

COMMITTEE SUBSTITUTE

FOR

H. B. 2663

(BY DELEGATES MOYE, T. CAMPBELL, MANCHIN,
SHAVER, STEPHENS, BARKER, M. POLING AND DOYLE)

(Originating in the Committee on the Judiciary.)
[February 3, 2011]

A BILL to amend and reenact §24-1-3 and §24-1-4 of the Code of West Virginia, 1931, as amended, all relating to the conduct of hearings by the Public Service Commission and its designated hearing examiners; requiring the Commission to preside en banc over any hearings conducted with respect to any case in which the Commission retains to sit en banc as the initial finder of fact; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §24-1-3 and §24-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation; quorum.

1 (a) The Public Service Commission of West Virginia is
2 continued and directed as provided by this chapter, chapter
3 twenty-four-a, chapter twenty-four-b and chapter twenty-
4 four-d of this code. ~~After having conducted a performance~~
5 ~~audit through its joint committee on government operations,~~
6 ~~pursuant to section nine, article ten, chapter four of this~~
7 ~~code, the Legislature hereby finds and declares that the~~
8 ~~Public Service Commission should be continued and~~
9 ~~reestablished. Accordingly, notwithstanding the provisions~~
10 ~~of section five, article ten, chapter four of this code, the~~
11 ~~Public Service Commission shall continue to exist until July~~
12 ~~1, two thousand three.~~ The Public Service Commission may
13 sue and be sued by that name.

14 **(b)** The Public Service Commission shall consist of three
15 members who shall be appointed by the Governor, with the
16 advice and consent of the Senate. The commissioners shall
17 be citizens and residents of this state and at least one of
18 them shall be duly licensed to practice law in West Virginia,
19 with not less than ten years' actual work experience in the
20 legal profession as a member of a State Bar.

21 **(c)** No more than two of the commissioners shall be
22 members of the same political party.

23 **(d)** Each commissioner shall, before entering upon the
24 duties of his or her office, take and subscribe to the oath
25 provided by section five, article IV of the Constitution of
26 this state. The oath shall be filed in the office of the
27 Secretary of State.

28 **(e)** The Governor shall designate one of the
29 commissioners to serve as chairman at the Governor's will
30 and pleasure. The chairman shall be the chief administrative
31 officer of the commission. The Governor may remove any
32 commissioner only for incompetency, neglect of duty, gross

33 immorality, malfeasance in office or violation of ~~subsection~~
34 ~~(c)~~ subsections (g) and (h) of this section.

35 ~~(b)~~ (f) ~~The unexpired terms of members of the Public~~
36 ~~Service Commission at the time this subsection becomes~~
37 ~~effective are continued.~~ Upon expiration of the terms,
38 appointments are for terms of six years, except that an
39 appointment to fill a vacancy is for the unexpired term only.
40 ~~The commissioners whose terms are terminated by the~~
41 ~~provisions of this subsection are eligible for reappointment.~~

42 ~~(c)~~ (g) No person while in the employ of, or holding any
43 official relation to, any public utility subject to the
44 provisions of this chapter or holding any stocks or bonds of
45 a public utility subject to the provisions of this chapter or
46 who is pecuniarily interested in a public utility subject to the
47 provisions of this chapter may serve as a member of the
48 commission or as an employee of the commission.

49 (h) Nor may any commissioner be a candidate for or hold
50 public office or be a member of any political committee
51 while acting as a commissioner; nor may any commissioner

52 or employee of the commission receive any pass, free
53 transportation or other thing of value, either directly or
54 indirectly, from any public utility or motor carrier subject to
55 the provisions of this chapter. In case any of the
56 commissioners becomes a candidate for any public office or
57 a member of any political committee, the Governor shall
58 remove him or her from office and shall appoint a new
59 commissioner to fill the vacancy created.

60 ~~(d) (i) The salaries of members of the Public Service~~
61 ~~Commission and the manner in which they are paid~~
62 ~~established by the prior enactment of this section are~~
63 ~~continued. Effective July 1, 2001, The annual salary of each~~
64 commissioner provided in section two-a, article seven,
65 chapter six of this code shall be paid in monthly installments
66 from the special funds in the percentages that follow:

67 (1) From the Public Service Commission Fund collected
68 under the provisions of section six, article three of this
69 chapter, eighty percent;

70 (2) From the Public Service Commission Motor Carrier
71 Fund collected under the provisions of section six, article
72 six, chapter twenty-four-a of this code, seventeen percent;
73 and

74 (3) From the Public Service Commission Gas Pipeline
75 Safety Fund collected under the provisions of section three,
76 article five, chapter twenty-four-b of this code, three
77 percent.

78 (j) In addition to the salary provided for all
79 commissioners in section two-a, article seven, chapter six of
80 this code, the chairman of the commission shall receive
81 \$5,000 per annum to be paid in monthly installments from
82 the Public Service Commission Fund collected under the
83 provisions of section six, article three of this chapter.

**§24-1-4. Appointment, duties and compensation of secretary
and other employees; hearings generally; outside
employment by certain employees prohibited.**

1 The commission shall appoint a secretary and such other
2 employees as may be necessary to carry out the provisions
3 of this chapter and shall fix their respective salaries or

4 compensations. It shall be the duty of the secretary to keep
5 a full and true record of all proceedings, acts, orders and
6 judgments of the commission, to issue all necessary process,
7 returns and notices, to keep all books, maps, documents and
8 papers ordered filed by the commission, and all orders made
9 by the commission or approved and confirmed by it and
10 ordered to be filed; and he shall be responsible to the
11 commission for the safe custody and preservation of all such
12 documents in his office. He may administer oaths in all
13 parts of the state, so far as the exercise of such power is
14 properly incidental to the performance of his duty or that of
15 the commission.

16 The commission may designate such of its employees as
17 it deems necessary to hold hearings, held or required by this
18 chapter, and to take evidence at such hearings, which
19 employees are hereby empowered to subpoena witnesses,
20 administer oaths, take testimony, require the production of
21 documentary evidence and exercise such other powers and
22 perform such other duties as may be delegated to them and

23 required by the commission, in any proceeding or
24 examination instituted or conducted by the commission
25 under this chapter, at any designated place of hearing within
26 the state.

27 On any matter the Commission retains to hear en banc as
28 the initial finder of fact, the Commission shall preside en
29 banc over all hearings that are conducted with respect to that
30 matter, including any associated public protest hearings.

31 Any commissioner or person employed by the
32 commission other than on a part-time basis shall devote full
33 time to the performance of his duties as such commissioner
34 or employee during the regular working hours as set by the
35 commission.

NOTE: The purpose of this bill is to require the Commission to sit en banc over all hearings conducted with respect any matter in which the Public Service Commission has retained to decide en banc as the initial finder of fact, including any associated public protest hearings. The bill also deletes obsolete language.

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