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2015 MAR 31 A 11:30

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 234

(SENATORS TRUMP, M. HALL,
BLAIR AND PLYMALE, *ORIGINAL SPONSORS*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB234

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FOR

Senate Bill No. 234

(SENATORS TRUMP, M. HALL,
BLAIR AND PLYMALE, *ORIGINAL SPONSORS*)

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; modifying procedure for sale or lease of municipal public utility; providing procedures for adjustment of rates by certain public service districts and municipal water and sewer utilities; eliminating requirement for consent and approval of Public Service Commission with respect to public service districts borrowing money, issuing bonds and entering into certain engineering contracts; relating to the authority of bondholders to petition the Public Service Commission for redress when

there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; limiting jurisdiction of Public Service Commission over certain water and sewer utilities owned or operated by political subdivisions of the state; defining terms; providing procedure for providing notice of construction projects to be undertaken by certain water and sewer utilities; requiring all public utilities to file schedules of rates with Public Service Commission; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital reserve; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

Be it enacted by the Legislature of West Virginia:

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-17. Sale or lease of municipal public utility.

1 In any case where a municipality owns a gas system, an
2 electric system, a waterworks system, a sewer system or other
3 public utility and a majority of not less than sixty percent of
4 the members of the governing body thereof shall deem it for
5 the best interest of such municipality that such utility be sold
6 or leased, the governing body may so sell or lease such gas
7 system, electric system, waterworks system, sewer system or
8 other public utility upon such terms and conditions as said
9 governing body in its discretion considers in the best interest
10 of the municipality: *Provided*, That such sale or lease may be
11 made only upon: (1) The publication of notice of a hearing
12 before the governing body of the municipality, as a Class I
13 legal advertisement in compliance with the provisions of
14 article three, chapter fifty-nine of this code, in a newspaper
15 published and of general circulation in the municipality, such
16 publication to be made not earlier than twenty days and not
17 later than seven days prior to the hearing; and (2) the
18 approval by the Public Service Commission of West Virginia.
19 The governing body, upon the approval of the sale or lease by
20 a majority of its members of not less than sixty percent of the
21 members of the governing body, shall have full power and
22 authority to proceed to execute or effect such sale or lease in
23 accordance with the terms and conditions prescribed in the
24 ordinance approved as aforesaid, and shall have power to do
25 any and all things necessary or incident thereto: *Provided*,
26 *however*, That if at any time after such approval and before
27 the execution of the authority under the ordinance, any
28 person should present to the governing body an offer to buy
29 such public utility at a price which exceeds by at least five
30 percent the sale price which shall have been so approved and
31 authorized or to lease the same upon terms which the
32 governing body, in its discretion, shall consider more
33 advantageous to the municipality than the terms of the lease
34 which shall have been previously approved as aforesaid, the
35 governing body shall have the power to accept such

36 subsequent offer, and to make such sale or such lease to the
37 person making the offer, upon approval of the offer by a
38 majority of not less than sixty percent of the members of the
39 governing body; but, if a sale shall have been approved by
40 the governing body as aforesaid, and the subsequent
41 proposition be for a lease, or, if a lease shall have been
42 approved by the governing body, and the subsequent
43 proposition shall be for a sale, the governing body shall have
44 the authority to accept the same upon approval of the offer by
45 a majority of not less than sixty percent of the members of the
46 governing body. The person making such proposition shall
47 furnish bond, with security to be approved by the governing
48 body, in a penalty of not less than twenty-five percent of such
49 proposed bid, conditioned to carry such proposition into
50 execution, if the same shall be approved by the governing
51 body. In any case where any such public utility shall be sold
52 or leased by the governing body as hereinabove provided, no
53 part of the moneys derived from such sale or lease shall be
54 applied to the payment of current expenses of the
55 municipality, but the proceeds of such sale or lease shall be
56 applied in payment and discharge of any indebtedness created
57 in respect to such public utility, and in case there be no
58 indebtedness, the governing body, in its discretion, shall have
59 the power and authority to expend all such moneys when
60 received for the purchase or construction of fire-fighting
61 equipment and buildings for housing such equipment, a
62 municipal building or city hall, and the necessary land upon
63 which to locate the same, or for the construction of paved
64 streets, avenues, roads, alleys, ways, sidewalks, sewers and
65 other like permanent improvements, and for no other
66 purposes. In case there be a surplus after the payment of such
67 indebtedness, the surplus shall be used as aforesaid.

68 The requirements of this section shall not apply to the
69 sale or lease of any part of the properties of any such public
70 utility determined by the governing body to be unnecessary
71 for the efficient rendering of the service of such utility.

§8-16-19. Appeal to Public Service Commission from rates fixed.

1 If any party in interest is dissatisfied with the rates fixed
2 under the provisions of section eighteen of this article, such
3 party shall have the right to appeal to the Public Service
4 Commission at any time within thirty days after the fixing of
5 such rates by the governing body, but the rates so fixed by
6 the governing body shall remain in full force and effect, until
7 set aside, altered or amended by the Public Service
8 Commission.

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND
ELECTRIC POWER SYSTEMS.****§8-19-4. Estimate of cost; ordinance or order for issuance of revenue
bonds; interest on bonds; rates for services; exemption from
taxation.**

1 Whenever a municipality or county commission shall,
2 under the provisions of this article, determine to acquire, by
3 purchase or otherwise, construct, establish, extend or equip
4 a waterworks system or an electric power system, or to
5 construct any additions, betterments or improvements to any
6 waterworks or electric power system, it shall cause an
7 estimate to be made of the cost thereof, and may, by
8 ordinance or order, provide for the issuance of revenue bonds
9 under the provisions of this article, which ordinance or order
10 shall set forth a brief description of the contemplated
11 undertaking, the estimated cost thereof, the amount, rate or
12 rates of interest, the time and place of payment and other
13 details in connection with the issuance of the bonds. The
14 bonds shall be in such form and shall be negotiated and sold
15 in such manner and upon such terms as the governing body
16 of such municipality or county commission may, by
17 ordinance or order, specify. All the bonds and the interest
18 thereon shall be exempt from all taxation by this state, or any
19 county, municipality or county commission, political
20 subdivision or agency thereof. Notwithstanding any other

21 provision of this code to the contrary, the real and personal
22 property which a municipality or county has acquired and
23 constructed according to the provisions of this article, and
24 any leasehold interest therein held by other persons, shall be
25 deemed public property and shall be exempt from taxation by
26 the state, or any county, municipality or other levying body,
27 so long as the same is owned by the municipality or county:
28 *Provided*, That with respect to electric power systems, this
29 exemption for real and personal property shall be applicable
30 only for the real and personal property: (1) Physically situate
31 within the municipal or county boundaries of the municipality
32 or county which acquired or constructed the electric power
33 system and there was in place prior to the effective date of the
34 amendments to this section made in the year 1992 an
35 agreement between the municipality and the county
36 commission for payments in lieu of tax; or (2) acquired or
37 constructed with the written agreement of the county school
38 board, county commission and any municipal authority
39 within whose jurisdiction the electric power system is or is to
40 be physically situate. Notwithstanding anything contained in
41 this statute to the contrary, this exemption shall be applicable
42 to any leasehold or similar interest held by persons other than
43 a municipality or county only if acquired or constructed with
44 the written agreement of the county school board, county
45 commission and any municipal authority within whose
46 jurisdiction the electric power system is or is to be physically
47 situate: *Provided, however*, That payments made to any
48 county commission, county school board or municipality in
49 lieu of tax pursuant to such an agreement shall be distributed
50 as if the payments resulted from ad valorem property
51 taxation. The bonds shall bear interest at a rate per annum set
52 by the municipality or county commission, payable at such
53 times, and shall be payable as to principal at such times, not
54 exceeding fifty years from their date, and at such place or
55 places, within or without the state, as shall be prescribed in
56 the ordinance or order providing for their issuance. Unless
57 the governing body of the municipality or county commission

58 shall otherwise determine, the ordinance or order shall also
59 declare that a statutory mortgage lien shall exist upon the
60 property so to be acquired, constructed, established, extended
61 or equipped, fix minimum rates or charges for water or
62 electricity to be collected prior to the payment of all of said
63 bonds and shall pledge the revenues derived from the
64 waterworks or electric power system for the purpose of
65 paying the bonds and interest thereon, which pledge shall
66 definitely fix and determine the amount of revenues which
67 shall be necessary to be set apart and applied to the payment
68 of the principal of and interest upon the bonds and the
69 proportion of the balance of the revenues, which are to be set
70 aside as a proper and adequate depreciation account, and the
71 remainder shall be set aside for the reasonable and proper
72 maintenance and operation thereof. The rates or charges to be
73 charged for the services from the waterworks or electric
74 power system shall be sufficient at all times to provide for the
75 payment of interest upon all bonds and to create a sinking
76 fund to pay the principal thereof as and when the same
77 become due, and reasonable reserves therefor, and to provide
78 for the repair, maintenance and operation of the waterworks
79 or electric power system, and to provide an adequate
80 depreciation fund, and to make any other payments which
81 shall be required or provided for in the ordinance or order
82 authorizing the issuance of said bonds.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-1a. Jurisdiction of the Public Service Commission.

1 The jurisdiction of the Public Service Commission
2 relating to public service districts shall be expanded to
3 include the following powers and the powers shall be in
4 addition to all other powers of the Public Service
5 Commission set forth in this code:

6 (a) To study, modify, approve, deny or amend the plans
7 created under section one-b of this article for consolidation or
8 merger of public service districts and their facilities,
9 personnel or administration;

10 (b) To petition the appropriate circuit court for the
11 removal of a public service district board member or
12 members; and

13 (c) To create by general order a separate division within
14 the Public Service Commission to provide assistance to
15 public service districts in technological, operational, financial
16 and regulatory matters, including, upon written request of the
17 public service board, assistance to the board in deliberations
18 regarding a proposed rate change or project.

**§16-13A-9. Rules; service rates and charges; discontinuance of service;
required water and sewer connections; lien for delinquent
fees.**

1 (a) (1) The board may make, enact and enforce all
2 needful rules in connection with the acquisition, construction,
3 improvement, extension, management, maintenance,
4 operation, care, protection and the use of any public service
5 properties owned or controlled by the district. The board shall
6 establish, in accordance with this article, rates, fees and
7 charges for the services and facilities it furnishes, which shall
8 be sufficient at all times, notwithstanding the provisions of
9 any other law or laws, to pay the cost of maintenance,
10 operation and depreciation of the public service properties
11 and principal of and interest on all bonds issued, other
12 obligations incurred under the provisions of this article and
13 all reserve or other payments provided for in the proceedings
14 which authorized the issuance of any bonds under this article.
15 The schedule of the rates, fees and charges may be based
16 upon:

17 (A) The consumption of water or gas on premises
18 connected with the facilities, taking into consideration
19 domestic, commercial, industrial and public use of water and
20 gas;

21 (B) The number and kind of fixtures connected with the
22 facilities located on the various premises;

23 (C) The number of persons served by the facilities;

24 (D) Any combination of paragraphs (A), (B) and (C) of
25 this subdivision; or

26 (E) May be determined on any other basis or
27 classification which the board may determine to be fair and
28 reasonable, taking into consideration the location of the
29 premises served and the nature and extent of the services and
30 facilities furnished. However, no rates, fees or charges for
31 stormwater services may be assessed against highways, road
32 and drainage easements or stormwater facilities constructed,
33 owned or operated by the West Virginia Division of
34 Highways.

35 (2) The board of a public service district with at least four
36 thousand five hundred customers and annual combined gross
37 revenue of \$3 million or more from its separate or combined
38 services may make, enact and enforce all needful rules in
39 connection with the enactment or amendment of rates, fees
40 and charges of the district. At a minimum, these rules shall
41 provide for:

42 (A) Adequate prior public notice of the contemplated
43 rates, fees and charges by causing a notice of intent to effect
44 such a change to be specified on the monthly billing
45 statement of the customers of the district for the month next
46 preceding the month in which the contemplated change is to
47 be before the board on first reading.

48 **(B) Adequate prior public notice of the contemplated**
49 **rates, fees and charges by causing to be published as a Class**
50 **I legal advertisement of the proposed action, in compliance**
51 **with the provisions of article three, chapter fifty-nine of the**
52 **code. The publication area for publication shall be all**
53 **territory served by the district. If the district provides service**
54 **in more than one county, publication shall be made in a**
55 **newspaper of general circulation in each county that the**
56 **district provides service.**

57 **(C) The public notice of the proposed action shall state**
58 **the current rates, fees and charges and the proposed changes**
59 **to said rates, fees and charges; the date, time and place of**
60 **both a public hearing on the proposal and the proposed final**
61 **vote on adoption; and the place or places within the district**
62 **where the proposed rates, fees and charges may be inspected**
63 **by the public. A reasonable number of copies of the proposal**
64 **shall be kept at the place or places and be made available for**
65 **public inspection. The notice shall also advise that interested**
66 **parties may appear at the public hearing before the board and**
67 **be heard with respect to the proposed rates, fees and charges.**

68 **(D) The proposed rates, fees and charges shall be read at**
69 **two meetings of the board with at least two weeks intervening**
70 **between each meeting. The public hearing may be conducted**
71 **with or following the second reading.**

72 **(E) Rates, fees and charges approved by an affirmative**
73 **vote of the board shall be forwarded in writing to the county**
74 **commission appointing the approving board. The county**
75 **commission shall publish notice of the proposed rates, fees**
76 **and charges by a Class 1 legal advertisement in compliance**
77 **with the provisions of article three, chapter fifty-nine of the**
78 **code. Within forty-five days of receipt of the proposed rates,**
79 **fees and charges, the county commission shall take action to**
80 **approve or reject the proposed rates, fees and charges. After**
81 **forty-five days, the proposed rates, fees and charges shall be**

82 effective with no further action by the board or county
83 commission. In any event, this 45-day period shall be
84 mandatory unless extended by the official action of both the
85 board proposing the rates, fees and charges, and the
86 appointing county commission.

87 (F) Enactment of the proposed rates, fees and charges
88 shall follow an affirmative vote by the county commission
89 and shall be effective no sooner than forty-five days
90 following action. The 45-day waiting period may be waived
91 by public vote of the county commission only if the
92 commission finds and declares the district to be in financial
93 distress such that the 45-day waiting period would be
94 detrimental to the ability of the district to deliver continued
95 and compliant public services.

96 (3) Where water, sewer, stormwater or gas services, or
97 any combination thereof, are all furnished to any premises,
98 the schedule of charges may be billed as a single amount for
99 the aggregate of the charges. The board shall require all users
100 of services and facilities furnished by the district to designate
101 on every application for service whether the applicant is a
102 tenant or an owner of the premises to be served. If the
103 applicant is a tenant, he or she shall state the name and
104 address of the owner or owners of the premises to be served
105 by the district. Notwithstanding the provisions of section
106 eight, article three, chapter twenty-four of this code to the
107 contrary, all new applicants for service shall deposit the
108 greater of a sum equal to two twelfths of the average annual
109 usage of the applicant's specific customer class or \$50, with
110 the district to secure the payment of service rates, fees and
111 charges in the event they become delinquent as provided in
112 this section. If a district provides both water and sewer
113 service, all new applicants for service shall deposit the
114 greater of a sum equal to two twelfths of the average annual
115 usage for water service or \$50 and the greater of a sum equal
116 to two twelfths of the average annual usage for wastewater

117 service of the applicant's specific customer class or \$50. In
118 any case where a deposit is forfeited to pay service rates, fees
119 and charges which were delinquent at the time of
120 disconnection or termination of service, no reconnection or
121 reinstatement of service may be made by the district until
122 another deposit equal to the greater of a sum equal to two
123 twelfths of the average usage for the applicant's specific
124 customer class or \$50 has been remitted to the district. After
125 twelve months of prompt payment history, the district shall
126 return the deposit to the customer or credit the customer's
127 account at a rate as the Public Service Commission may
128 prescribe: *Provided*, That where the customer is a tenant, the
129 district is not required to return the deposit until the time the
130 tenant discontinues service with the district. Whenever any
131 rates, fees, rentals or charges for services or facilities
132 furnished remain unpaid for a period of twenty days after the
133 same become due and payable, the user of the services and
134 facilities provided is delinquent and the user is liable at law
135 until all rates, fees and charges are fully paid. The board may,
136 under reasonable rules promulgated by the Public Service
137 Commission, shut off and discontinue water or gas services
138 to all delinquent users of either water or gas facilities, or
139 both, ten days after the water or gas services become
140 delinquent: *Provided, however*, That nothing contained
141 within the rules of the Public Service Commission shall be
142 deemed to require any agents or employees of the board to
143 accept payment at the customer's premises in lieu of
144 discontinuing service for a delinquent bill.

145 (b) In the event that any publicly or privately owned
146 utility, city, incorporated town, other municipal corporation
147 or other public service district included within the district
148 owns and operates separately water facilities, sewer facilities
149 or stormwater facilities and the district owns and operates
150 another kind of facility, either water or sewer, or both, as the
151 case may be, then the district and the publicly or privately
152 owned utility, city, incorporated town or other municipal

153 corporation or other public service district shall covenant and
154 contract with each other to shut off and discontinue the
155 supplying of water service for the nonpayment of sewer or
156 stormwater service fees and charges: *Provided*, That any
157 contracts entered into by a public service district pursuant to
158 this section shall be submitted to the Public Service
159 Commission for approval. Any public service district which
160 provides water and sewer service, water and stormwater
161 service or water, sewer and stormwater service has the right
162 to terminate water service for delinquency in payment of
163 water, sewer or stormwater bills. Where one public service
164 district is providing sewer service and another public service
165 district or a municipality included within the boundaries of
166 the sewer or stormwater district is providing water service
167 and the district providing sewer or stormwater service
168 experiences a delinquency in payment, the district or the
169 municipality included within the boundaries of the sewer or
170 stormwater district that is providing water service, upon the
171 request of the district providing sewer or stormwater service
172 to the delinquent account, shall terminate its water service to
173 the customer having the delinquent sewer or stormwater
174 account: *Provided, however*, That any termination of water
175 service must comply with all rules and orders of the Public
176 Service Commission: *Provided further*, That nothing
177 contained within the rules of the Public Service Commission
178 shall be deemed to require any agents or employees of the
179 public service districts to accept payment at the customer's
180 premises in lieu of discontinuing service for a delinquent bill.

181 (c) Any district furnishing sewer facilities within the
182 district may require or may, by petition to the circuit court of
183 the county in which the property is located, compel or may
184 require the Division of Health to compel all owners, tenants
185 or occupants of any houses, dwellings and buildings located
186 near any sewer facilities where sewage will flow by gravity
187 or be transported by other methods approved by the Division
188 of Health, including, but not limited to, vacuum and pressure

189 systems, approved under the provisions of section nine,
190 article one, chapter sixteen of this code, from the houses,
191 dwellings or buildings into the sewer facilities, to connect
192 with and use the sewer facilities and to cease the use of all
193 other means for the collection, treatment and disposal of
194 sewage and waste matters from the houses, dwellings and
195 buildings where there is gravity flow or transportation by any
196 other methods approved by the Division of Health, including,
197 but not limited to, vacuum and pressure systems, approved
198 under the provisions of section nine, article one of this
199 chapter and the houses, dwellings and buildings can be
200 adequately served by the sewer facilities of the district and it
201 is declared that the mandatory use of the sewer facilities
202 provided for in this subsection is necessary and essential for
203 the health and welfare of the inhabitants and residents of the
204 districts and of the state. If the public service district requires
205 the property owner to connect with the sewer facilities even
206 when sewage from dwellings may not flow to the main line
207 by gravity and the property owner incurs costs for any
208 changes in the existing dwellings' exterior plumbing in order
209 to connect to the main sewer line, the public service district
210 board shall authorize the district to pay all reasonable costs
211 for the changes in the exterior plumbing, including, but not
212 limited to, installation, operation, maintenance and purchase
213 of a pump or any other method approved by the Division of
214 Health. Maintenance and operation costs for the extra
215 installation should be reflected in the users charge for
216 approval of the Public Service Commission. The circuit court
217 shall adjudicate the merits of the petition by summary hearing
218 to be held not later than thirty days after service of petition to
219 the appropriate owners, tenants or occupants.

220 (d) Whenever any district has made available sewer
221 facilities to any owner, tenant or occupant of any house,
222 dwelling or building located near the sewer facility and the
223 engineer for the district has certified that the sewer facilities
224 are available to and are adequate to serve the owner, tenant

225 or occupant and sewage will flow by gravity or be
226 transported by other methods approved by the Division of
227 Health from the house, dwelling or building into the sewer
228 facilities, the district may charge, and the owner, tenant or
229 occupant shall pay, the rates and charges for services
230 established under this article only after thirty days' notice of
231 the availability of the facilities has been received by the
232 owner, tenant or occupant. Rates and charges for sewage
233 services shall be based upon actual water consumption or the
234 average monthly water consumption based upon the owner's,
235 tenant's or occupant's specific customer class.

236 (e) The owner, tenant or occupant of any real property
237 may be determined and declared to be served by a stormwater
238 system only after each of the following conditions is met: (1)
239 The district has been designated by the Environmental
240 Protection Agency as an entity to serve a West Virginia
241 Separate Storm Sewer System community, as defined in 40
242 C. F. R. §122.26; (2) the district's authority has been properly
243 expanded to operate and maintain a stormwater system; (3)
244 the district has made available a stormwater system where
245 stormwater from the real property affects or drains into the
246 stormwater system; and (4) the real property is located in the
247 Municipal Separate Storm Sewer System's designated service
248 area. It is further hereby found, determined and declared that
249 the mandatory use of the stormwater system is necessary and
250 essential for the health and welfare of the inhabitants and
251 residents of the district and of the state. The district may
252 charge and the owner, tenant or occupant shall pay the rates,
253 fees and charges for stormwater services established under
254 this article only after thirty days' notice of the availability of
255 the stormwater system has been received by the owner. An
256 entity providing stormwater service shall provide a tenant a
257 report of the stormwater fee charged for the entire property
258 and, if appropriate, that portion of the fee to be assessed to
259 the tenant.

260 (f) All delinquent fees, rates and charges of the district
261 for either water facilities, sewer facilities, gas facilities or
262 stormwater systems or stormwater management programs
263 are liens on the premises served of equal dignity, rank and
264 priority with the lien on the premises of state, county,
265 school and municipal taxes. Nothing contained within the
266 rules of the Public Service Commission shall be deemed to
267 require any agents or employees of the public service
268 districts to accept payment at the customer's premises in
269 lieu of discontinuing service for a delinquent bill. In
270 addition to the other remedies provided in this section,
271 public service districts are granted a deferral of filing fees
272 or other fees and costs incidental to the bringing and
273 maintenance of an action in magistrate court for the
274 collection of delinquent water, sewer, stormwater or gas
275 bills. If the district collects the delinquent account, plus
276 reasonable costs, from its customer or other responsible
277 party, the district shall pay to the magistrate the normal
278 filing fee and reasonable costs which were previously
279 deferred. In addition, each public service district may
280 exchange with other public service districts a list of
281 delinquent accounts: *Provided*, That an owner of real
282 property may not be held liable for the delinquent rates or
283 charges for services or facilities of a tenant, nor may any
284 lien attach to real property for the reason of delinquent rates
285 or charges for services or facilities of a tenant of the real
286 property unless the owner has contracted directly with the
287 public service district to purchase the services or facilities.

288 (g) Anything in this section to the contrary
289 notwithstanding, any establishment, as defined in section
290 three, article eleven, chapter twenty-two of this code, now or
291 hereafter operating its own sewage disposal system pursuant
292 to a permit issued by the Department of Environmental
293 Protection, as prescribed by section eleven of said article, is
294 exempt from the provisions of this section.

295 (h) A public service district which has been designated by
 296 the Environmental Protection Agency as an entity to serve a
 297 West Virginia Separate Storm Sewer System community
 298 shall prepare an annual report detailing the collection and
 299 expenditure of rates, fees or charges and make it available for
 300 public review at the place of business of the governing body
 301 and the stormwater utility main office.

§16-13A-25. Borrowing and bond issuance; procedure.

1 A public service district has plenary power to borrow
 2 money, enter into contracts for the provision of engineering,
 3 design or feasibility studies, issue or contract to issue revenue
 4 bonds or exercise any of the powers conferred by the
 5 provisions of section thirteen, twenty or twenty-four of this
 6 article. Upon written request of the public service board
 7 contemplating such transaction or project, the Public Service
 8 Commission shall provide technical support to the public
 9 service board, including, but not limited to, engineering,
 10 design and financial analysis of the proposed transaction or
 11 project.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

**§24-1-1. Legislative purpose and policy; plan for internal reorganization;
 promulgation of plan as rule; cooperation with Joint
 Committee on Government and Finance.**

1 (a) It is the purpose and policy of the Legislature in
 2 enacting this chapter to confer upon the Public Service
 3 Commission of this state the authority and duty to enforce
 4 and regulate the practices, services and rates of public
 5 utilities 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 ways
12 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, applied in a manner consistent with the purposes
17 and policies set forth in article two-a of this chapter and
18 based primarily on the costs of providing these services;

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

21 (6) Encourage removal of artificial barriers to rail carrier
22 service, stimulate competition, stimulate the free flow of
23 goods and passengers throughout the state and promote the
24 expansion of the tourism industry, thereby improving the
25 economic condition of the state.

26 (b) The Legislature creates the Public Service
27 Commission to exercise the legislative powers delegated to
28 it. The Public Service Commission is charged with the
29 responsibility for appraising and balancing the interests of
30 current and future utility service customers, the general
31 interests of the state's economy and the interests of the
32 utilities subject to its jurisdiction in its deliberations and
33 decisions.

34 (c) The Legislature directs the Public Service
35 Commission to identify, explore and consider the potential
36 benefits or risks associated with emerging and state-of-the-art
37 concepts in utility management, rate design and conservation.
38 The commission may conduct inquiries and hold hearings

39 regarding such concepts in order to provide utilities subject
40 to its jurisdiction and other interested persons the opportunity
41 to comment and shall report to the Governor and the
42 Legislature regarding its findings and policies to each of
43 these areas not later than the first day of the regular session
44 of the Legislature in the year 1985, and every two years
45 thereafter.

46 (d) It is legislative policy to ensure that the Legislature
47 and the general public become better informed regarding the
48 regulation of public utilities in this state and the conduct of
49 the business of the Public Service Commission. To aid in the
50 achievement of this policy, the Public Service Commission
51 annually shall present to the Joint Committee on Government
52 and Finance, created by article three, chapter four of this
53 code, or a subcommittee designated by the joint committee,
54 a management summary report which describes in a concise
55 manner:

56 (1) The major activities of the commission for the year
57 especially as such activities relate to the implementation of
58 the provisions of this chapter;

59 (2) Important policy decisions reached and initiatives
60 undertaken during the year;

61 (3) The current balance of supply and demand for natural
62 gas and electric utility services in the state and forecast of the
63 probable balance for the next ten years; and

64 (4) Other information considered by the commission to be
65 important including recommendations for statutory reform
66 and the reasons for such recommendations.

67 (e) In addition to any other studies and reports required
68 to be conducted and made by the Public Service Commission
69 pursuant to any other provision of this section, the

70 commission shall study and initially report to the Legislature
71 no later than the first day of the regular session of the
72 Legislature in the year 1980 upon:

73 (1) The extent to which natural gas wells or wells
74 heretofore supplying gas utilities in this state have been
75 capped off or shut in; the number of such wells; their
76 probable extent of future production and the reasons given
77 and any justification for capping off or shutting in such wells;
78 the reasons, if any, why persons engaged or heretofore
79 engaged in the development of gas wells in this state or the
80 Appalachian areas have been discouraged from drilling,
81 developing or selling the production of such wells; and
82 whether there are fixed policies by any utility or group of
83 utilities to avoid the purchase of natural gas produced in the
84 Appalachian region of the United States generally and in
85 West Virginia specifically.

86 (2) The extent of the export and import of natural gas
87 utility supplies in West Virginia.

88 (3) The cumulative effect of the practices mentioned in
89 subdivisions (1) and (2) of this subsection upon rates
90 theretofore and hereafter charged gas utility customers in
91 West Virginia. In carrying out the provisions of this section
92 the commission shall have jurisdiction over such persons,
93 whether public utilities or not, as may be in the opinion of the
94 commission necessary to the exercise of its mandate and may
95 compel attendance before it, take testimony under oath and
96 compel the production of papers or other documents. Upon
97 reasonable request by the commission, all other state agencies
98 shall cooperate with the commission in carrying out the
99 provisions and requirements of this subsection.

100 (f) No later than the first day of the regular session of the
101 Legislature in the year 1980, the Public Service Commission
102 shall submit to the Legislature a plan for internal

103 reorganization which plan shall specifically address the
104 following:

105 (1) A division within the Public Service Commission
106 which shall include the office of the commissioners, the
107 hearing examiners and such support staff as may be necessary
108 to carry out the functions of decisionmaking and general
109 supervision of the commission, which functions shall not
110 include advocacy in cases before the commission;

111 (2) The creation of a division which shall act as an
112 advocate for the position of and in the interest of all
113 customers;

114 (3) The means and procedures by which the division to be
115 created pursuant to the provisions of subdivision (2) of this
116 subsection shall protect the interests of each class of
117 customers and the means by which the commission will
118 assure that such division will be financially and
119 departmentally independent of the division created by
120 subdivision (1) of this subsection;

121 (4) The creation of a division within the Public Service
122 Commission which shall assume the duties and
123 responsibilities now charged to the commissioners with
124 regard to motor carriers which division shall exist separately
125 from those divisions set out in subdivisions (1) and (2) of this
126 subsection and which shall relieve the commissioners of all
127 except minimal administrative responsibilities as to motor
128 carriers and which plan shall provide for a hearing procedure
129 to relieve the commissioners from hearing motor carrier
130 cases;

131 (5) Which members of the staff of the Public Service
132 Commission shall be exempted from the salary schedules or
133 pay plan adopted by the Civil Service Commission and
134 identify such staff members by job classification or

135 designation, together with the salary or salary ranges for each
136 such job classification or designation;

137 (6) The manner in which the commission will strengthen
138 its knowledge and independent capacity to analyze key
139 conditions and trends in the industries it regulates extending
140 from general industry analysis and supply-demand
141 forecasting to continuing and more thorough scrutiny of the
142 capacity planning, construction management, operating
143 performance and financial condition of the major companies
144 within these industries.

145 Such plan shall be based on the concept that each of the
146 divisions mentioned in subdivisions (1), (2) and (4) of this
147 subsection shall exist independently of the others and the plan
148 shall discourage ex parte communications between them by
149 such means as the commission shall direct, including, but not
150 limited to, separate clerical and professional staffing for each
151 division. Further, the Public Service Commission is directed to
152 incorporate within the said plan to the fullest extent possible the
153 recommendations presented to the subcommittee on the Public
154 Service Commission of the Joint Committee on Government
155 and Finance in a final report dated February, 1979, and entitled
156 A Plan for Regulatory Reform and Management Improvement.

157 The commission shall, before January 5, 1980, adopt said
158 plan by order, which order shall promulgate the same as a
159 rule of the commission to be effective upon the date specified
160 in said order, which date shall be no later than December 31,
161 1980. Certified copies of such order and rule shall be filed on
162 the first day of the 1980 regular session of the Legislature, by
163 the chairman of the commission with the clerk of each house
164 of the Legislature, the Governor and the Secretary of State.
165 The chairman of the commission shall also file with the office
166 of the Secretary of State the receipt of the clerk of each house
167 and of the Governor, which receipt shall evidence compliance
168 with this section.

169 Upon the filing of a certified copy of such order and rule,
170 the clerk of each house of the Legislature shall report the
171 same to their respective houses and the presiding officer
172 thereof shall refer the same to appropriate standing committee
173 or committees.

174 Within the limits of funds appropriated therefor, the rule
175 of the Public Service Commission shall be effective upon the
176 date specified in the order of the commission promulgating it
177 unless an alternative plan be adopted by general law or unless
178 the rule is disapproved by a concurrent resolution of the
179 Legislature adopted prior to adjournment sine die of the
180 regular session of the Legislature to be held in the year 1980:
181 *Provided*, That if such rule is approved in part and
182 disapproved in part by a concurrent resolution of the
183 Legislature adopted prior to such adjournment, such rule shall
184 be effective to the extent and only to the extent that the same
185 is approved by such concurrent resolution.

186 The rules promulgated and made effective pursuant to
187 this section shall be effective notwithstanding any other
188 provisions of this code for the promulgation of rules or
189 regulations.

190 (g) The Public Service Commission is hereby directed to
191 cooperate with the Joint Committee on Government and
192 Finance of the Legislature in its review, examination and
193 study of the administrative operations and enforcement
194 record of the Railroad Safety Division of the Public Service
195 Commission and any similar studies.

196 (h) (1) The Legislature hereby finds that rates for natural
197 gas charged to customers of all classes have risen
198 dramatically in recent years to the extent that such increases
199 have adversely affected all customer classes. The Legislature
200 further finds that it must take action necessary to mitigate the
201 adverse consequences of these dramatic rate increases.

202 (2) The Legislature further finds that the practices of
203 natural gas utilities in purchasing high-priced gas supplies, in
204 purchasing gas supplies from out-of-state sources when West
205 Virginia possesses abundant natural gas, and in securing
206 supplies, directly or indirectly, by contractual agreements,
207 including take-or-pay provisions, indefinite price escalators
208 or most-favored nation clauses have contributed to the
209 dramatic increase in natural gas prices. It is therefore the
210 policy of the Legislature to discourage such purchasing
211 practices in order to protect all customer classes.

212 (3) The Legislature further finds that it is in the best
213 interests of the citizens of West Virginia to encourage the
214 transportation of natural gas in intrastate commerce by
215 interstate or intrastate pipelines or by local distribution
216 companies in order to provide competition in the natural gas
217 industry and in order to provide natural gas to consumers at
218 the lowest possible price.

219 (i) The Legislature further finds that transactions between
220 utilities and affiliates are a contributing factor to the increase
221 in natural gas and electricity prices and tend to confuse
222 consideration of a proper rate of return calculation. The
223 Legislature therefore finds that it is imperative that the Public
224 Service Commission have the opportunity to properly study
225 the issue of proper rate of return for lengthy periods of time
226 and to limit the return of a utility to a proper level when
227 compared to return or profit that affiliates earn on
228 transactions with sister utilities.

229 (j) The Legislature further finds that water and sewer
230 utilities that are political subdivisions of the state providing
231 separate or combined services and having at least four
232 thousand five hundred customers and annual gross revenues
233 of \$3 million or more are most fairly and effectively
234 regulated by the local governing body with respect to rates,
235 borrowing and capital projects. Therefore, notwithstanding

236 any contrary provisions of this section, the jurisdiction of the
237 Public Service Commission over water and sewer utilities
238 that are political subdivisions of the state is limited to that
239 granted specifically in this code.

240 (k) The Legislature further finds that an adequate cash
241 working capital fund is essential to allow water and sewer
242 utilities that are political subdivisions of the state to deliver
243 continuous and compliant service. Therefore, these utilities
244 shall maintain a working capital reserve in an amount of no
245 less than one eighth of actual annual operation and
246 maintenance expense. This reserve shall be separate and
247 distinct from and in addition to any repair and replacement
248 fund that may be required by bond covenants.

§24-1-1b. Supplemental rule for reorganization.

1 The Public Service Commission shall, by general order,
2 create a division within its staff which shall, upon written
3 request of the governing body of a political subdivision that
4 operates a water, sewer and/or stormwater utility, provide
5 legal, operational, engineering, financial, ratemaking and
6 accounting advice and assistance to water, sewer and/or
7 stormwater utilities that are political subdivisions of the state
8 and may perform or participate in the studies required under
9 section one-b, article thirteen-a, chapter sixteen of this code.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from
2 the context, the words "public utility", when used in this
3 chapter, shall mean and include any person or persons, or
4 association of persons, however associated, whether
5 incorporated or not, including municipalities, engaged in any
6 business, whether herein enumerated or not, which is, or shall
7 hereafter be held to be, a public service. Whenever in this
8 chapter the words "commission" or "Public Service

9 Commission” occur, such word or words shall, unless a
10 different intent clearly appears from the context, be taken to
11 mean the Public Service Commission of West Virginia.
12 Whenever used in this chapter, “customer” shall mean and
13 include any person, firm, corporation, municipality, public
14 service district or any other entity who purchases a product
15 or services of any utility and shall include any such person,
16 firm, corporation, municipality, public service district or any
17 other entity who purchases such services or product for
18 resale. Whenever in this chapter the words “governing body”
19 occur, such word or words shall, unless a different intent
20 clearly appears from the context, be taken to mean the
21 municipal body charged with the authority and responsibility
22 of enacting ordinances of the municipality, as defined in
23 section two, article one, chapter eight of this code, or a public
24 service board of a public service district, as defined in section
25 three, article thirteen-a, chapter sixteen of this code.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.**

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 (a) 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 by
7 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
16 or more persons or firms other than the owner of the sewer
17 systems: *Provided*, That if a public utility other than a
18 political subdivision intends to provide sewer service by an
19 innovative, alternative method, as defined by the federal
20 Environmental Protection Agency, the innovative, alternative
21 method is a public utility function and subject to the
22 jurisdiction of the Public Service Commission regardless of
23 the number of customers served by the innovative, alternative
24 method; any public service district created under the
25 provisions of article thirteen-a, chapter sixteen of this code;
26 toll bridges, wharves, ferries; solid waste facilities; and any
27 other public service: *Provided, however*, That natural gas
28 producers who provide natural gas service to not more than
29 twenty-five residential customers are exempt from the
30 jurisdiction of the commission with regard to the provisions
31 of such residential service: *Provided further*, That upon
32 request of any of the customers of such natural gas producers,
33 the commission may, upon good cause being shown, exercise
34 such authority as the commission may deem appropriate over
35 the operation, rates and charges of such producer and for such
36 length of time as the commission may consider to be proper.

37 (b) The jurisdiction of the commission over political
38 subdivisions of this state providing separate or combined
39 services and having at least four thousand five hundred
40 customers and annual combined gross revenues of \$3 million
41 or more that are political subdivisions of the state is limited
42 to:

43 (1) General supervision of public utilities, as granted and
44 described in section five of this article;

45 (2) Regulation of measurements, practices, acts or
46 services, as granted and described in section seven of this
47 article;

48 (3) Regulation of a system of accounts to be kept by a
49 public utility that is a political subdivision of the state, as
50 granted and described in section eight of this article;

51 (4) Submission of information to the commission
52 regarding rates, tolls, charges or practices, as granted and
53 described in section nine of this article;

54 (5) Authority to subpoena witnesses, take testimony and
55 administer oaths to any witness in any proceeding before or
56 conducted by the commission, as granted and described in
57 section ten of this article; and

58 (6) Investigation and resolution of disputes involving
59 political subdivisions of the state regarding inter-utility
60 agreements, rates, fees and charges, service areas and
61 contested utility combinations.

62 (7) Customers of water and sewer utilities operated by a
63 political subdivision of the state and customers of stormwater
64 utilities operated by a public service district may bring formal
65 or informal complaints regarding the commission's exercise
66 of the powers enumerated in this section and the commission
67 shall resolve these complaints.

68 (8) In the event that a political subdivision has a
69 deficiency in either its bond revenue or bond reserve
70 accounts, or is otherwise in breach of a bond covenant, the
71 bond holder may petition the Public Service Commission for
72 such redress as will bring the accounts to current status or
73 otherwise resolve the breached covenant, and the commission
74 shall have jurisdiction to fully resolve the alleged deficiency
75 or breach.

76 (c) The commission may, upon application, waive its
77 jurisdiction and allow a utility operating in an adjoining state
78 to provide service in West Virginia when:

79 (1) An area of West Virginia cannot be practicably and
80 economically served by a utility licensed to operate within
81 the State of West Virginia;

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

84 (3) The utility operating in the adjoining state is regulated
85 by a regulatory agency or commission of the adjoining state;
86 and

87 (4) The number of customers to be served is not
88 substantial. The rates the out-of-state utility charges West
89 Virginia customers shall be the same as the rate the utility is
90 duly authorized to charge in the adjoining jurisdiction. The
91 commission, in the case of any such utility, may revoke its
92 waiver of jurisdiction for good cause.

93 (d) Any other provisions of this chapter to the contrary
94 notwithstanding:

95 (1) An owner or operator of an electric generating facility
96 located or to be located in this state that has been designated
97 as an exempt wholesale generator under applicable federal
98 law, or will be so designated prior to commercial operation
99 of the facility, and for which such facility the owner or
100 operator holds a certificate of public convenience and
101 necessity issued by the commission on or before July 1, 2003,
102 shall be subject to subsections (e), (f), (g), (h), (i) and (j),
103 section eleven-c of this article as if the certificate of public
104 convenience and necessity for such facility were a siting
105 certificate issued under said section and shall not otherwise
106 be subject to the jurisdiction of the commission or to the
107 provisions of this chapter with respect to such facility except
108 for the making or constructing of a material modification
109 thereof as provided in subdivision (5) of this subsection.

110 (2) Any person, corporation or other entity that intends to
111 construct or construct and operate an electric generating
112 facility to be located in this state that has been designated as
113 an exempt wholesale generator under applicable federal law,
114 or will be so designated prior to commercial operation of the
115 facility, and for which facility the owner or operator does not
116 hold a certificate of public convenience and necessity issued
117 by the commission on or before July 1, 2003, shall, prior to
118 commencement of construction of the facility, obtain a siting
119 certificate from the commission pursuant to the provisions of
120 section eleven-c of this article in lieu of a certificate of public
121 convenience and necessity pursuant to the provisions of
122 section eleven of this article. An owner or operator of an
123 electric generating facility as is described in this subdivision
124 for which a siting certificate has been issued by the
125 commission shall be subject to subsections (e), (f), (g), (h), (i)
126 and (j), section eleven-c of this article and shall not otherwise
127 be subject to the jurisdiction of the commission or to the
128 provisions of this chapter with respect to such facility except
129 for the making or constructing of a material modification
130 thereof as provided in subdivision (5) of this subsection.

131 (3) An owner or operator of an electric generating facility
132 located in this state that had not been designated as an exempt
133 wholesale generator under applicable federal law prior to
134 commercial operation of the facility that generates electric
135 energy solely for sale at retail outside this state or solely for
136 sale at wholesale in accordance with any applicable federal
137 law that preempts state law or solely for both such sales at
138 retail and such sales at wholesale and that had been
139 constructed and had engaged in commercial operation on or
140 before July 1, 2003, shall not be subject to the jurisdiction of
141 the commission or to the provisions of this chapter with
142 respect to such facility, regardless of whether such facility
143 subsequent to its construction has been or will be designated
144 as an exempt wholesale generator under applicable federal
145 law: *Provided*, That such owner or operator shall be subject

146 to subdivision (5) of this subsection if a material modification
147 of such facility is made or constructed.

148 (4) Any person, corporation or other entity that intends to
149 construct or construct and operate an electric generating
150 facility to be located in this state that has not been or will not
151 be designated as an exempt wholesale generator under
152 applicable federal law prior to commercial operation of the
153 facility that will generate electric energy solely for sale at
154 retail outside this state or solely for sale at wholesale in
155 accordance with any applicable federal law that preempts
156 state law or solely for both such sales at retail and such sales
157 at wholesale and that had not been constructed and had not
158 been engaged in commercial operation on or before July 1,
159 2003, shall, prior to commencement of construction of the
160 facility, obtain a siting certificate from the commission
161 pursuant to the provisions of section eleven-c of this article
162 in lieu of a certificate of public convenience and necessity
163 pursuant to the provisions of section eleven of this article.
164 An owner or operator of an electric generating facility as is
165 described in this subdivision for which a siting certificate has
166 been issued by the commission shall be subject to subsections
167 (e), (f), (g), (h), (i) and (j), section eleven-c of this article and
168 shall not otherwise be subject to the jurisdiction of the
169 commission or to the provisions of this chapter with respect
170 to such facility except for the making or constructing of a
171 material modification thereof as provided in subdivision (5)
172 of this subsection.

173 (5) An owner or operator of an electric generating facility
174 described in this subsection shall, before making or
175 constructing a material modification of the facility that is not
176 within the terms of any certificate of public convenience and
177 necessity or siting certificate previously issued for the facility
178 or an earlier material modification thereof, obtain a siting
179 certificate for the modification from the commission pursuant
180 to the provisions of section eleven-c of this article in lieu of

181 a certificate of public convenience and necessity for the
182 modification pursuant to the provisions of section eleven of
183 this article and, except for the provisions of section eleven-c
184 of this article, shall not otherwise be subject to the
185 jurisdiction of the commission or to the provisions of this
186 chapter with respect to such modification.

187 (6) The commission shall consider an application for a
188 certificate of public convenience and necessity filed pursuant
189 to section eleven of this article to construct an electric
190 generating facility described in this subsection or to make or
191 construct a material modification of such electric generating
192 facility as an application for a siting certificate pursuant to
193 section eleven-c of this article if the application for the
194 certificate of public convenience and necessity was filed with
195 the commission prior to July 1, 2003, and if the commission
196 has not issued a final order thereon as of that date.

197 (7) The limitations on the jurisdiction of the commission
198 over, and on the applicability of the provisions of this chapter
199 to, the owner or operator of an electric generating facility as
200 imposed by and described in this subsection shall not be
201 deemed to affect or limit the commission's jurisdiction over
202 contracts or arrangements between the owner or operator of
203 such facility and any affiliated public utility subject to the
204 provisions of this chapter.

§24-2-2. General power of commission to regulate public utilities.

1 (a) The commission is hereby given power to investigate
2 all rates, methods and practices of public utilities subject to
3 the provisions of this chapter; to require them to conform to
4 the laws of this state and to all rules, regulations and orders
5 of the commission not contrary to law; and to require copies
6 of all reports, rates, classifications, schedules and timetables
7 in effect and used by the public utility or other person to be
8 filed with the commission, and all other information desired

9 by the commission relating to the investigation and
10 requirements, including inventories of all property in such
11 form and detail as the commission may prescribe. The
12 commission may compel obedience to its lawful orders by
13 mandamus or injunction or other proper proceedings in the
14 name of the state in any circuit court having jurisdiction of
15 the parties or of the subject matter, or the Supreme Court of
16 Appeals directly, and the proceedings shall have priority over
17 all pending cases. The commission may change any
18 intrastate rate, charge or toll which is unjust or unreasonable
19 or any interstate charge with respect to matters of a purely
20 local nature which have not been regulated by or pursuant to
21 an act of Congress and may prescribe a rate, charge or toll
22 that is just and reasonable, and change or prohibit any
23 practice, device or method of service in order to prevent
24 undue discrimination or favoritism between persons and
25 between localities and between commodities for a like and
26 contemporaneous service. But in no case shall the rate, toll
27 or charge be more than the service is reasonably worth,
28 considering the cost of the service. Every order entered by
29 the commission shall continue in force until the expiration of
30 the time, if any, named by the commission in the order, or
31 until revoked or modified by the commission, unless the
32 order is suspended, modified or revoked by order or decree
33 of a court of competent jurisdiction: *Provided*, That in the
34 case of utilities used by emergency shelter providers, the
35 commission shall prescribe such rates, charges or tolls that
36 are the lowest available. "Emergency shelter provider" means
37 any nonprofit entity which provides temporary emergency
38 housing and services to the homeless or to victims of
39 domestic violence or other abuse.

40 (b) Notwithstanding any other provision of this code to
41 the contrary, rates are not discriminatory if, when considering
42 the debt costs associated with a future water or sewer project
43 which would not benefit existing customers, the commission
44 establishes rates which ensure that the future customers to be

45 served by the new project are solely responsible for the debt
46 costs associated with the project.

47 (c) Notwithstanding any other provision of this code to
48 the contrary, the jurisdiction of the commission over water
49 and/or sewer utilities that are political subdivisions of the
50 state providing a separate or combined services and having at
51 least four thousand five hundred customers and annual
52 combined gross revenues of \$3 million or more shall be
53 limited to those powers enumerated in subsection (b), section
54 one of this article.

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

1 (a) The commission shall have power to enforce,
2 originate, establish, change and promulgate tariffs, rates, joint
3 rates, tolls and schedules for all public utilities except for
4 water and/or sewer utilities that are political subdivisions of
5 this state providing a separate or combined services and
6 having at least four thousand five hundred customers and
7 annual combined gross revenues of \$3 million or more:
8 *Provided*, That the commission may exercise such rate
9 authority over municipally owned electric or natural gas
10 utilities or a municipally owned water and/or sewer utility
11 having less than four thousand five hundred customers and \$3
12 million dollars annual combined gross revenues, only under
13 the circumstances and limitations set forth in section four-b
14 of this article. And whenever the commission shall, after
15 hearing, find any existing rates, tolls, tariffs, joint rates or
16 schedules enacted or maintained by a utility regulated under
17 the provisions of this section to be unjust, unreasonable,
18 insufficient or unjustly discriminatory or otherwise in
19 violation of any of the provisions of this chapter, the
20 commission shall by an order fix reasonable rates, joint rates,
21 tariffs, tolls or schedules to be followed in the future in lieu
22 of those found to be unjust, unreasonable, insufficient or
23 unjustly discriminatory or otherwise in violation of any

24 provisions of law, and the said commission, in fixing the rate
25 of any railroad company, may fix a fair, reasonable and just
26 rate to be charged on any branch line thereof, independent of
27 the rate charged on the main line of such railroad.

28 (b) In determining just and reasonable rates, the
29 commission may audit and investigate management practices
30 and policies, or have performed an audit and investigation of
31 such practices and policies, in order to determine whether the
32 utility is operating with efficiency and is utilizing sound
33 management practices. The commission shall adopt rules and
34 regulations setting forth the scope, frequency and application
35 of such audits and investigations to the various utilities
36 subject to its jurisdiction. The commission may include the
37 cost of conducting the management audit in the cost of
38 service of the utility.

39 (c) In determining just and reasonable rates, the
40 commission shall investigate and review transactions between
41 utilities and affiliates. The commission shall limit the total
42 return of the utility to a level which, when considered with
43 the level of profit or return the affiliate earns on transactions
44 with the utility, is just and reasonable.

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

1 (a) After June 30, 1981, no public utility subject to this
2 chapter, except for water and/or sewer utilities that are
3 political subdivisions of the state providing separate or
4 combined services and having at least four thousand five
5 hundred customers and annual gross revenue of \$3 million or
6 more from its separate or combined services, shall change,
7 suspend or annul any rate, joint rate, charge, rental or
8 classification except after thirty days' notice to the
9 commission and the public, which notice shall plainly state
10 the changes proposed to be made in the schedule then in force
11 and the time when the changed rates or charges shall go into

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

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

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

85 revenue of the regulated public service district, there shall be
86 no suspension period in the case of rates established by a
87 public service district pursuant to section nine, article
88 thirteen-a, chapter sixteen of this code and the proposed rates
89 of public service districts shall go into effect upon the date of
90 filing with the commission, subject to refund modification at
91 the conclusion of the commission proceeding. In the case of
92 rates established or proposed that increase by more than
93 twenty-five percent of the gross revenue of the public service
94 district, the district may apply for, and the commission may
95 grant, a waiver of the suspension period and allow rates to be
96 effective upon the date of filing with the commission. The
97 public service district shall provide notice by Class 1 legal
98 advertisement in a newspaper of general circulation in its
99 service territory of the percentage increase in rates at least
100 fourteen days prior to the effective date of the increased rates.
101 Any refund determined to be determined to be due and owing
102 as a result of any difference between any final rates approved
103 by the commission and the rates placed into effect subject to
104 refund shall be refunded by the public service district as a
105 credit against each customer's account for a period of up to
106 six months after entry of the commission's final order. Any
107 remaining balance which is not fully credited by credit within
108 six months after entry of the commission's final order shall
109 be directly refunded to the customer by check: *Provided*
110 *further*, That if any such hearing and decision thereon is not
111 concluded within the periods of suspension, as above stated,
112 such rate, charge, classification, regulation or practice shall
113 go into effect at the end of such period not subject to refund:
114 *And provided further*, That if any such rate, charge,
115 classification, regulation or practice goes into effect because
116 of the failure of the commission to reach a decision, the same
117 shall not preclude the commission from rendering a decision
118 with respect thereto which would disapprove, reduce or
119 modify any such proposed rate, charge, classification,
120 regulation or practice, in whole or in part, but any such
121 disapproval, reduction or modification shall not be deemed to

122 require a refund to the customers of such utility as to any rate,
123 charge, classification, regulation or practice so disapproved,
124 reduced or modified. The fact of any rate, charge,
125 classification, regulation or practice going into effect by
126 reason of the commission's failure to act thereon shall not
127 affect the commission's power and authority to subsequently
128 act with respect to any such application or change in any rate,
129 charge, classification, regulation or practice. Any rate,
130 charge, classification, regulation or practice which shall be
131 approved, disapproved, modified or changed, in whole or in
132 part, by decision of the commission shall remain in effect as
133 so approved, disapproved, modified or changed during the
134 period or pendency of any subsequent hearing thereon or
135 appeal therefrom. Orders of the commission affecting rates,
136 charges, classifications, regulations or practices which have
137 gone into effect automatically at the end of the of the
138 suspension period are prospective in effect.

139 (c) At any hearing involving a rate sought to be increased
140 or involving the change of any rate, charge, classification,
141 regulation or practice, the burden of proof to show the
142 justness and reasonableness of the increased rate or proposed
143 increased rate, or the proposed change of rate, charge,
144 classification, regulation or practice shall be upon the public
145 utility making application for such change. The commission
146 shall, whenever practicable and within budgetary constraints,
147 conduct one or more public hearings within the area served
148 by the public utility making application for such increase or
149 change, for the purpose of obtaining comments and evidence
150 on the matter from local ratepayers.

151 (d) Each public utility subject to the provisions of this
152 section shall be required to establish, in a written report
153 which shall be incorporated into each general rate case
154 application, that it has thoroughly investigated and
155 considered the emerging and state-of-the-art concepts in the
156 utility management, rate design and conservation as reported

157 by the commission under subsection (c), section one, article
158 one of this chapter as alternatives to, or in mitigation of, any
159 rate increase. The utility report shall contain as to each
160 concept considered the reasons for adoption or rejection of
161 each. When in any case pending before the commission all
162 evidence shall have been taken and the hearing completed,
163 the commission shall render a decision in such case. The
164 failure of the commission to render a decision with respect to
165 any such proposed change in any such rate, charge,
166 classification, regulation or practice within the various time
167 periods specified in this section after the application therefor
168 shall constitute neglect of duty on the part of the commission
169 and each member thereof.

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

180 (f) 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 commission
186 or another regulatory commission and to refund to the public
187 utility. In such case the commission may require such public
188 utility to enter into a bond in an amount deemed by the
189 commission to be reasonable and conditioned upon the refund
190 to the persons or parties entitled thereto of the amount of the
191 excess if such rates so put into effect are subsequently

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192 determined to be higher than those finally fixed for such
193 utility.

194 (g) No utility regulated under the provisions of this
195 section may make application for a general rate increase
196 while another general rate application is pending before the
197 commission and not finally acted upon, except pursuant to the
198 provisions of subsection (f) of this section. The provisions of
199 this subsection shall not be construed so as to prohibit any
200 such rate application from being made while a previous
201 application which has been finally acted upon by the
202 commission is pending before or upon appeal to the West
203 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, natural
2 gas cooperatives and municipal water and/or sewer utilities
3 that are political subdivisions of the state with at least four
4 thousand five hundred customers and annual combined gross
5 revenue of less than \$3 million dollars, except for
6 municipally operated commercial solid waste facilities as
7 defined in section two, article fifteen, chapter twenty-two of
8 this code, and the rates and charges for local exchange
9 services provided by telephone cooperatives are not subject
10 to the rate approval provisions of section four or four-a of this
11 article, but are subject to the limited rate provisions of this
12 section.


13 (b) All rates and charges set by electric cooperatives,
14 natural gas cooperatives and municipally operated public
15 utilities that are political subdivisions of the state providing
16 water, sewer, electric and natural gas services and all rates
17 and charges for local exchange services set by telephone
18 cooperatives shall be just, reasonable, applied without unjust

19 discrimination between or preference for any customer or
20 class of customer and based primarily on the costs of
21 providing these services. All rates and charges shall be
22 based upon the measured or reasonably estimated cost of
23 service and the equitable sharing of those costs between
24 customers based upon the cost of providing the service
25 received by the customer, including a reasonable plant-in-
26 service depreciation expense. The rates and charges shall
27 be adopted by the electric, natural gas, telephone
28 cooperative or political subdivision's governing board or
29 body and, in the case of the municipally operated public
30 utility, by municipal ordinance to be effective not sooner
31 than forty-five days after adoption. The 45-day waiting
32 period may be waived by public vote of the governing body
33 if that body finds and declares the public utility that is a
34 political subdivision of the state to be in financial distress
35 such that the 45-day waiting period would be detrimental to
36 the ability of the utility to deliver continued and compliant
37 public services: *Provided*, That notice of intent to effect a
38 rate change shall be specified on the monthly billing
39 statement of the customers of the utility for the month next
40 preceding the month in which the rate change is to become
41 effective and the utility governing body shall give its
42 customers and, in the case of a cooperative, its customers,
43 members and stockholders, other reasonable notices as will
44 allow filing of timely objections to the proposed rate change
45 and full participation in municipal rate legislation through
46 the provision of a public forum in which customers may
47 comment upon the proposed rate change prior to an
48 enactment vote. The rates and charges or ordinance shall be
49 filed with the commission, together with any information
50 showing the basis of the rates and charges and other
51 information as the commission considers necessary. Any
52 change in the rates and charges with updated information
53 shall be filed with the commission. If a petition, as set out
54 in subdivision (1), (2) or (3), subsection (c) of this section,
55 is received and the electric cooperative, natural gas

56 cooperative or telephone cooperative or municipality has
57 failed to file with the commission the rates and charges with
58 information showing the basis of rates and charges and
59 other information as the commission considers necessary,
60 the suspension period limitation of one hundred twenty days
61 and the one hundred-day period limitation for issuance of an
62 order by a hearing examiner, as contained in subsections (d)
63 and (e) of this section, is tolled until the necessary
64 information is filed. The electric cooperative, natural gas
65 cooperative, telephone cooperative or municipality shall set
66 the date when any new rate or charge is to go into effect.

67 (c) The commission shall review and approve or modify
68 the rates and charges of electric cooperatives, natural gas
69 cooperatives, telephone cooperatives, or municipal electric or
70 natural gas utilities and municipally owned water and/or
71 sewer utilities that are political subdivisions of the state and
72 having less than four thousand five hundred customers and \$3
73 million dollars of annual combined gross revenues upon the
74 filing of a petition within thirty days of the adoption of the
75 ordinance or resolution changing the rates or charges by:

76 (1) Any customer aggrieved by the changed rates or
77 charges who presents to the commission a petition signed by
78 not less than twenty-five percent of the customers served by
79 the municipally operated electric or natural gas public utility
80 or municipally owned water and/or sewer utility having less
81 than four thousand five hundred customers and \$3 million
82 dollars annual combined gross revenues or twenty-five
83 percent of the membership of the electric, natural gas or
84 telephone cooperative residing within the state;

85 (2) Any customer who is served by a municipally owned *electric* 
86 or natural gas public utility and who resides outside the
87 corporate limits and who is affected by the change in the rates
88 or charges and who presents to the commission a petition
89 alleging discrimination between customers within and

90 without the municipal boundaries. The petition shall be
91 accompanied by evidence of discrimination; or

92 (3) Any customer or group of customers of the
93 municipally owned electric or natural gas public utility who
94 is affected by the change in rates who reside within the
95 municipal boundaries and who present a petition to the
96 commission alleging discrimination between a customer or
97 group of customers and other customers of the municipal
98 utility. The petition shall be accompanied by evidence of
99 discrimination.

100 (d) (1) The filing of a petition with the commission
101 signed by not less than twenty-five percent of the customers
102 served by the municipally owned electric or natural gas
103 public utility or a municipally owned water and/or sewer
104 utility having less than four thousand five hundred customers
105 or \$3 million dollars annual combined gross revenues or
106 twenty-five percent of the membership of the electric, natural
107 gas or telephone cooperative residing within the state under
108 subsection (c) of this section shall suspend the adoption of
109 the rate change contained in the ordinance or resolution for
110 a period of one hundred twenty days from the date the rates
111 or charges would otherwise go into effect or until an order is
112 issued as provided herein.

113 (2) Upon sufficient showing of discrimination by
114 customers outside the municipal boundaries or a customer or
115 a group of customers within the municipal boundaries under
116 a petition filed under subdivision (2) or (3), subsection (c) of
117 this section, the commission shall suspend the adoption of the
118 rate change contained in the ordinance for a period of one
119 hundred twenty days from the date the rates or charges would
120 otherwise go into effect or until an order is issued as provided
121 herein. A municipal rate ordinance enacted pursuant to the
122 provisions of this section and municipal charter or state code
123 that establishes or proposes a rate increase that results in an

124 increase of less than twenty-five percent of the gross revenue of
125 the utility shall be presumed valid and rates shall be allowed to
126 go into effect, subject to refund, upon the date stated in that
127 ordinance. In the case of rates established or proposed that
128 increase by more than twenty-five percent of the gross revenue
129 of the municipally operated public utility, the utility may apply
130 for, and the commission may grant, a waiver of the suspension
131 period and allow rates to be effective upon enactment.

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

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

153 (g) The commission may, upon petition by an electric,
154 natural gas or telephone cooperative or municipal electric or
155 natural gas public utility or a municipally owned water and/or
156 sewer utility having less than four thousand five hundred
157 customers and \$3 million dollars annual combined gross

158 revenues, allow an interim or emergency rate to take effect,
159 subject to refund or future modification, if it is determined that
160 the interim or emergency rate is necessary to protect the
161 municipality from financial hardship attributable to the
162 purchase of the utility commodity sold, or the commission
163 determines that a temporary or interim rate increase is
164 necessary for the utility to avoid financial distress. In such
165 cases, the commission shall waive the 45-day waiting period
166 provided for in subsection (b) of this section and the one
167 hundred twenty-day suspension period provided for in
168 subsection (d) of this section.

169 (h) The commission shall, upon written request of the
170 governing body of a political subdivision, provide technical
171 assistance to the governing body in its deliberations regarding
172 a proposed rate increase.

173 (i) Notwithstanding any other provision, the commission
174 has no authority or responsibility with regard to the
175 regulation of rates, income, services or contracts by
176 municipally operated public utilities for services which are
177 transmitted and sold outside of the State of West Virginia.

178 (j) Notwithstanding any other provision of this code to
179 the contrary, the jurisdiction of the commission over water
180 and/or sewer utilities that are political subdivisions of the
181 state and having at least four thousand five hundred
182 customers and annual gross combined revenues of \$3 million
183 or more shall be limited to those powers enumerated in
184 subsection (b), section one of this article.

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

1 (a) Whenever, under the provisions of this chapter, the
2 commission shall find any regulations, measurements,

3 practices, acts or service to be unjust, unreasonable,
4 insufficient or unjustly discriminatory, or otherwise in
5 violation of any provisions of this chapter, or shall find that
6 any service is inadequate, or that any service which is
7 demanded cannot be reasonably obtained, the commission
8 shall determine and declare, and by order fix reasonable
9 measurement, regulations, acts, practices or services, to be
10 furnished, imposed, observed and followed in the state in lieu
11 of those found to be unjust, unreasonable, insufficient, or
12 unjustly discriminatory, inadequate or otherwise in violation
13 of this chapter, and shall make such other order respecting the
14 same as shall be 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 the
24 court determines that the petition is proper in all respects and
25 finds, after a hearing thereon, that the allegations contained
26 in the petition are true, it shall grant the same and shall order
27 that the utility be placed in receivership. The court, in its
28 discretion and in consideration of the recommendation of the
29 commission, shall appoint a receiver who shall be a
30 responsible individual, partnership or corporation
31 knowledgeable in public utility affairs and who shall maintain
32 control and responsibility for the running and management of
33 the affairs of the utility. In so doing, the receiver shall
34 operate the utility so as to preserve the assets of the utility
35 and to serve the best interests of its customers. The receiver
36 shall be compensated from the assets of said utility in an
37 amount to be determined by the court.

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

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

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

1 (a) A public utility, person or corporation other than a
2 political subdivision of the state providing water, sewer
3 and/or stormwater services and having at least four thousand
4 five hundred customers and annual gross combined revenues
5 of \$3 million dollars or more may not begin the construction
6 of any plant, equipment, property or facility for furnishing to
7 the public any of the services enumerated in section one,
8 article two of this chapter, nor apply for, nor obtain any
9 franchise, license or permit from any municipality or other
10 governmental agency, except ordinary extensions of existing
11 systems in the usual course of business, unless and until it
12 shall obtain from the Public Service Commission a certificate
13 of public convenience and necessity authorizing such
14 construction franchise, license or permit.

15 (b) Upon the filing of any application for the certificate,
16 and after hearing, the commission may, in its discretion, issue
17 or refuse to issue, or issue in part and refuse in part, the
18 certificate of convenience and necessity: *Provided*, That the
19 commission, after it gives proper notice and if no substantial

20 protest is received within thirty days after the notice is given,
21 may waive formal hearing on the application. Notice shall be
22 given by publication which shall state that a formal hearing
23 may be waived in the absence of substantial protest, made
24 within thirty days, to the application. The notice shall be
25 published as a Class I legal advertisement in compliance with
26 the provisions of article three, chapter fifty-nine of this code.
27 The publication area shall be the proposed area of operation.

28 (c) Any public utility, person or corporation subject to the
29 provisions of this section other than a political subdivision of
30 the state providing water and/or sewer services having at least
31 four thousand five hundred customers and combined annual
32 gross revenue of \$3 million dollars or more shall give the
33 commission at least thirty days' notice of the filing of any
34 application for a certificate of public convenience and
35 necessity under this section: *Provided*, That the commission
36 may modify or waive the thirty-day notice requirement and
37 shall waive the thirty-day notice requirement for projects
38 approved by the Infrastructure and Jobs Development
39 Council.

40 (d) The commission shall render its final decision on any
41 application filed under the provisions of this section or
42 section eleven-a of this article within two hundred seventy
43 days of the filing of the application and within ninety days
44 after final submission of any such application for decision
45 following a hearing: *Provided*, That if the application is for
46 authority to construct a water and sewer project and the
47 projected total cost is less than \$10 million, the commission
48 shall render its final decision within two hundred twenty-five
49 days of the filing of the application.

50 (e) The commission shall render its final decision on any
51 application filed under the provisions of this section that has
52 received the approval of the Infrastructure and Jobs
53 Development Council pursuant to article fifteen-a, chapter

54 thirty-one of this code within one hundred eighty days after
55 filing of the application: *Provided*, That if a substantial
56 protest is received within thirty days after the notice is
57 provided pursuant to subsection (b) of this section, the
58 commission shall render its final decision within two hundred
59 seventy days or two hundred twenty-five days of the filing of
60 the application, whichever is applicable as determined in
61 subsection (d) of this section.

62 (f) If the projected total cost of a project which is the
63 subject of an application filed pursuant to this section or
64 section eleven-a of this article is greater than \$50 million, the
65 commission shall render its final decision on any such
66 application filed under the provisions of this section or
67 section eleven-a of this article within four hundred days of
68 the filing of the application and within ninety days after final
69 submission of any such application for decision after a
70 hearing.

71 (g) If a decision is not rendered within the time frames
72 established in this section, the commission shall issue a
73 certificate of convenience and necessity as applied for in the
74 application.

75 (h) The commission shall prescribe rules as it may deem
76 proper for the enforcement of the provisions of this section;
77 and, in establishing that public convenience and necessity do
78 exist, the burden of proof shall be upon the applicant.

79 (i) Pursuant to the requirements of this section, the
80 commission may issue a certificate of public convenience
81 and necessity to any intrastate pipeline, interstate pipeline
82 or local distribution company for the transportation in
83 intrastate commerce of natural gas used by any person for
84 one or more uses, as defined by rule, by the commission in
85 the case of:

86 (1) Natural gas sold by a producer, pipeline or other seller
87 to the person; or

88 (2) Natural gas produced by the person.

89 (j) A public utility, including a public service district,
90 which has received a certificate of public convenience and
91 necessity after July 8, 2005, from the commission and has
92 been approved by the Infrastructure and Jobs Development
93 Council is not required to, and cannot be compelled to,
94 reopen the proceeding if the cost of the project changes but
95 the change does not affect the rates established for the
96 project.

97 (k) Any public utility, person or corporation proposing
98 any electric power project that requires a certificate under this
99 section is not required to obtain such certificate before
100 applying for or obtaining any franchise, license or permit
101 from any municipality or other governmental agency.

102 (l) Water, sewer and/or stormwater utilities that are
103 political subdivisions of the state and having at least four
104 thousand five hundred customers and combined gross
105 revenues of \$3 million dollars or more desiring to pursue
106 construction projects that are not in the ordinary course of
107 business shall provide notice to both current customers and
108 those citizens who will be affected by the proposed
109 construction as follows:

110 (1) Adequate prior public notice of the contemplated
111 construction by causing a notice of intent to pursue a project
112 that is not in the ordinary course of business to be specified
113 on the monthly billing statement of the customers of the
114 utility for the month next preceding the month in which the
115 contemplated construction is to be before the governing body
116 on first reading.

117 (2) Adequate prior public notice of the contemplated
118 construction by causing to be published as a Class I legal
119 advertisement of the proposed action, in compliance with the
120 provisions of article three, chapter fifty-nine of the code. The
121 publication area for publication shall be all territory served by
122 the district. If the political subdivision provides service in
123 more than one county, publication shall be made in a
124 newspaper of general circulation in each county that the
125 political subdivision provides service.

126 (3) The public notice of the proposed construction shall
127 state the scope of the proposed construction, the current rates,
128 fees and charges, the proposed changes to said rates, fees and
129 charges; the date, time and place of both a public hearing on
130 the proposal and the proposed final vote on adoption; and the
131 place or places within the political subdivision where the
132 proposed construction and the rates, fees and charges may be
133 inspected by the public. A reasonable number of copies of the
134 proposal shall be kept at the place or places and be made
135 available for public inspection. The notice shall also advise
136 that interested parties may appear at the public hearing before
137 the political subdivision and be heard with respect to the
138 proposed construction and the proposed rates, fees and
139 charges.

140 (4) The proposed construction and the proposed rates,
141 fees and charges shall be read at two meetings of the
142 governing body with at least two weeks intervening between
143 each meeting. The public hearing may be conducted with or
144 following the second reading.

145 (5) Enactment of the proposed construction and the
146 proposed rates, fees and charges shall follow an affirmative
147 vote of the governing body and shall be effective no sooner
148 than forty-five days following the action of the governing
149 body. If the political subdivision proposes rates that will go
150 into effect prior than the completion of construction of the

151 proposed project, the 45-day waiting period may be waived
152 by public vote of the governing body only if the political
153 subdivision finds and declares the political subdivision to be
154 in financial distress such that the 45-day waiting period
155 would be detrimental to the ability of the political subdivision
156 to deliver continued and compliant public services: *Provided,*
157 That in no event shall the rate become effective prior to the
158 date that the county commission has entered an order
159 approving the action of the public service district board.

160 (6) Rates, fees and charges approved by an affirmative
161 vote of the public services district board shall be forwarded
162 in writing to the county commission appointing the approving
163 board. The county commission shall, within forty-five days
164 of receipt of the proposed rates, fees and charges, take action
165 to approve or reject the proposed rates, fees and charges.
166 After forty-five days, and absent action by the county
167 commission, the proposed rates, fees and charges shall be
168 effective with no further action by the board or county
169 commission. In any event this 45-day period may be
170 extended by official action of both the board proposing the
171 rates, fees and charges and the appointing county
172 commission.

173 (7) The county commission shall provide notice to the
174 public by a Class I legal advertisement of the proposed
175 action, in compliance with the provisions of article three,
176 chapter fifty-nine of this code, of the meeting where it shall
177 consider the proposed increases in rates, fees and charges no
178 later than one week prior to the meeting date.

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

§24-3-5. Schedule of rates to be filed with commission.

1 Every public utility shall file with the commission, and
2 keep open to public inspection, schedules showing all the

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

Mark R. Spawcort
.....
Chairman Senate Committee

Al B. Hill
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clark S. Barron
.....
Clerk of the Senate

Steph D. Harrison
.....
Clerk of the House of Delegates

Phillip P. Pala
.....
President of the Senate

Philip M. Miller
.....
Speaker of the House of Delegates

The within *wrapped* this the *31st*
Day of *March*, 2015.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:25 pm