

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 623**

(SENATOR SYPOLT, *original sponsor*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT 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 that relate to its establishment and modification of  
50 capacity improvement fees for residential and commercial  
51 customers for inclusion in the tariff of a private, public or  
52 municipal water or sewer utility.

53 (1) A capacity improvement fee shall be based upon the  
54 estimated cost of future additions or upgrades of capacity  
55 required to serve future capacity demand by a new connec-  
56 tion compared to the overall demand due to customer  
57 growth;

58 (2) A capacity improvement fee shall apply to developers  
59 and owners of structures that seek to connect to water and  
60 sewer systems;

61 (3) In establishing the capacity improvement fee, the  
62 commission shall consider, together with other criteria it  
63 may in its discretion consider, the expected growth in  
64 population that will be served by the utility, the capacity  
65 requirement to serve that population growth and the ex-  
66 pected exhaustion date of existing capacity;

67 (4) The commission shall consider establishing differen-  
68 tials in the fee or limitations on the amount of or calculation  
69 of fees based upon a relative cost of housing index created  
70 pursuant to the provisions of section two-b, article one,  
71 chapter eleven of this code, which fee differentials shall not  
72 be considered discriminatory rates within the meaning of  
73 this chapter;

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

80       (6) The capacity improvement fee shall include a lower  
81 fee for manufactured housing equal to twenty-five percent of  
82 the otherwise applicable fee for a standard residential  
83 housing unit;

84       (7) The commission shall establish a method for develop-  
85 ing fee schedules and maximum fees for commercial develop-  
86 ments and residential developments with multiple units;

87       (8) The revenue from the capacity improvement fees shall  
88 be deposited in a separate account to be used only for future  
89 capital improvements, as determined and authorized by  
90 commission order;

91       (9) The commission may develop further criteria relating  
92 to existing and proposed capacity improvement fees the  
93 commission considers necessary to effectuate the provisions  
94 of this subsection;

95       (10) The commission shall promulgate rules in accor-  
96 dance with section seven, article one, chapter twenty-four of  
97 this code to effectuate the purposes of this subsection; and

98       (11) Nothing contained in this subsection may be con-  
99 strued to invalidate any capacity improvement fees approved  
100 by the commission prior to the effective date of the rules  
101 required to be promulgated by this subsection.

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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

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*Governor*