

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4269**

BY DELEGATES ROWE, GARCIA, YOUNG, BARACH, EVANS,

AND FLEISCHAUER

[Introduced January 19, 2022; Referred to the  
Committee on Government Organization]

1 A BILL to amend and reenact §24-1-1 of the Code of West Virginia, 1931, as amended, relating  
2 to the Public Service Commission; and requiring annual reports on ratepayer utility costs  
3 to the Joint Committee on Government and Finance, adjusted for inflation.

*Be it enacted by the Legislature of West Virginia:*

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

**§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 enacting this chapter to confer upon  
2 the Public Service Commission of this state the authority and duty to enforce and regulate the  
3 practices, services, and rates of public utilities in order to:

4 (1) Ensure fair and prompt regulation of public utilities in the interest of the using and  
5 consuming public;

6 (2) Provide the availability of adequate, economical, and reliable utility services throughout  
7 the state;

8 (3) Encourage the well-planned development of utility resources in a manner consistent  
9 with state needs and in ways consistent with the productive use of the state's energy resources,  
10 such as coal;

11 (4) Ensure that rates and charges for utility services are just, reasonable, applied without  
12 unjust discrimination or preference, applied in a manner consistent with the purposes and policies  
13 set forth in §24-2A-1 *et seq.* of this code and based primarily on the costs of providing these  
14 services;

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

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

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

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by §4-3-1 et seq. of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

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

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

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

(4) The ratepayer utility costs over the prior 15 years and projected over the next 5 years, all adjusted for inflation; and

~~(4)~~ (5) Other information considered by the commission to be important including

46 recommendations for statutory reform and the reasons for such recommendations.

47 (e) In addition to any other studies and reports required to be conducted and made by the  
48 Public Service Commission pursuant to any other provision of this section, the commission shall  
49 study and initially report to the Legislature no later than the first day of the regular session of the  
50 Legislature in the year 1980 upon:

51 (1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this  
52 state have been capped off or shut in; the number of such wells; their probable extent of future  
53 production and the reasons given and any justification for capping off or shutting in such wells;  
54 the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells  
55 in this state or the Appalachian areas have been discouraged from drilling, developing or selling  
56 the production of such wells; and whether there are fixed policies by any utility or group of utilities  
57 to avoid the purchase of natural gas produced in the Appalachian region of the United States  
58 generally and in West Virginia specifically.

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

60 (3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this  
61 subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.  
62 In carrying out the provisions of this section the commission shall have jurisdiction over such  
63 persons, whether public utilities or not, as may be in the opinion of the commission necessary to  
64 the exercise of its mandate and may compel attendance before it, take testimony under oath and  
65 compel the production of papers or other documents. Upon reasonable request by the  
66 commission, all other state agencies shall cooperate with the commission in carrying out the  
67 provisions and requirements of this subsection.

68 (f) No later than the first day of the regular session of the Legislature in the year 1980, the  
69 Public Service Commission shall submit to the Legislature a plan for internal reorganization which  
70 plan shall specifically address the following:

71 (1) A division within the Public Service Commission which shall include the office of the

commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

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

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

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

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the Civil Service Commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

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

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan

98 shall discourage ex parte communications between them by such means as the commission shall  
99 direct, including, but not limited to, separate clerical and professional staffing for each division.  
100 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest  
101 extent possible the recommendations presented to the subcommittee on the Public Service  
102 Commission of the Joint Committee on Government and Finance in a final report dated February,  
103 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

104 The commission shall, before January 5, 1980, adopt said plan by order, which order shall  
105 promulgate the same as a rule of the commission to be effective upon the date specified in said  
106 order, which date shall be no later than December 31, 1980. Certified copies of such order and  
107 rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman  
108 of the commission with the clerk of each house of the Legislature, the Governor, and the Secretary  
109 of State. The chairman of the commission shall also file with the office of the Secretary of State  
110 the receipt of the clerk of each house and of the Governor, which receipt shall evidence  
111 compliance with this section.

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

115 Within the limits of funds appropriated therefor, the rule of the Public Service Commission  
116 shall be effective upon the date specified in the order of the commission promulgating it unless  
117 an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent  
118 resolution of the Legislature adopted prior to adjournment sine die of the regular session of the  
119 Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and  
120 disapproved in part by a concurrent resolution of the Legislature adopted prior to such  
121 adjournment, such rule shall be effective to the extent and only to the extent that the same is  
122 approved by such concurrent resolution.

123 The rules promulgated and made effective pursuant to this section shall be effective

notwithstanding any other provisions of this code for the promulgation of rules or regulations.

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

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

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

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

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

(j) The Legislature further finds that water and sewer utilities that are political subdivisions

150 of the state providing separate or combined services and having at least four thousand five  
151 hundred customers and annual gross revenues of \$3 million or more are most fairly and effectively  
152 regulated by the local governing body with respect to rates, borrowing and capital projects.  
153 Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public  
154 Service Commission over water and sewer utilities that are political subdivisions of the state is  
155 limited to that granted specifically in this code.

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

NOTE: The purpose of this bill is to require the Public Service Commission to submit annual reports on ratepayer utility costs, to the Joint Committee on Government and Finance, adjusted for inflation.

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