500,000 in fixed assets,
108 including machinery and equipment, in West Virginia;

109 (4) Provide reasonable evidence that due to market
110 conditions in the industry in which the energy intensive
111 industrial consumer operates, or other factors bearing on
112 investment in and operation of the industrial facility or
113 facilities, without the special rate the operation or contin-
114 ued operation of the industrial facility or facilities is
115 threatened or not economically viable under reasonable
116 assumptions and projections regarding the market and the
117 operation of the industrial facility or facilities;

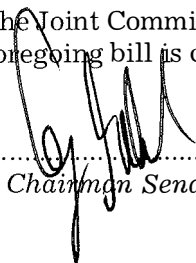
118 (5) Provide reasonable evidence that, with the special
119 rate, the energy intensive industrial consumer intends to
120 operate the industrial facility or facilities in West Virginia

121 for an extended period of time, and that the operation or
122 continued operation of the industrial facility or facilities
123 for an extended period of time appears economically
124 viable, under reasonable assumptions and projections
125 regarding the market in which the energy intensive
126 industrial consumer operates and regarding the operation
127 of the industrial facility or facilities; and

128 (6) Provide information and data setting forth how the
129 energy intensive industrial consumer meets the qualifica-
130 tions of this section, and how the special rate advances the
131 policy goals set forth in subsection (a) of this section.

132 (f) The Commission shall determine whether any excess
133 revenue or revenue shortfall created by a special rate
134 authorized pursuant to this section should be allocated
135 among any other customers of the utility. In making that
136 determination, the Commission shall consider all relevant
137 factors, including whether such allocation is just, reason-
138 able, and fairly balances the interests of other customers,
139 the utility, and the customer receiving the special rate.

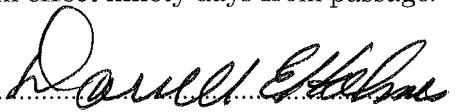
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

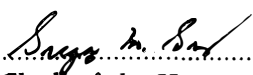

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Chairman Senate Committee

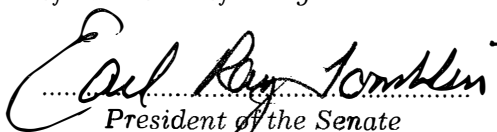

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Chairman House Committee

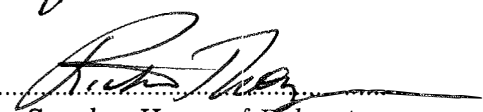
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within *is approved* this the *18th*
Day of *Main* 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2010

Time 9:16am