

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

**Senate Bill No. 585**

**(BY SENATOR PALUMBO)**

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

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AN ACT to repeal §24-3-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-1-1 of said code, relating to removing unconstitutional language regarding access to rail lines.

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

That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows:

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

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

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

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

14 (4) Ensure that rates and charges for utility services are just,  
15 reasonable, applied without unjust discrimination or preference,  
16 applied in a manner consistent with the purposes and policies  
17 set forth in article two-a of this chapter, and based primarily on  
18 the costs of providing these services;

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

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

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

33 (c) The Legislature directs the Public Service  
34 Commission to identify, explore and consider the potential

35 benefits or risks associated with emerging and state-of-the-art  
36 concepts in utility management, rate design and conservation.  
37 The commission may conduct inquiries and hold hearings  
38 regarding such concepts in order to provide utilities subject  
39 to its jurisdiction and other interested persons the opportunity  
40 to comment, and shall report to the Governor and the  
41 Legislature regarding its findings and policies to each of  
42 these areas not later than the first day of the regular session  
43 of the Legislature in the year 1985, and every two years  
44 thereafter.

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

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

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

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

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

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

72 (1) The extent to which natural gas wells or wells  
73 heretofore supplying gas utilities in this state have been  
74 capped off or shut in; the number of such wells; their  
75 probable extent of future production and the reasons given  
76 and any justification for capping off or shutting in such wells;  
77 the reasons, if any, why persons engaged or heretofore  
78 engaged in the development of gas wells in this state or the  
79 Appalachian areas have been discouraged from drilling,  
80 developing or selling the production of such wells; and  
81 whether there are fixed policies by any utility or group of  
82 utilities to avoid the purchase of natural gas produced in the  
83 Appalachian region of the United States generally and in  
84 West Virginia specifically.

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

87 (3) The cumulative effect of the practices mentioned in  
88 subdivisions (1) and (2) of this subsection upon rates  
89 theretofore and hereafter charged gas utility customers in  
90 West Virginia.

91 In carrying out the provisions of this section the  
92 commission shall have jurisdiction over such persons,  
93 whether public utilities or not, as may be in the opinion of the  
94 commission necessary to the exercise of its mandate and may  
95 compel attendance before it, take testimony under oath and  
96 compel the production of papers or other documents. Upon  
97 reasonable request by the commission, all other state agencies

98 shall cooperate with the commission in carrying out the  
99 provisions and requirements of this subsection.

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

105 (1) A division within the Public Service Commission  
106 which shall include the office of the commissioners, the  
107 hearing examiners and such support staff as may be necessary  
108 to carry out the functions of decisionmaking and general  
109 supervision of the commission, which functions shall not  
110 include advocacy in cases before the commission;

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

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

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

129 to relieve the commissioners from hearing motor carrier  
130 cases;

131 (5) Which members of the staff of the Public Service  
132 Commission shall be exempted from the salary schedules or  
133 pay plan adopted by the civil service commission and identify  
134 such staff members by job classification or designation,  
135 together with the salary or salary ranges for each such job  
136 classification or designation;

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

145 Such plan shall be based on the concept that each of the  
146 divisions mentioned in subdivisions (1), (2) and (4) of this  
147 subsection shall exist independently of the others and the plan  
148 shall discourage ex parte communications between them by  
149 such means as the commission shall direct, including, but not  
150 limited to, separate clerical and professional staffing for each  
151 division. Further, the Public Service Commission is directed  
152 to incorporate within the said plan to the fullest extent  
153 possible the recommendations presented to the subcommittee  
154 on the Public Service Commission of the Joint Committee on  
155 Government and Finance in a final report dated February,  
156 1979, and entitled "A Plan for Regulatory Reform and  
157 Management Improvement."

158 The commission shall, before January 5, 1980, adopt said  
159 plan by order, which order shall promulgate the same as a  
160 rule of the commission to be effective upon the date specified  
161 in said order, which date shall be no later than December 31,

162 1980. Certified copies of such order and rule shall be filed on  
163 the first day of the 1980 regular session of the Legislature, by  
164 the chairman of the commission with the clerk of each house  
165 of the Legislature, the Governor and the Secretary of State.  
166 The chairman of the commission shall also file with the  
167 Office of the Secretary of State the receipt of the clerk of  
168 each house and of the Governor, which receipt shall evidence  
169 compliance with this section.

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

175       Within the limits of funds appropriated therefor, the rule  
176 of the Public Service Commission shall be effective upon the  
177 date specified in the order of the commission promulgating it  
178 unless an alternative plan be adopted by general law or unless  
179 the rule is disapproved by a concurrent resolution of the  
180 Legislature adopted prior to adjournment sine die of the  
181 regular session of the Legislature to be held in the year 1980:  
182 *Provided*, That if such rule is approved in part and  
183 disapproved in part by a concurrent resolution of the  
184 Legislature adopted prior to such adjournment, such rule shall  
185 be effective to the extent and only to the extent that the same  
186 is approved by such concurrent resolution.

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

191       (g) The Public Service Commission is hereby directed to  
192 cooperate with the Joint Committee on Government and  
193 Finance of the Legislature in its review, examination and



194 study of the administrative operations and enforcement  
195 record of the Railroad Safety Division of the Public Service  
196 Commission and any similar studies.

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

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

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

220 (i) The Legislature further finds that transactions between  
221 utilities and affiliates are a contributing factor to the increase  
222 in natural gas and electricity prices and tend to confuse  
223 consideration of a proper rate of return calculation. The  
224 Legislature therefore finds that it is imperative that the Public  
225 Service Commission have the opportunity to properly study

226 the issue of proper rate of return for lengthy periods of time  
227 and to limit the return of a utility to a proper level when  
228 compared to return or profit that affiliates earn on  
229 transactions with sister utilities.



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

.....  
*Chairman Senate Committee*

.....  
*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 ....., 2014.

.....  
*Governor*