Committee Substitute for House Bill 3096

By Delegate Espinosa

[Passed April 8, 2017; in effect ninety days from passage.]
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for
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AN ACT to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to the operation and regulation of utilities and services generally; modifying procedures and requirements for the operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; eliminating reference to appeals to the Public Service Commission from actions of municipal boards that are not subject to the jurisdiction of the Public Service Commission; prohibiting Public Service Commission jurisdiction of Internet protocol-enabled service and voice-over Internet protocol-enabled service; defining the terms “Internet protocol-enabled service” and “Voice-over Internet protocol service”; limiting Public Service Commission jurisdiction of certain telephone company transactions; relating to the authority of county commissions to modify proposed rates for certain water and sewer utilities and providing for complaints to be filed with the circuit courts pertaining to rates and charges enacted as proposed, modified or rejected by the county commission; eliminating Public Service Commission authority regarding stormwater utilities; providing time limits for the filing of requests for investigations pertaining to political subdivisions providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of $3 million or more; clarifying the authority of the Public Service Commission to resolve complaints of customers of water and sewer utilities operated by a political subdivision of the state having at least four thousand five hundred customers and annual combined gross revenues of $3 million or more; clarifying the jurisdiction of the Public Service Commission relating to rates for municipal water and/or sewer utilities having less than four thousand five hundred customers or annual combined gross revenues of less than $3 million; revising the notice and procedure provisions for construction projects for political subdivisions of this state providing separate or combined
water and/or sewer services and having at least four thousand five hundred customers
and annual combined gross revenues of $3 million or more; and providing procedures for
a public service district or a customer satisfying certain requirements to file a complaint in
circuit court to contest the action or inaction of a county commission regarding a rate
proposals and construction projects that are not in the ordinary course of business.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain;
extraterritorial powers.

The board may acquire any publicly or privately owned public service properties located
within the boundaries of the district regardless of whether or not all or any part of such properties
are located within the corporate limits of any city, incorporated town or other municipal corporation
included within the district and may purchase and acquire all rights and franchises and any and
all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district
necessary or incidental to its purposes and each such district may acquire, construct, maintain
and operate any such public service properties within the corporate limits of any city, incorporated
town or other municipal corporation included within the district or in any unincorporated territory
within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city,
town or other municipal corporation included within the district owns and operates either water

2
facilities, sewer facilities, stormwater facilities or gas facilities or all of these, then the district may
not acquire, construct, establish, improve or extend any public service properties of the same kind
within such city, incorporated towns or other municipal corporations or the adjacent
unincorporated territory served by such cities, incorporated towns or other municipal corporations,
except upon, the consent of such cities, incorporated towns or other municipal corporations and
in conformity and compliance with the rights of the holders of any revenue bonds or obligations
theretofore issued by such cities, incorporated towns or other municipal corporations then
outstanding and in accordance with the ordinance, resolution or other proceedings which
authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer
facilities, a stormwater system, stormwater management program or gas facilities for water,
sewer, stormwater or gas services within any city, incorporated town or other municipal
corporation included within a district, then such city, incorporated town or other municipal
corporation may not thereafter construct, acquire or establish any facilities of the same kind within
such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements
deemed necessary or incidental for the purposes of the district, each such district has the right of
eminent domain to the same extent and to be exercised in the same manner as now or hereafter
provided by law for such right of eminent domain by cities, incorporated towns and other municipal
corporations: Provided, That the power of eminent domain provided in this section does not
extend to highways, road and drainage easements, or stormwater facilities constructed, owned
or operated by the West Virginia division of highways without the express agreement of the
commissioner of highways: Provided, however, That such board may not acquire all or any
substantial part of a privately owned waterworks system unless and until authorized so to do by
the public service commission of West Virginia, and that this section shall not be construed to
authorize any district to acquire through condemnation proceedings either in whole or substantial
part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

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

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

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

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

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

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

(E) Any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and
extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

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

(A) Adequate prior public notice of the contemplated rates, fees and charges by causing a notice of intent to effect such a change to be provided to the customers of the district for the month immediately preceding the month in which the contemplated change is to be considered at a hearing by the board. Such notice shall include a statement that a change in rates, fees and charges is being considered, the time, date and location of the hearing of the board at which the change will be considered and that the proposed rates, fees and charges are on file at the office of the District for review during regular business hours. Such notice shall be printed on, or mailed with, the monthly billing statement, or provided in a separate mailing.

(B) Adequate prior public notice of the contemplated rates, fees and charges by causing to be published, after the first reading and approval of a resolution of the board considering such revised rates, fees and charges but not less than one week prior to the public hearing of the board on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall summarize the current rates, fees and charges and the proposed changes to said rates, fees and charges; the date, time and place of;
the public hearing on the resolution approving such revised rates, fees and charges and the place
or places within the district where the proposed resolution approving the revised rates, fees and
charges may be inspected by the public. A reasonable number of copies of the proposed
resolution shall be kept at the place or places and be made available for public inspection. The
notice shall also advise that interested parties may appear at the public hearing before the board
and be heard with respect to the proposed revised rates, fees and charges.

(D) The resolution proposing the revised rates, fees and charges shall be read at two
meetings of the board with at least two weeks intervening between each meeting. The public
hearing may be conducted by the board prior to, or at, the meeting at which the resolution is
considered for adoption on the second reading.

(E) Rates, fees and charges approved by resolution of the board shall be forwarded in
writing to the county commission with the authority to appoint the members of the board. The
county commission shall publish notice of the proposed revised rates, fees and charges by a
Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of
the code. Within forty-five days of receipt of the proposed rates, fees and charges, the county
commission shall take action to approve, modify, or reject the proposed rates, fees and charges,
in its sole discretion. If, after forty-five days, the county commission has not taken final action to
approve, modify or reject the proposed rates, fees and charges, as presented to the county
commission, shall be effective with no further action by the board or county commission. In any
event, this 45-day period shall be mandatory unless extended by the official action of both the
board proposing the rates, fees and charges, and the appointing county commission.

(F) Enactment of the proposed or modified rates, fees and charges shall follow an
affirmative vote by the county commission and shall be effective no sooner than forty-five days
following action. The 45-day waiting period may be waived by public vote of the county
commission only if the commission finds and declares the district to be in financial distress such
that the 45-day waiting period would be detrimental to the ability of the district to deliver continued
and compliant public services.
(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 customers or twenty-five percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subdivision (2) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: Provided. That any complaint or petition filed hereunder shall be filed within thirty days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the forty-five day period from the receipt by the county commission, in writing, of the rates, fees and charges approved by resolution of the board, without final action by the county commission to approve, modify or reject such rates, fees and charges, and the circuit court shall resolve said complaint: Provided, however, That the rates, fees and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered or amended by the circuit court in an order to be followed in the future.

(3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or $50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall
deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or $50 has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent: Provided, however, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
fees and charges: **Provided,** That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: **Provided,** however, That any termination of water service must comply with all rules and orders of the Public Service Commission: **Provided further,** That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including,
but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one of this chapter and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only after thirty days' notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.
(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System's designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty days' notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

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

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

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

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

The Public Service Commission shall, by general order, create a division within its staff
which shall, upon written request of the governing body of a political subdivision that operates a
water and/or sewer utility, provide legal, operational, engineering, financial, ratemaking and
accounting advice and assistance to water and/or sewer utilities that are political subdivisions of
the state and may perform or participate in the studies required under section one-b, 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.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, however, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided further, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper.
(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of $3 million or more that are political subdivisions of the state is limited to:

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

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

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

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

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

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees and charges, service areas and contested utility combinations: Provided, That any request for an investigation related to such a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve said dispute within 120 days of filing. The one hundred-twenty day period for resolution of the dispute may be tolled by the Commission until the necessary information showing the basis of the rates, fees and charges or other information as the commission considers necessary is filed: Provided, however, That disputed rates, fees and charges so fixed by the political subdivision providing separate or combined water and/or sewer
services shall remain in full force and effect until set aside, altered or amended by the commission
in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state
may bring formal or informal complaints regarding the commission’s exercise of the powers
enumerated in this section and the commission shall resolve these complaints.

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

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

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

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

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

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

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

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

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

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that

16
had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law; Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

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

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification
from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

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

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

(e) The commission shall not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) “Internet protocol-enabled service” means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data or video.

(2) “Voice-over Internet protocol service” means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user’s location using Internet protocol or a successor protocol; and
(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved in the transaction are under common ownership.

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

(a) The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having at least four thousand five hundred customers and annual combined gross revenues of $3 million or more: Provided, That the commission may exercise such rate authority over municipally owned electric or natural gas utilities or a municipally owned water and/or sewer utility having less than four thousand five hundred customers or annual combined gross revenues of less than $3 million dollars, only under the circumstances and limitations set forth in section four-b of this article, and subject to the provisions set forth in subsection (b) of this section. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.
(b) Any complaint filed with the commission by a resale or wholesale customer of a municipally owned water and/or sewer utility having less than four thousand five hundred customers or annual combined gross revenue of less than $3 million dollars concerning rates, fees or charges applicable to such resale or wholesale customer, shall be filed within thirty days of the enactment by the governing body of the political subdivision of an ordinance changing rates, fees or charges for such service. The commission shall resolve said complaint within 120 days of filing. The one hundred-twenty day period for resolution of the complaint may be tolled by the commission until the necessary information showing the basis of the rates, fees, charges and other information as the commission considers necessary is filed: Provided, That rates, fees and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered or amended by the commission in an order to be followed in the future: Provided, however, That the commission shall have no authority to order refunds for amounts collected during the pendency of the complaint proceeding unless the rates, fees, or charges so enacted by the governing body were enacted subject to refund under the provisions of subsections (d)(2) or (g) of section four-b of this article.

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

(d) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.
§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political subdivisions of the state having less than four thousand five hundred customers or annual combined gross revenues of less than $3 million dollars, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities that are political subdivisions of the state providing water, sewer, electric and/or natural gas services that are subject to the provisions of this section and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination between or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, telephone cooperative or political subdivision's governing board or body and, in the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services: Provided, That notice of intent to effect a rate change shall be specified
on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

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

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

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

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

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

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as
provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and
municipal charter or state code that establishes or proposes a rate increase that results in an
increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid
and rates shall be allowed to go into effect, subject to refund, upon the date stated in that
ordinance. Any refund determined to be due and owing as a result of any difference between any
final rates approved by the commission and the rates placed into effect subject to refund shall be
refunded as a credit against each customer's account for a period of up to six months after entry
of the commission's final order. Any remaining balance which is not fully credited by credit within
six months after entry of the commission's final order shall be directly refunded to the customer
by check. In the case of rates established or proposed that increase by more than twenty-five
percent of the gross revenue of the municipally operated public utility, the utility may apply for,
and the commission may grant, a waiver of the suspension period and allow rates to be effective
upon enactment.

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

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c)
of this section, the commission may exercise the power granted to it under the provisions of
section three of this article, consistent with the applicable rate provisions of section twenty, article
ten, chapter eight of this code, section four, article nineteen of said chapter and section sixteen,
article thirteen, chapter sixteen of this code. The commission may determine the method by which
the rates are reviewed and may grant and conduct a de novo hearing on the matter if the
customer, electric, natural gas or telephone cooperative or municipality requests a hearing.
(g) The commission may, upon petition by an electric, natural gas or telephone cooperative or municipal electric or natural gas public utility or a municipally owned water and/or sewer utility having less than four thousand five hundred customers or annual combined gross revenues of less than $3 million dollars, allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

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

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

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

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

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

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

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

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: Provided, That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the commission shall render its final decision within two hundred twenty-five days of the filing of the application.
(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: Provided, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

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

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

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

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

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

(2) Natural gas produced by the person.

(jj) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved
Enr. CS for HB 3096

by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled
to, reopen the proceeding if the cost of the project changes but the change does not affect the
rates established for the project.

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

(l) Water or sewer utilities that are political subdivisions of the state and having at least
four thousand five hundred customers and combined gross revenues of $3 million dollars or more
desiring to pursue construction projects that are not in the ordinary course of business shall
provide adequate prior public notice of the contemplated construction and proposed changes to
rates, fees and charges, if any, as a result of such construction to both current customers and
those persons who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of
intent to pursue a project that is not in the ordinary course of business to be specified on the
monthly billing statement of the customers of the utility for the month immediately preceding the
month in which an ordinance or resolution approving the proposed construction and proposed
changes to rates, fees and charges, if any, is to be before the governing body for the public
hearing on the ordinance or resolution approving the proposed construction and proposed
changes to rates, fees and charges, if any.

(2) Adequate prior public notice of the contemplated construction by causing to be
published as a Class I legal advertisement of the proposed public hearing on the ordinance or
resolution approving the proposed construction and proposed changes to rates, fees and charges,
if any, in compliance with the provisions of article three, chapter fifty-nine of the code. The
publication area for publication shall be all territory served by the political subdivision. If the
political subdivision provides service in more than one county, publication shall be made in a
newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed
construction; a summary of the current rates, fees and charges, and proposed changes to said
rates, fees and charges, if any; the date, time and place of the public hearing on the ordinance or
resolution approving the proposed construction and proposed changes to rates, fees and charges,
if any; and the place or places within the political subdivision where the ordinance or resolution
approving the proposed construction and proposed changes to rates, fees and charges, if any,
may be inspected by the public. A reasonable number of copies of the ordinance or resolution
shall be kept at the place or places and be made available for public inspection. The notice shall
also advise that interested parties may appear at the public hearing before the political subdivision
and be heard with respect to the proposed construction and the proposed rates, fees and charges,
if any.

(4) The ordinance or resolution on the proposed construction and the proposed rates, fees
and charges shall be read at two meetings of the governing body with at least two weeks
intervening between each meeting. The public hearing may be conducted prior to, or at, the
meeting of the governing body at which the ordinance or resolution approving the proposed
construction is considered on second reading.

(5) Enactment or adoption of the ordinance or resolution approving the proposed
construction and the proposed rates, fees and charges shall follow an affirmative vote of the
governing body and the approved rates shall go into effect no sooner than forty-five days following
the action of the governing body. If the political subdivision proposes rates that will go into effect
prior to the completion of construction of the proposed project, the 45-day waiting period may be
waived by public vote of the governing body only if the political subdivision finds and declares the
political subdivision to be in financial distress such that the 45-day waiting period would be
detrimental to the ability of the political subdivision to deliver continued and compliant public
services: Provided, That, if the political subdivision is a public service district, in no event shall the rate become effective prior to the date that the county commission has entered an order approving or modifying the action of the public service district board.

(6) Rates, fees and charges approved by an affirmative vote of the public service district board shall be forwarded in writing to the county commission with the authority to appoint the members of the public service board of the public service district. The county commission shall, within forty-five days of receipt of the proposed rates, fees and charges, take action to approve, modify, or reject the proposed rates, fees and charges, in its sole discretion. If, after forty-five days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees and charges, the proposed rates, fees and charges, as presented to the County Commission, shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees and charges and the appointing county commission.

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

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 or twenty-five percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees and charges under the provisions of this subsection (!) may file a complaint regarding the rates, fees and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: Provided, That any complaint or petition filed hereunder shall be filed within thirty days of the county commission's final action approving, modifying or rejecting such rates, fees and charges, or the expiration of the 45 day period from
the receipt by the county commission, in writing, of the rates, fees and charges approved by
resolution of the board, without final action by the county commission to approve, modify or reject
such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided, however,*
That the rates, fees and charges so fixed by the county commission, or those adopted
by the district upon which the county commission failed to act, shall remain in full force and effect,
until set aside, altered or amended by the circuit court in an order to be followed in the future.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

[Signature]

Chairman, Senate Committee

[Signature]

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

[Signature]

Clerk of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

President of the Senate

[Signature]

The within is approved this the 20th day of April, 2017.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

APR 20 2017

Time 3:49 pm