

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 623

(By Senator Sypolt)

[Originating in the Committee on Government Organization;
reported February 23, 2012.]

A BILL to amend and reenact §24-2-2 of the Code of West Virginia, 1931, as amended, relating generally to the power of the Public Service Commission to regulate public utilities; and authorizing the Public Service Commission to promulgate rules establishing requirements for capacity improvement fees.

Be it enacted by the Legislature of West Virginia:

That §24-2-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§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 require-
10 ments, including inventories of all property in such form and
11 detail as the commission may prescribe. The commission may
12 compel obedience to its lawful orders by mandamus or
13 injunction or other proper proceedings in the name of the
14 state in any circuit court having jurisdiction of the parties or
15 of the subject matter, or the Supreme Court of Appeals
16 direct, and the proceedings shall have priority over all
17 pending cases. The commission may change any intrastate
18 rate, charge or toll which is unjust or unreasonable or any
19 interstate charge with respect to matters of a purely local
20 nature which have not been regulated by or pursuant to an
21 act of Congress and may prescribe a rate, charge or toll that
22 is just and reasonable, and change or prohibit any practice,

23 device or method of service in order to prevent undue
24 discrimination or favoritism between persons and between
25 localities and between commodities for a like and contempo-
26 raneous service. But in no case shall the rate, toll or charge
27 be more than the service is reasonably worth, considering the
28 cost of the service. Every order entered by the commission
29 shall continue in force until the expiration of the time, if any,
30 named by the commission in the order, or until revoked or
31 modified by the commission, unless the order is suspended,
32 modified or revoked by order or decree of a court of compe-
33 tent jurisdiction: *Provided*, That in the case of utilities used
34 by emergency shelter providers, the commission shall
35 prescribe such rates, charges or tolls that are the lowest
36 available. "Emergency shelter provider" means any non-
37 profit entity which provides temporary emergency housing
38 and services to the homeless or to victims of domestic
39 violence or other abuse.

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

45 customers to be served by the new project are solely respon-
46 sible for the debt costs associated with the project.

47 (c) Notwithstanding any other provision of this code to
48 the contrary, the Commission shall promulgate and adopt
49 rules to establish or modify a capacity improvement fee or
50 existing capacity improvement fee for residential and
51 commercial customers for inclusion in the tariff of a private,
52 public or municipal water or sewer utility. The rules shall
53 include the following:

54 (1) A capacity improvement fee based upon the estimated
55 cost of future additions or upgrades for capacity required to
56 serve the capacity demand by the new connection compared
57 to the overall demand due to customer growth;

58 (2) The fee that applies to developers and owners of
59 structures that seek to connect to water and sewer systems;

60 (3) The criteria for establishing the fee, including, but not
61 limited to, expected growth in population that will be served
62 by the utility, the capacity requirement to serve that popula-
63 tion growth and the expected exhaustion date of existing
64 capacity;

65 (4) The reasonableness of establishing differentials in the
66 fee or limitations on the amount of or calculation of fees

67 based upon a relative cost of housing index created pursuant
68 to the provisions of section two-b, article one, chapter eleven
69 of this code, and the fee differentials shall not be considered
70 discriminatory rates within the meaning of this chapter;

71 (5) An affordable housing component with a discount
72 capacity improvement fee schedule based upon the new
73 home's value compared to the most recent annual single
74 dwelling residential housing index created pursuant to the
75 provisions of section two-b, article one, chapter eleven of
76 this code;

77 (6) A lower fee for manufactured housing equal to
78 twenty-five percent of the otherwise applicable fee for a
79 standard residential housing unit;

80 (7) A fee schedule and maximum fee for a commercial
81 development and a residential development with multiple
82 units;

83 (8) A requirement that the revenue from the capacity
84 improvement fees be deposited in a separate account to be
85 used only for future capital improvements; and

86 (9) Any other criteria relating to existing and proposed
87 capacity improvement fees the commission deems necessary
88 to effectuate the provisions of this subsection.