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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.

HB 4601

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E N R O L L E D

H. B. 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.

1 In any case where a public service district owns a water,
2 sewer, stormwater or gas system, and a majority of not less
3 than sixty percent of the members of the public service
4 board thereof deem it for the best interests of the district to
5 sell, lease or rent such water, sewer, stormwater or gas
6 system to any municipality or privately-owned water,
7 sewer, stormwater or gas system, or to any water, sewer,
8 stormwater or gas system owned by an adjacent public
9 service district, the board may so sell, lease or rent such
10 water, sewer, stormwater or gas system upon such terms
11 and conditions as said board, in its discretion, considers in
12 the best interests of the district: *Provided*, That such sale,
13 leasing or rental may be made only upon: (1) The
14 publication of notice of a hearing before the board of the
15 public service district, as a Class I legal advertisement in
16 compliance with the provisions of article three, chapter
17 fifty-nine of this code, in a newspaper published and of
18 general circulation in the county or counties wherein the
19 district is located, such publication to be made not earlier
20 than twenty days and not later than seven days prior to the

21 hearing; (2) approval by the county commission or
22 commissions of the county or counties in which the district
23 operates; and (3) approval by the public service commission
24 of West Virginia.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 After June 30, 1981, no public utility subject to this
2 chapter except those utilities subject to the provisions of
3 section four-b and section four-d of this article, shall
4 change, suspend or annul any rate, joint rate, charge, rental
5 or classification except after thirty days' notice to the
6 commission and the public, which notice shall plainly state
7 the changes proposed to be made in the schedule then in
8 force and the time when the changed rates or charges shall
9 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
12 schedules, or shall be plainly indicated upon the schedules
13 in force at the time, and kept open to public inspection:
14 *Provided*, That the commission may, in its discretion, and
15 for good cause shown, allow changes upon less time than
16 the notice herein specified, or may modify the requirements
17 of this section in respect to publishing, posting and filing of
18 tariffs, either by particular instructions 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
24 commission may either upon complaint or upon its own
25 initiative without complaint enter upon a hearing
26 concerning the propriety of such rate, charge, classification,
27 regulation or practice; and, if the commission so orders, it
28 may proceed without answer or other form of pleading by
29 the interested parties, but upon reasonable notice, and,
30 pending such hearing and the decisions thereon, the
31 commission, upon filing with such schedule and delivering
32 to the public utility affected thereby a statement in writing
33 of its reasons for such suspension, may suspend the
34 operation of such schedule and defer the use of such rate,
35 charge, classification, regulation or practice, but not for a
36 longer period than two hundred seventy days beyond the
37 time when such rate, charge, classification, regulation or
38 practice would otherwise go into effect; and after full
39 hearing, whether completed before or after the rate, charge,
40 classification, regulation or practice goes into effect, the
41 commission may make such order in reference to such rate,
42 charge, classification, regulation or practice as would be
43 proper in a proceeding initiated after the rate, charge,

44 classification, regulation or practice had become effective:
45 *Provided*, That in the case of a public utility having two
46 thousand five hundred customers or less and which is not
47 principally owned by any other public utility corporation or
48 public utility holding corporation, the commission may
49 suspend the operation of such schedule and defer the use of
50 such rate, charge, classification, regulation or practice, but
51 not for a longer period than one hundred twenty days
52 beyond the time when such rate, charge, classification,
53 regulation or practice would otherwise go into effect; and
54 in the case of a public utility having more than two
55 thousand five hundred customers, but not more than five
56 thousand customers, and which is not principally owned by
57 any other public utility corporation or public utility holding
58 corporation, the commission may suspend the operation of
59 such schedule and defer the use of such rate, charge,
60 classification, regulation or practice, but not for a longer
61 period than one hundred fifty days beyond the time when
62 such rate, charge, classification, regulation or practice
63 would otherwise go into effect; and in the case of a public
64 utility having more than five thousand customers, but not
65 more than seven thousand five hundred customers, and
66 which is not principally owned by any other public utility
67 corporation or public utility holding corporation, the
68 commission may suspend the operation of such schedule
69 and defer the use of such rate, charge, classification,
70 regulation or practice, but not for a longer period than one
71 hundred eighty days beyond the time when such rate,
72 charge, classification, regulation or practice would
73 otherwise go into effect; and after full hearing, whether
74 completed before or after the rate, charge, classification,
75 regulation or practice goes into effect, the commission may
76 make such order in reference to such rate, charge,
77 classification, regulation or practice as would be proper in

78 a proceeding initiated after the rate, charge, classification,
79 regulation or practice had become effective: *Provided,*
80 *however,* That, in the case of rates established or proposed
81 that increase by less than twenty-five percent of the gross
82 revenue of the public service district, there shall be no
83 suspension period in the case of rates established by a
84 public service district pursuant to section nine, article
85 thirteen-a, chapter sixteen of this code, and the proposed
86 rates of public service districts shall go into effect upon the
87 date of filing with the commission, subject to refund
88 modification at the conclusion of the commission
89 proceeding. In the case of rates established or proposed that
90 increase by more than twenty-five percent of the gross
91 revenue of the public service district, the district may apply
92 for, and the commission may grant, a waiver of the
93 suspension period and allow rates to be effective upon the
94 date of filing with the commission. The public service
95 district shall provide notice by Class 1 legal advertisement
96 in a newspaper of general circulation in its service territory
97 of the percentage increase in rates at least fourteen days
98 prior to the effective date of the increased rates. Any refund
99 determined to be determined to be due and owing as a result
100 of any difference between any final rates approved the
101 commission and the rates placed into effect subject to
102 refund shall be refunded by the public service district as a
103 credit against each customer's account for a period of up to
104 six months after entry of the commission's final order. Any
105 remaining balance which is not fully credited by credit
106 within six months after entry of the commission's final
107 order shall be directly refunded to the customer by check:
108 *Provided, further,* That if any such hearing and decision
109 thereon is not concluded within the periods of suspension,
110 as above stated, such rate, charge, classification, regulation
111 or practice shall go into effect at the end of such period not

112 subject to refund: *And provided further*, That if any such
113 rate, charge, classification, regulation or practice goes into
114 effect because of the failure of the commission to reach a
115 decision, the same shall not preclude the commission from
116 rendering a decision with respect thereto which would
117 disapprove, reduce or modify any such proposed rate,
118 charge, classification, regulation or practice, in whole or in
119 part, but any such disapproval, reduction or modification
120 shall not be deemed to require a refund to the customers of
121 such utility as to any rate, charge, classification, regulation
122 or practice so disapproved, reduced or modified. The fact of
123 any rate, charge, classification, regulation or practice going
124 into effect by reason of the commission's failure to act
125 thereon shall not affect the commission's power and
126 authority to subsequently act with respect to any such
127 application or change in any rate, charge, classification,
128 regulation or practice. Any rate, charge, classification,
129 regulation or practice which shall be approved,
130 disapproved, modified or changed, in whole or in part, by
131 decision of the commission shall remain in effect as so
132 approved, disapproved, modified or changed during the
133 period or pendency of any subsequent hearing thereon or
134 appeal therefrom. Orders of the commission affecting rates,
135 charges, classifications, regulations or practices which have
136 gone into effect automatically at the end of the suspension
137 period are prospective in effect only. At any hearing
138 involving a rate sought to be increased or involving the
139 change of any rate, charge, classification, regulation or
140 practice, the burden of proof to show the justness and
141 reasonableness of the increased rate or proposed increased
142 rate, or the proposed change of rate, charge, classification,
143 regulation or practice shall be upon the public utility
144 making application for such change. The commission shall,
145 whenever practicable and within budgetary constraints,

146 conduct one or more public hearings within the area served
147 by the public utility making application for such increase or
148 change, for the purpose of obtaining comments and
149 evidence on the matter from local ratepayers.

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

170 Where more than twenty members of the public are
171 affected by a proposed change in rates, it shall be a
172 sufficient notice to the public within the meaning of this
173 section if such notice is published as a Class II legal
174 advertisement in compliance with the provisions of article
175 three, chapter fifty-nine of this code, and the publication
176 area for such publication shall be the community where the
177 majority of the resident members of the public affected by

178 such change reside or, in case of nonresidents, have their
179 principal place of business within this state.

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

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

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

- 1 (a) The rates and charges of electric cooperatives,
- 2 natural gas cooperatives and municipally operated public

3 utilities, except for municipally operated commercial solid
4 waste facilities as defined in section two, article fifteen,
5 chapter twenty-two of this code, and the rates and charges
6 for local exchange services provided by telephone
7 cooperatives are not subject to the rate approval provisions
8 of section four or four-a of this article, but are subject to the
9 limited rate provisions of this section.

10 (b) All rates and charges set by electric cooperatives,
11 natural gas cooperatives and municipally operated public
12 utilities and all rates and charges for local exchange
13 services set by telephone cooperatives shall be just,
14 reasonable, applied without unjust discrimination or
15 preference and based primarily on the costs of providing
16 these services. The rates and charges shall be adopted by
17 the electric, natural gas or telephone cooperative's
18 governing board and in the case of the municipally operated
19 public utility by municipal ordinance to be effective not
20 sooner than forty-five days after adoption: *Provided*, That
21 notice of intent to effect a rate change shall be specified on
22 the monthly billing statement of the customers of the utility
23 for the month next preceding the month in which the rate
24 change is to become effective or the utility shall give its
25 customers, and in the case of a cooperative, its customers,
26 members and stockholders, other reasonable notices as will
27 allow filing of timely objections to the rate change or full
28 participation in municipal rate legislation. The rates and
29 charges or ordinance shall be filed with the commission,
30 together with any information showing the basis of the rates
31 and charges and other information as the commission
32 considers necessary. Any change in the rates and charges
33 with updated information shall be filed with the
34 commission. If a petition, as set out in subdivision (1), (2)
35 or (3), subsection (c) of this section is received and the

36 electric cooperative, natural gas cooperative or telephone
37 cooperative or municipality has failed to file with the
38 commission the rates and charges with information showing
39 the basis of rates and charges and other information as the
40 commission considers necessary, the suspension period
41 limitation of one hundred twenty days and the one hundred-
42 day period limitation for issuance of an order by a hearing
43 examiner, as contained in subsections (d) and (e) of this
44 section, is tolled until the necessary information is filed.
45 The electric cooperative, natural gas cooperative, telephone
46 cooperative or municipality shall set the date when any new
47 rate or charge is to go into effect.

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

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

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

65 (3) Any customer or group of customers who are
66 affected by the change in rates who reside within the

67 municipal boundaries and who present a petition to the
68 commission alleging discrimination between customer or
69 group of customers and other customers of the municipal
70 utility. The petition shall be accompanied by evidence of
71 discrimination.

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

82 (2) Upon sufficient showing of discrimination by
83 customers outside the municipal boundaries or a customer
84 or a group of customers within the municipal boundaries
85 under a petition filed under subdivision (2) or (3),
86 subsection (c) of this section, the commission shall suspend
87 the adoption of the rate change contained in the ordinance
88 for a period of one hundred twenty days from the date the
89 rates or charges would otherwise go into effect or until an
90 order is issued as provided herein. A municipal rate
91 ordinance enacted pursuant to the provisions of this section
92 and municipal charter or state code that establishes or
93 proposes a rate increase that results in an increase of less
94 than twenty-five percent of the gross revenue of the utility
95 shall be presumed valid and rates shall be allowed to go
96 into effect, subject to refund, upon the date stated in that
97 ordinance. In the case of rates established or proposed that
98 increase by more than twenty-five percent of the gross
99 revenue of the municipally operated public utility, the

100 utility may apply for, and the commission may grant, a
101 waiver of the suspension period and allow rates to be
102 effective upon enactment.

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

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

126 (g) A municipal utility shall be required to refund
127 revenues collected from rates enacted that are disapproved
128 or modified upon subsequent order of the commission
129 entered in a proceeding under this section. Any refund
130 determined to be due and owing as a result of any

131 difference between the municipal rates placed into effect
132 subject to refund and any final rates approved the
133 commission shall be refunded by the municipal utility as a
134 credit against each customer's account for a period of up to
135 six months after entry of the commission's final order. Any
136 remaining balance which is not fully refunded by credit
137 within six months after entry of the commission's final
138 order shall be directly refunded to the individual customer
139 by check.

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

153 (i) Notwithstanding any other provision, the
154 commission has no authority or responsibility with regard
155 to the regulation of rates, income, services or contracts by
156 municipally operated public utilities for services which are
157 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.

Danny Wells
Chairman, House Committee

[Signature]
~~Member~~ — ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

Suzanne M. Spay
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

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

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 28 2014

Time 10:45 AM