

1 **Senate Bill No. 585**

2 (By Senator Palumbo)

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4 [Introduced February 14, 2014; referred to the Committee on the  
5 Judiciary.]  
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10 A BILL to repeal §24-3-3b of the Code of West Virginia, 1931, as  
11 amended; and to amend and reenact §24-1-1 of said code,  
12 relating to removing unconstitutional language regarding  
13 access to rail lines.

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

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16 be repealed; and that §24-1-1 of said code be amended and reenacted  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

18 **ARTICLE 1. GENERAL PROVISIONS.**

19 **§24-1-1. Legislative purpose and policy; plan for internal**  
20 **reorganization; promulgation of plan as rule;**  
21 **cooperation with Joint Committee on Government and**  
22 **Finance.**

1 (a) It is the purpose and policy of the Legislature in  
2 enacting this chapter to confer upon the Public Service Commission  
3 of this state the authority and duty to enforce and regulate the  
4 practices, services and rates of public utilities in order to:

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

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

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

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

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

20 (6) Encourage ~~and support open and competitive marketing of~~  
21 ~~rail carrier services by providing to all rail carriers access to~~  
22 ~~tracks as provided in section three b, article three of this~~  
23 ~~chapter. It is the purpose of the Legislature to remove removal of~~

1 artificial barriers to rail carrier service, stimulate competition,  
2 stimulate the free flow of goods and passengers throughout the  
3 state and promote the expansion of the tourism industry, thereby  
4 improving the economic condition of the state.

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

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

23       (d) It is legislative policy to ensure that the Legislature

1 and the general public become better informed regarding the  
2 regulation of public utilities in this state and the conduct of the  
3 business of the Public Service Commission. To aid in the  
4 achievement of this policy, the Public Service Commission annually  
5 shall present to the Joint Committee on Government and Finance,  
6 created by article three, chapter four of this code, or a  
7 subcommittee designated by the joint committee, a management  
8 summary report which describes in a concise manner:

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

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

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

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

20 (e) In addition to any other studies and reports required to  
21 be conducted and made by the Public Service Commission pursuant to  
22 any other provision of this section, the commission shall study and  
23 initially report to the Legislature no later than the first day of

1 the regular session of the Legislature in the year 1980 upon:

2       (1) The extent to which natural gas wells or wells heretofore  
3 supplying gas utilities in this state have been capped off or shut  
4 in; the number of such wells; their probable extent of future  
5 production and the reasons given and any justification for capping  
6 off or shutting in such wells; the reasons, if any, why persons  
7 engaged or heretofore engaged in the development of gas wells in  
8 this state or the Appalachian areas have been discouraged from  
9 drilling, developing or selling the production of such wells; and  
10 whether there are fixed policies by any utility or group of  
11 utilities to avoid the purchase of natural gas produced in the  
12 Appalachian region of the United States generally and in West  
13 Virginia specifically.

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

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

19       In carrying out the provisions of this section the commission  
20 shall have jurisdiction over such persons, whether public utilities  
21 or not, as may be in the opinion of the commission necessary to the  
22 exercise of its mandate and may compel attendance before it, take  
23 testimony under oath and compel the production of papers or other

1 documents. Upon reasonable request by the commission, all other  
2 state agencies shall cooperate with the commission in carrying out  
3 the provisions and requirements of this subsection.

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

8 (1) A division within the Public Service Commission which  
9 shall include the office of the commissioners, the hearing  
10 examiners and such support staff as may be necessary to carry out  
11 the functions of decisionmaking and general supervision of the  
12 commission, which functions shall not include advocacy in cases  
13 before the commission;

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

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

22 (4) The creation of a division within the Public Service  
23 Commission which shall assume the duties and responsibilities now

1 charged to the commissioners with regard to motor carriers which  
2 division shall exist separately from those divisions set out in  
3 subdivisions (1) and (2) of this subsection and which shall relieve  
4 the commissioners of all except minimal administrative  
5 responsibilities as to motor carriers and which plan shall provide  
6 for a hearing procedure to relieve the commissioners from hearing  
7 motor carrier cases;

8       (5) Which members of the staff of the Public Service  
9 Commission shall be exempted from the salary schedules or pay plan  
10 adopted by the civil service commission and identify such staff  
11 members by job classification or designation, together with the  
12 salary or salary ranges for each such job classification or  
13 designation;

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

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

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

10       The commission shall, before January 5, 1980, adopt said plan  
11 by order, which order shall promulgate the same as a rule of the  
12 commission to be effective upon the date specified in said order,  
13 which date shall be no later than December 31, 1980. Certified  
14 copies of such order and rule shall be filed on the first day of  
15 the 1980 regular session of the Legislature, by the chairman of the  
16 commission with the clerk of each house of the Legislature, the  
17 Governor and the Secretary of State. The chairman of the  
18 commission shall also file with the Office of the Secretary of  
19 State the receipt of the clerk of each house and of the Governor,  
20 which receipt shall evidence compliance with this section.

21       Upon the filing of a certified copy of such order and rule,  
22 the clerk of each house of the Legislature shall report the same to  
23 their respective houses and the presiding officer thereof shall



1 refer the same to appropriate standing committee or committees.

2       Within the limits of funds appropriated therefor, the rule of  
3 the Public Service Commission shall be effective upon the date  
4 specified in the order of the commission promulgating it unless an  
5 alternative plan be adopted by general law or unless the rule is  
6 disapproved by a concurrent resolution of the Legislature adopted  
7 prior to adjournment sine die of the regular session of the  
8 Legislature to be held in the year 1980: *Provided*, That if such  
9 rule is approved in part and disapproved in part by a concurrent  
10 resolution of the Legislature adopted prior to such adjournment,  
11 such rule shall be effective to the extent and only to the extent  
12 that the same is approved by such concurrent resolution.

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

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

22       (h) (1) The Legislature hereby finds that rates for natural  
23 gas charged to customers of all classes have risen dramatically in

1 recent years to the extent that such increases have adversely  
2 affected all customer classes. The Legislature further finds that  
3 it must take action necessary to mitigate the adverse consequences  
4 of these dramatic rate increases.

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

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

21 (i) The Legislature further finds that transactions between  
22 utilities and affiliates are a contributing factor to the increase  
23 in natural gas and electricity prices and tend to confuse

1 consideration of a proper rate of return calculation. The  
2 Legislature therefore finds that it is imperative that the Public  
3 Service Commission have the opportunity to properly study the issue  
4 of proper rate of return for lengthy periods of time and to limit  
5 the return of a utility to a proper level when compared to return  
6 or profit that affiliates earn on transactions with sister  
7 utilities.

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(NOTE: The purpose of this bill is to remove unconstitutional language regarding open access to rail lines in West Virginia, following the decision in *Association of Am. R.R. v. Public Serv. Comm'n*, 745 F. Supp. 1175 (S.D.W. Va. 1989).

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