

**Senate Bill No. 102**

(By Senators Snyder and Plymale)

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[Introduced February 13, 2013; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]  
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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.**

(a) The commission is hereby given power to investigate all  
rates, methods and practices of public utilities subject to the  
provisions of this chapter; to require them to conform to the laws

1 of this state and to all rules, regulations and orders of the  
2 commission not contrary to law; and to require copies of all  
3 reports, rates, classifications, schedules and timetables in effect  
4 and used by the public utility or other person, to be filed with  
5 the commission, and all other information desired by the commission  
6 relating to the investigation and requirements, including  
7 inventories of all property in such form and detail as the  
8 commission may prescribe. The commission may compel obedience to  
9 its lawful orders by mandamus or injunction or other proper  
10 proceedings in the name of the state in any circuit court having  
11 jurisdiction of the parties or of the subject matter, or the  
12 Supreme Court of Appeals direct, and the proceedings shall have  
13 priority over all pending cases. The commission may change any  
14 intrastate rate, charge or toll which is unjust or unreasonable or  
15 any interstate charge with respect to matters of a purely local  
16 nature which have not been regulated by or pursuant to an act of  
17 Congress and may prescribe a rate, charge or toll that is just and  
18 reasonable, and change or prohibit any practice, device or method  
19 of service in order to prevent undue discrimination or favoritism  
20 between persons and between localities and between commodities for  
21 a like and contemporaneous service. But in no case shall the rate,  
22 toll or charge be more than the service is reasonably worth,  
23 considering the cost of the service. Every order entered by the

1 commission shall continue in force until the expiration of the  
2 time, if any, named by the commission in the order, or until  
3 revoked or modified by the commission, unless the order is  
4 suspended, modified or revoked by order or decree of a court of  
5 competent jurisdiction: *Provided*, That in the case of utilities  
6 used by emergency shelter providers, the commission shall prescribe  
7 such rates, charges or tolls that are the lowest available.  
8 "Emergency shelter provider" means any nonprofit entity which  
9 provides temporary emergency housing and services to the homeless  
10 or to victims of domestic violence or other abuse.

11 (b) Notwithstanding any other provision of this code to the  
12 contrary, rates are not discriminatory if, when considering the  
13 debt costs associated with a future water or sewer project which  
14 would not benefit existing customers, the commission establishes  
15 rates which ensure that the future customers to be served by the  
16 new project are solely responsible for the debt costs associated  
17 with the project.

18 (c) Notwithstanding any other provision of this code to the  
19 contrary, the commission shall promulgate and adopt rules that  
20 relate to its establishment and modification of capacity  
21 improvement fees for residential and commercial customers for  
22 inclusion in the tariff of a private, public or municipal water or  
23 sewer utility.

1       (1) A capacity improvement fee shall be based upon the  
2 estimated cost of future additions or upgrades of capacity required  
3 to serve future capacity demand by a new connection compared to the  
4 overall demand due to customer growth;

5       (2) A capacity improvement fee shall apply to developers and  
6 owners of structures that seek to connect to water and sewer  
7 systems;

8       (3) In establishing the capacity improvement fee, the  
9 commission shall consider, together with other criteria it may in  
10 its discretion consider, the expected growth in population that  
11 will be served by the utility, the capacity requirement to serve  
12 that population growth and the expected exhaustion date of existing  
13 capacity;

14       (4) The commission shall consider establishing differentials  
15 in the fee or limitations on the amount of or calculation of fees  
16 based upon a relative cost of housing index created pursuant to the  
17 provisions of section two-b, article one, chapter eleven of this  
18 code, which fee differentials may not be considered discriminatory  
19 rates within the meaning of this chapter;

20       (5) The commission shall consider an affordable housing  
21 component with a discount capacity improvement fee schedule based  
22 upon the new home's value compared to the most recent annual single  
23 dwelling residential housing index created pursuant to the

1 provisions of section two-b, article one, chapter eleven of this  
2 code;

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

6 (7) The commission shall establish a method for developing fee  
7 schedules and maximum fees for commercial developments and  
8 residential developments with multiple units;

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

12 (9) The commission may develop further criteria relating to  
13 existing and proposed capacity improvement fees the commission  
14 considers necessary to effectuate the provisions of this  
15 subsection;

16 (10) The commission shall promulgate rules in accordance with  
17 section seven, article one, chapter twenty-four of this code to  
18 effectuate the purposes of this subsection; and

19 (11) Nothing contained in this subsection may be construed to  
20 invalidate any capacity improvement fees approved by the commission  
21 prior to the effective date of the rules required to be promulgated  
22 by this subsection.

NOTE: The purpose of this bill is to authorize the Public Service Commission to require capital improvement fees that include an affordable housing rate differential.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.