WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

ENROLLED

House Bill No. 4601

(By Delegates White (By Request), Boggs and Skaff)

Passed March 8, 2014

In effect ninety days from passage.
AN ACT to amend and reenact §16-13A-18a of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-4a and §24-2-4b of said code, all relating to fiscal management and regulation of publicly owned utilities; waiving certain cash distribution requirements in the case of a sale between two political subdivisions; eliminating a suspension period for a rate increase established by municipal rate ordinance or enacted by a public service district that increases rates less than twenty-five percent of gross revenues; providing a process to apply for a waiver of the suspension period for rates established by municipal rate ordinance or enacted by a public service district that increases rates by more than twenty-five percent of gross revenues; and providing a refund procedure for proposed municipal or public service district rate increase in certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §16-13A-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-4a and §24-2-4b of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the
hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission: Provided, That no such distribution shall be required in the case of a sale between political subdivisions of the state.

CHAPTER 24. PUBLIC SERVICE COMMISSION

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.


After June 30, 1981, no public utility subject to this chapter except those utilities subject to the provisions of section four-b and section four-d of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The
proposed changes shall be shown by printing new
schedules, or shall be plainly indicated upon the schedules
in force at the time, and kept open to public inspection:

Provided, That the commission may, in its discretion, and
for good cause shown, allow changes upon less time than
the notice herein specified, or may modify the requirements
of this section in respect to publishing, posting and filing of
tariffs, either by particular instructions or by general order.

Whenever there shall be filed with the commission any
schedule stating a change in the rates or charges, or joint
rates or charges, or stating a new individual or joint rate or
charge or joint classification or any new individual or joint
regulation or practice affecting any rate or charge, the
commission may either upon complaint or upon its own
initiative without complaint enter upon a hearing
concerning the propriety of such rate, charge, classification,
regulation or practice; and, if the commission so orders, it
may proceed without answer or other form of pleading by
the interested parties, but upon reasonable notice, and,
pending such hearing and the decisions thereon, the
commission, upon filing with such schedule and delivering
to the public utility affected thereby a statement in writing
of its reasons for such suspension, may suspend the
operation of such schedule and defer the use of such rate,
charge, classification, regulation or practice, but not for a
longer period than two hundred seventy days beyond the
time when such rate, charge, classification, regulation or
practice would otherwise go into effect; and after full
hearing, whether completed before or after the rate, charge,
classification, regulation or practice goes into effect, the
commission may make such order in reference to such rate,
charge, classification, regulation or practice as would be
proper in a proceeding initiated after the rate, charge,
classification, regulation or practice had become effective:

Provided, That in the case of a public utility having two
thousand five hundred customers or less and which is not
principally owned by any other public utility corporation or
public utility holding corporation, the commission may
suspend the operation of such schedule and defer the use of
such rate, charge, classification, regulation or practice, but
not for a longer period than one hundred twenty days
beyond the time when such rate, charge, classification,
regulation or practice would otherwise go into effect; and
in the case of a public utility having more than two
thousand five hundred customers, but not more than five
thousand customers, and which is not principally owned by
any other public utility corporation or public utility holding
corporation, the commission may suspend the operation of
such schedule and defer the use of such rate, charge,
classification, regulation or practice, but not for a longer
period than one hundred fifty days beyond the time when
such rate, charge, classification, regulation or practice
would otherwise go into effect; and in the case of a public
utility having more than five thousand customers, but not
more than seven thousand five hundred customers, and
which is not principally owned by any other public utility
corporation or public utility holding corporation, the
commission may suspend the operation of such schedule
and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than one
hundred eighty days beyond the time when such rate,
charge, classification, regulation or practice would
otherwise go into effect; and after full hearing, whether
completed before or after the rate, charge, classification,
regulation or practice goes into effect, the commission may
make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in
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78 a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however,* That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code, and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided, further,* That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not
subject to refund: *And provided further,* That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only. At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints,
conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by
such change reside or, in case of nonresidents, have their principal place of business within this state.

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

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

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public
utilities, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. The rates and charges shall be adopted by the electric, natural gas or telephone cooperative's governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the rate change or full participation in municipal rate legislation. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section is received and the
electric cooperative, natural gas cooperative or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

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

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

(3) Any customer or group of customers who are affected by the change in rates who reside within the
municipal boundaries and who present a petition to the
commission alleging discrimination between customer or
group of customers and other customers of the municipal
utility. The petition shall be accompanied by evidence of
discrimination.

(d)(1) The filing of a petition with the commission
signed by not less than twenty-five percent of the customers
served by the municipally operated public utility or twenty-
five percent of the membership of the electric, natural gas
or telephone cooperative residing within the state under
subdivision (1), subsection (c) of this section shall suspend
the adoption of the rate change contained in the ordinance
or resolution for a period of one hundred twenty days from
the date the rates or charges would otherwise go into effect
or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by
customers outside the municipal boundaries or a customer
or a group of customers within the municipal boundaries
under a petition filed under subdivision (2) or (3),
subsection (c) of this section, the commission shall suspend
the adoption of the rate change contained in the ordinance
for a period of one hundred twenty days from the date the
rates or charges would otherwise go into effect or until an
order is issued as provided herein. A municipal rate
ordinance enacted pursuant to the provisions of this section
and municipal charter or state code that establishes or
proposes a rate increase that results in an increase of less
than twenty-five percent of the gross revenue of the utility
shall be presumed valid and rates shall be allowed to go
into effect, subject to refund, upon the date stated in that
ordinance. In the case of rates established or proposed that
increase by more than twenty-five percent of the gross
revenue of the municipally operated public utility, the
utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

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

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this code, section four, article nineteen, chapter eight of this code, and section sixteen, article thirteen, chapter sixteen of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

(g) A municipal utility shall be required to refund revenues collected from rates enacted that are disapproved or modified upon subsequent order of the commission entered in a proceeding under this section. Any refund determined to be due and owing as a result of any
difference between the municipal rates placed into effect subject to refund and any final rates approved the commission shall be refunded by the municipal utility as a credit against each customer’s account for a period of up to six months after entry of the commission’s final order. Any remaining balance which is not fully refunded by credit within six months after entry of the commission’s final order shall be directly refunded to the individual customer by check.

(h) The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(i) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 1st day of April, 2014.

Governor
PRESENTED TO THE GOVERNOR

[Signature]

Date 28 201

Time 10:45 AM