

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5429

By Delegates Dillon and Vance

[Introduced February 02, 2024; Referred to the
Committee on Technology and Infrastructure then
Government Organization]

1 A BILL to amend and reenact §24-1-1 of the Code of West Virginia, 1931, as amended, relating to
 2 the authority of the Public Service Commission; requests for rate adjustments from public
 3 electric utilities; limiting the jurisdiction of the Public Service Commission to holding
 4 hearings on rate adjustment requests by public electrical utilities and to making
 5 recommendations to the Legislature; and requiring that electric utility rate adjustments be
 6 approved by the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§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 the
 2 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.

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

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

32 (d) It is legislative policy to ensure that the Legislature and the general public become
33 better informed regarding the regulation of public utilities in this state and the conduct of the
34 business of the Public Service Commission. To aid in the achievement of this policy, the Public
35 Service Commission annually shall present to the Joint Committee on Government and Finance,
36 created by article three, chapter four of this code, or a subcommittee designated by the joint
37 committee, a management summary report which describes in a concise manner:

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

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

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

43 (4) Other information considered by the commission to be important including
44 recommendations for statutory reform and the reasons for such recommendations.

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

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

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

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

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

69 (1) A division within the Public Service Commission which shall include the office of the
70 commissioners, the hearing examiners and such support staff as may be necessary to carry out
71 the functions of decision making and general supervision of the commission, which functions shall
72 not include advocacy in cases before the commission;

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

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

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

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

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

94 Such plan shall be based on the concept that each of the divisions mentioned in

95 subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan
96 shall discourage ex parte communications between them by such means as the commission shall
97 direct, including, but not limited to, separate clerical and professional staffing for each division.
98 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest
99 extent possible the recommendations presented to the subcommittee on the Public Service
100 Commission of the Joint Committee on Government and Finance in a final report dated February,
101 1979, and entitled A Plan for Regulatory Reform and Management Improvement.

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

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

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

121 The rules promulgated and made effective pursuant to this section shall be effective
122 notwithstanding any other provisions of this code for the promulgation of rules or regulations.

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

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

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

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

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

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

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

160 (l) The Legislature further finds that notwithstanding any contrary provisions of this section,
161 the jurisdiction of the Public Service Commission over electric utilities is limited to hearing
162 requests for rate adjustments from public electrical utilities and issuing a recommendation on the
163 request for rate adjustments to the Legislature. The Legislature further finds that all adjustments to
164 rates for public electric utilities require a specific bill approved by the Legislature.

NOTE: The purpose of this bill is to limiting the jurisdiction of the Public Service Commission over rate adjustment requests by public utilities to hearing the request and making recommendations to the Legislature. Electric utility rate adjustments approval require a bill by the Legislature.

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