

Senate Bill No. 585

(By Senator Palumbo)

[Introduced February 14, 2014; referred to the Committee on
the Judiciary.]

A BILL 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That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows: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
7 in the interest of the using and consuming public;

8 (2) Provide the availability of adequate, economical
9 and 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
12 ways consistent with the productive use of the state's
13 energy resources, such as coal;

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

18 chapter, and based primarily on the costs of providing these
19 services;

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

22 ~~(6) Encourage and support open and competitive~~
23 ~~marketing of rail carrier services by providing to all rail~~
24 ~~carriers access to tracks as provided in section three-b, article~~
25 ~~three of this chapter. It is the purpose of the Legislature to~~
26 ~~remove~~ removal of artificial barriers to rail carrier service,
27 stimulate competition, stimulate the free flow of goods and
28 passengers throughout the state and promote the expansion
29 of the tourism industry, thereby improving the economic
30 condition of the state.

31 (b) The Legislature creates the Public Service
32 Commission to exercise the legislative powers delegated to
33 it. The Public Service Commission is charged with the
34 responsibility for appraising and balancing the interests of
35 current and future utility service customers, the general
36 interests of the state's economy and the interests of the

37 utilities subject to its jurisdiction in its deliberations and
38 decisions.

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

51 (d) It is legislative policy to ensure that the Legislature
52 and the general public become better informed regarding the
53 regulation of public utilities in this state and the conduct of
54 the business of the Public Service Commission. To aid in the
55 achievement of this policy, the Public Service Commission

56 annually shall present to the Joint Committee on Government
57 and Finance, created by article three, chapter four of this
58 code, or a subcommittee designated by the joint committee,
59 a management summary report which describes in a concise
60 manner:

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

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

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

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

72 (e) In addition to any other studies and reports required to be
73 conducted and made by the Public Service Commission
74 pursuant to any other provision of this section, the commission

75 shall study and initially report to the Legislature no later than the
76 first day of the regular session of the Legislature in the year
77 1980 upon:

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

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

92 (3) The cumulative effect of the practices mentioned in
93 subdivisions (1) and (2) of this subsection upon rates

94 theretofore and hereafter charged gas utility customers in
95 West Virginia.

96 In carrying out the provisions of this section the
97 commission shall have jurisdiction over such persons,
98 whether public utilities or not, as may be in the opinion of the
99 commission necessary to the exercise of its mandate and may
100 compel attendance before it, take testimony under oath and
101 compel the production of papers or other documents. Upon
102 reasonable request by the commission, all other state
103 agencies shall cooperate with the commission in carrying out
104 the provisions and requirements of this subsection.

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

110 (1) A division within the Public Service Commission
111 which shall include the office of the commissioners, the
112 hearing examiners and such support staff as may be

113 necessary to carry out the functions of decisionmaking and
114 general supervision of the commission, which functions shall
115 not include advocacy in cases before the commission;

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

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

126 (4) The creation of a division within the Public Service
127 Commission which shall assume the duties and
128 responsibilities now charged to the commissioners with
129 regard to motor carriers which division shall exist separately
130 from those divisions set out in subdivisions (1) and (2) of this
131 subsection and which shall relieve the commissioners of all

132 except minimal administrative responsibilities as to motor
133 carriers and which plan shall provide for a hearing procedure to
134 relieve the commissioners from hearing motor carrier cases;

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

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

149 Such plan shall be based on the concept that each of the
150 divisions mentioned in subdivisions (1), (2) and (4) of this

151 subsection shall exist independently of the others and the
152 plan shall discourage ex parte communications between them
153 by such means as the commission shall direct, including, but
154 not limited to, separate clerical and professional staffing for
155 each division. Further, the Public Service Commission is
156 directed to incorporate within the said plan to the fullest
157 extent possible the recommendations presented to the
158 subcommittee on the Public Service Commission of the Joint
159 Committee on Government and Finance in a final report
160 dated February, 1979, and entitled "A Plan for Regulatory
161 Reform and Management Improvement."

162 The commission shall, before January 5, 1980, adopt said
163 plan by order, which order shall promulgate the same as a
164 rule of the commission to be effective upon the date specified
165 in said order, which date shall be no later than December 31,
166 1980. Certified copies of such order and rule shall be filed on
167 the first day of the 1980 regular session of the Legislature, by
168 the chairman of the commission with the clerk of each house
169 of the Legislature, the Governor and the Secretary of State.

170 The chairman of the commission shall also file with the
171 Office of the Secretary of State the receipt of the clerk of
172 each house and of the Governor, which receipt shall evidence
173 compliance with this section.

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

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

189 to the extent that the same is approved by such concurrent
190 resolution.

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

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

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

206 (2) The Legislature further finds that the practices of
207 natural gas utilities in purchasing high-priced gas supplies, in

208 purchasing gas supplies from out-of-state sources when West
209 Virginia possesses abundant natural gas, and in securing
210 supplies, directly or indirectly by contractual agreements
211 including take-or-pay provisions, indefinite price escalators
212 or most-favored nation clauses have contributed to the
213 dramatic increase in natural gas prices. It is therefore the
214 policy of the Legislature to discourage such purchasing
215 practices in order to protect all customer classes.

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

223 (i) The Legislature further finds that transactions between
224 utilities and affiliates are a contributing factor to the increase
225 in natural gas and electricity prices and tend to confuse
226 consideration of a proper rate of return calculation. The

227 Legislature therefore finds that it is imperative that the Public
228 Service Commission have the opportunity to properly study
229 the issue of proper rate of return for lengthy periods of time
230 and to limit the return of a utility to a proper level when
231 compared to return or profit that affiliates earn on
232 transactions with sister utilities.

(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.)