

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4587

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CADLE, HAMRICK, SYPOLT AND PORTERFIELD

[Introduced January 29, 2020; Referred to the
Committee on Government Organization then the
Judiciary.]

1 A BILL to amend and reenact §24-2-4a of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §24A-2-4 of said code; to amend and reenact §24A-5-2 of said code; to
3 amend said code by adding thereto two new sections, designated §24A-5-2a and §24A-
4 5-2b; all relating to the regulation of the collection, hauling, and disposal of solid waste by
5 motor carriers; authorizing indexed automatic rate increases for solid waste collection and
6 hauling; authorizing multi-year contracts; setting procedures for the approval of rates;
7 authorizing solid waste carriers to require pooling; and authorizing the Public Service
8 Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4a. Procedure for changing rates after June 30, 1981.

1 (a) After June 30, 1981, no public utility subject to this chapter, except for those entities
2 subject to the provisions of §24A-5-2a of this code and water and/or sewer utilities that are political
3 subdivisions of the state providing separate or combined services and having at least 4,500
4 customers and annual gross revenue of \$3 million or more from its separate or combined services,
5 shall change, suspend or annul any rate, joint rate, charge, rental or classification except after
6 thirty days' notice to the commission and the public, which notice shall plainly state the changes
7 proposed to be made in the schedule then in force and the time when the changed rates or
8 charges shall go into effect; but the commission may enter an order suspending the proposed
9 rate as hereinafter provided. The proposed changes shall be shown by printing new schedules,
10 or shall be plainly indicated upon the schedules in force at the time, and kept open to public
11 inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow
12 changes upon less time than the notice herein specified, or may modify the requirements of this
13 section in respect to publishing, posting and filing of tariffs, either by particular instructions or by
14 general order.

15 (b) Whenever there shall be filed with the commission any schedule stating a change in
16 the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge
17 or joint classification or any new individual or joint regulation or practice affecting any rate or
18 charge, the commission may, either upon complaint or upon its own initiative without complaint,
19 enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or
20 practice; and, if the commission so orders, it may proceed without answer or other form of
21 pleading by the interested parties, but upon reasonable notice, and, pending such hearing and
22 the decisions thereon, the commission, upon filing with such schedule and delivering to the public
23 utility affected thereby a statement in writing of its reasons for such suspension, may suspend the
24 operation of such schedule and defer the use of such rate, charge, classification, regulation or
25 practice, but not for a longer period than two hundred seventy days beyond the time when such
26 rate, charge, classification, regulation or practice would otherwise go into effect; and after full
27 hearing, whether completed before or after the rate, charge, classification, regulation or practice
28 goes into effect, the commission may make such order in reference to such rate, charge,
29 classification, regulation or practice as would be proper in a proceeding initiated after the rate,
30 charge, classification, regulation or practice had become effective: *Provided*, That in the case of
31 a public utility having two thousand five hundred customers or less and which is not a political
32 subdivision and which is not principally owned by any other public utility corporation or public
33 utility holding corporation, the commission may suspend the operation of such schedule and defer
34 the use of such rate, charge, classification, regulation or practice, but not for a longer period than
35 one hundred twenty days beyond the time when such rate, charge, classification, regulation or
36 practice would otherwise go into effect; and in the case of a public utility having more than two
37 thousand five hundred customers, but not more than five thousand customers, and which is not
38 a political subdivision and which is not principally owned by any other public utility corporation or
39 public utility holding corporation, the commission may suspend the operation of such schedule
40 and defer the use of such rate, charge, classification, regulation or practice, but not for a longer

41 period than one hundred fifty days beyond the time when such rate, charge, classification,
42 regulation or practice would otherwise go into effect; and in the case of a public utility having more
43 than five thousand customers, but not more than seven thousand five hundred customers, and
44 which is not a political subdivision and which is not principally owned by any other public utility
45 corporation or public utility holding corporation, the commission may suspend the operation of
46 such schedule and defer the use of such rate, charge, classification, regulation or practice, but
47 not for a longer period than one hundred eighty days beyond the time when such rate, charge,
48 classification, regulation or practice would otherwise go into effect; and after full hearing, whether
49 completed before or after the rate, charge, classification, regulation or practice goes into effect,
50 the commission may make such order in reference to such rate, charge, classification, regulation
51 or practice as would be proper in a proceeding initiated after the rate, charge, classification,
52 regulation or practice had become effective: *Provided, however,* That, in the case of rates
53 established or proposed that increase by less than twenty-five percent of the gross revenue of
54 the regulated public service district, there shall be no suspension period in the case of rates
55 established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen
56 of this code and the proposed rates of public service districts shall go into effect upon the date of
57 filing with the commission, subject to refund modification at the conclusion of the commission
58 proceeding. In the case of rates established or proposed that increase by more than twenty-five
59 percent of the gross revenue of the public service district, the district may apply for, and the
60 commission may grant, a waiver of the suspension period and allow rates to be effective upon
61 the date of filing with the commission. The public service district shall provide notice by Class 1
62 legal advertisement in a newspaper of general circulation in its service territory of the percentage
63 increase in rates at least fourteen days prior to the effective date of the increased rates. Any
64 refund determined to be determined to be due and owing as a result of any difference between
65 any final rates approved by the commission and the rates placed into effect subject to refund shall
66 be refunded by the public service district as a credit against each customer's account for a period

67 of up to six months after entry of the commission's final order. Any remaining balance which is
68 not fully credited by credit within six months after entry of the commission's final order shall be
69 directly refunded to the customer by check: *Provided further*, That if any such hearing and decision
70 thereon is not concluded within the periods of suspension, as above stated, such rate, charge,
71 classification, regulation or practice shall go into effect at the end of such period not subject to
72 refund: *And provided further*, That if any such rate, charge, classification, regulation or practice
73 goes into effect because of the failure of the commission to reach a decision, the same shall not
74 preclude the commission from rendering a decision with respect thereto which would disapprove,
75 reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole
76 or in part, but any such disapproval, reduction or modification shall not be deemed to require a
77 refund to the customers of such utility as to any rate, charge, classification, regulation or practice
78 so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or
79 practice going into effect by reason of the commission's failure to act thereon shall not affect the
80 commission's power and authority to subsequently act with respect to any such application or
81 change in any rate, charge, classification, regulation or practice. Any rate, charge, classification,
82 regulation or practice which shall be approved, disapproved, modified or changed, in whole or in
83 part, by decision of the commission shall remain in effect as so approved, disapproved, modified
84 or changed during the period or pendency of any subsequent hearing thereon or appeal
85 therefrom. Orders of the commission affecting rates, charges, classifications, regulations or
86 practices which have gone into effect automatically at the end of the of the suspension period are
87 prospective in effect.

88 (c) At any hearing involving a rate sought to be increased or involving the change of any
89 rate, charge, classification, regulation or practice, the burden of proof to show the justness and
90 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
91 charge, classification, regulation or practice shall be upon the public utility making application for
92 such change. The commission shall, whenever practicable and within budgetary constraints,

93 conduct one or more public hearings within the area served by the public utility making application
94 for such increase or change, for the purpose of obtaining comments and evidence on the matter
95 from local ratepayers.

96 (d) Each public utility subject to the provisions of this section shall be required to establish,
97 in a written report which shall be incorporated into each general rate case application, that it has
98 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
99 management, rate design and conservation as reported by the commission under subsection (c),
100 section one, article one of this chapter as alternatives to, or in mitigation of, any rate increase.
101 The utility report shall contain as to each concept considered the reasons for adoption or rejection
102 of each. When in any case pending before the commission all evidence shall have been taken
103 and the hearing completed, the commission shall render a decision in such case. The failure of
104 the commission to render a decision with respect to any such proposed change in any such rate,
105 charge, classification, regulation or practice within the various time periods specified in this
106 section after the application therefor shall constitute neglect of duty on the part of the commission
107 and each member thereof.

108 (e) Where more than twenty members of the public are affected by a proposed change in
109 rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is
110 published as a Class II legal advertisement in compliance with the provisions of article three,
111 chapter fifty-nine of this code and the publication area for such publication shall be the community
112 where the majority of the resident members of the public affected by such change reside or, in
113 case of nonresidents, have their principal place of business within this state.

114 (f) The commission may order rates into effect subject to refund, plus interest in the
115 discretion of the commission, in cases in which the commission determines that a temporary or
116 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
117 upon which these rates are based are subject to modification by the commission or another
118 regulatory commission and to refund to the public utility. In such case the commission may require

119 such public utility to enter into a bond in an amount deemed by the commission to be reasonable
120 and conditioned upon the refund to the persons or parties entitled thereto of the amount of the
121 excess if such rates so put into effect are subsequently determined to be higher than those finally
122 fixed for such utility.

123 (g) No utility regulated under the provisions of this section may make application for a
124 general rate increase while another general rate application is pending before the commission
125 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
126 provisions of this subsection shall not be construed so as to prohibit any such rate application
127 from being made while a previous application which has been finally acted upon by the
128 commission is pending before or upon appeal to the West Virginia Supreme Court of Appeal.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-4. Rates, fares and charges.

1 (a) All rates, fares and charges made by any common carrier by motor vehicle shall be
2 just and reasonable, and shall not be unlawfully discriminatory, prejudicial nor preferential. No
3 such carrier shall charge, demand, collect, or receive a greater or less or different remuneration
4 for the transportation of passengers or property, or for any service in connection therewith, than
5 the rates, fares, and charges which have been legally established and filed with the commission;
6 nor shall any such carrier refund, remit, discount or rebate in any manner or by any device any
7 portion of the rates, fares, and charges required to be collected by the tariffs on file with or ordered
8 by the commission.

9 (b) Notwithstanding any provision of this code to the contrary, effective July 1, 2020, motor
10 carriers transporting solid waste may enter into multi-year contracts with commercial customers
11 for the collection and transportation of solid waste.

§24A-5-2. Certificate of convenience and necessity.

1 (a) Required; application; hearing; granting. — It shall be unlawful for any common carrier
2 by motor vehicle to operate within this state without first having obtained from the commission a
3 certificate of convenience and necessity. Upon the filing of an application for such certificate, the
4 commission shall set a time a place for a hearing on the application: *Provided*, That the
5 commission may, after giving proper notice and if no protest is received, waive formal hearing on
6 the application. Notice shall be by publication which shall state that a formal hearing may be
7 waived in the absence of a protest to such application. The notice shall be published as a Class
8 I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this
9 code and the publication area for such publication shall be the proposed area of operation. The
10 notice shall be published at least ten days prior to the date of the hearing. After the hearing or
11 waiver by the commission of the hearing, if the commission finds from the evidence that the public
12 convenience and necessity require the proposed service or any part thereof, it shall issue the
13 certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may
14 attach to the exercise of the right granted by such certificate such terms and conditions as in its
15 judgment the public convenience and necessity may require, and if the commission shall be of
16 the opinion that the service rendered by any common carrier holding a certificate of convenience
17 and necessity over any route or routes in this state is in any respect inadequate or insufficient to
18 met the public needs, such certificate holder shall be given reasonable time and opportunity to
19 remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant
20 proposing to operate over such route or routes as a common carrier. Before granting a certificate
21 to a common carrier by motor vehicle the commission shall take into consideration existing
22 transportation facilities in the territory for which a certificate is sought, and in case it finds from the
23 evidence that the service furnished by existing transportation facilities is reasonably efficient and
24 adequate, the commission shall not grant such certificate.

25 (b) Rules and regulations; taking evidence at hearings; burden of proof. — The
26 commission shall prescribe such rules and regulations as it may deem proper for the enforcement

27 of the provisions of this section and in establishing that public convenience and necessity do exist
28 the burden of proof shall be upon the applicant. The commission may designate any of its
29 employees to take evidence at the hearing of any application for a certificate and submit findings
30 of fact as a part of a report or reports to be made to the commission.

31 (c) Certificate not franchise, etc.; assignment or transfer. — No certificate issued in
32 accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable
33 or to confer any proprietary or property rights in the use of the public highways. No certificate
34 issued under this chapter shall be assigned or otherwise transferred without the approval of the
35 commission: Provided, That

36 (1) Upon the death of a person holding a certificate, his or her personal representative or
37 representatives may operate under such certificate while the same remains in force and effect
38 and, with the consent of the commission, may transfer such certificate; and

39 (2) An application by a motor carrier to transfer a certificate of convenience and necessity,
40 or a portion thereof, to another motor carrier possessing one or more certificates of public
41 convenience and necessity for the same commodity shall be affirmed or denied within 90 days of
42 the submission of a complete application for transfer. The commission shall make a determination
43 within ten business days of receiving a transfer application if the application is complete and notify
44 the applicant if additional information is required. If the commission fails to act on a complete
45 application within 90 days, the application to transfer the certificate shall be deemed approved.

46 (d) Suspension, revocation or amendment. — The commission may at any time, for good
47 cause, suspend and, upon not less than fifteen days' notice to the grantee of any certificate and
48 an opportunity to be heard, revoke or amend any certificate.

49 (e) The commission shall have the authority, after hearing, to ratify, approve and affirm
50 those orders issued pursuant to this section since March 10, nineteen hundred seventy-nine. For
51 the purposes of this subsection the commission may give notice by a Class I legal advertisement

52 of such hearing in any newspaper or newspapers of general circulation in this state, and such
53 other newspapers as the commission may designate.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-2a. Procedure for changing rates for collection and hauling of solid waste by motor carriers; rural rates.

1 (a) Unless a motor carrier collecting and hauling solid waste elects to increase rates under
2 section 2 of this chapter and the commission's existing rules and regulations, effective July 1,
3 2020, no solid waste motor carrier subject to this chapter shall change, suspend, or annul any
4 individual rate, joint rate, fare, charge, or classification for the collection or hauling of solid waste,
5 except after 30 days' notice to the commission and the carrier's customers, with such notice to
6 customers being sent as a bill insert or separately mailed statement that plainly states the changes
7 proposed to be made in the schedule then in force and the time when the changed rates or
8 charges will go into effect. The motor carrier shall file its proposed public notice with the
9 commission for review. Within five business days of the filing of the notice with the commission,
10 the commission shall issue an order approving the notice.

11 (b) Any proposed rate changes shall be shown by printing new schedules, or shall be
12 plainly indicated upon the schedules in force at the time, and kept open to public inspection:
13 Provided, That the commission may, in its discretion, and for good cause shown, allow changes
14 upon less time than the notice herein specified, or may modify the requirements of this section in
15 respect to publishing, posting and filing of tariffs, either by particular instructions or by general
16 order.

17 (c) Whenever a solid waste motor carrier shall file with the commission any schedule
18 stating a change in the rates or charges, or joint rates or charges, or stating a new individual or
19 joint rate or charge or joint classification or any new individual or joint regulation or practice
20 affecting any rate or charge, except as set forth in subsection (d) below, the commission shall
21 have authority, on its own initiative, or upon substantial protest filed with the commission within

22 30 days notice of the proposed increase or change demonstrated by the complaints submitted by
23 the lesser of: (i) 25 percent of the customers impacted by the proposed change in rates or
24 charges; or (ii) 750 customers impacted by the proposed change in rates or charges to suspend
25 the rates pending a hearing and final determination that the rate, charge, classification, regulation
26 or practice is just, reasonable, and based primarily on the cost of service. At any hearing involving
27 a rate sought to be increased or involving the change of any fare, charge, classification, regulation,
28 or practice, the burden of proof to show that the increased rate or proposed increased rate, or the
29 proposed change of fare, charge, classification, regulation or practice, is just, reasonable, and
30 based primarily on the cost of service, shall be upon the motor carrier making application for such
31 change. Any suspension of a rate, charge classification, regulation, or practice under this
32 subsection shall not extend beyond such time that the commission enters a final decision in the
33 case or 120 days from the date notice was first given. The commission may extend the time in
34 which a final decision is due by an additional 30 days if a motor carrier fails to provide material
35 information requested by the commission more than 30 days in advance of the hearing.

36 (d) *Urban Consumer Garbage Trash Collection Index rate change* – Effective July 1, 2020,
37 solid waste motor carriers shall be permitted to increase rates for the collection and hauling of
38 solid waste once on January 1 of each year, without the filing of an application for approval by the
39 commission and such increase shall be considered just and reasonable and not unfairly
40 discriminatory, prejudicial or preferential if: (1) The carrier complies with the notice requirements
41 of subsection (a) of this section; and (2) the percentage of the increase over the prior rate is equal
42 to or less than the percentage of any increase in the United States Department of Labor Bureau
43 of Labor Statistics Garbage and Trash Collection Index (the “Index”) from January 1, of the
44 preceding year. Any rate increase that a motor carrier believes is at or below the aforementioned
45 increase in the Index shall be identified as such when filed with the commission. Such rate
46 increases shall be subject to challenge by the commission only if it determines that the increase
47 is in fact in excess of the amount of the increase in the Index for the relevant time period. If the

48 commission determines a rate increase filed pursuant to this subsection is in excess of the
49 increase in the Index for the relevant time period, it may enter an order suspending the rate
50 increase consistent with subsection (c) of this section. If such an order is entered, the motor
51 carrier shall be entitled to a hearing pursuant to the process authorized in subsection (c) of this
52 section. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier
53 has already raised its rates in a given year pursuant to this subsection shall not preclude that
54 carrier from applying for and receiving from the commission a rate increase pursuant to
55 subsection (c) of this section: *Provided*, That the commission shall take into account the prior rate
56 increase taken pursuant to this subsection when considering the carrier's application to increase
57 rates. A motor carrier may implement up to four annual indexed rate increases under this
58 subsection before filing for a rate increase under chapter 24A of this code; *Provided*, That the
59 commission shall not engage in retroactive rate making.

60 (e) The commission shall prescribe such rules and regulations as to the giving of notice of
61 a change in rates pursuant to this section as are reasonable and are deemed proper in the public
62 interest.

**§24A-5-2b. Authorizing solid waste motor carriers to require certain customers to pool
solid waste for collection.**

1 Every motor carrier of solid waste in residential service shall provide and maintain
2 regularly scheduled pickup service. Exceptions to the regularly scheduled pickup service may be
3 made for reasons beyond the motor carrier's control, including, but not limited to, dangerous road
4 conditions, inclement weather, flooding, road closures. Exceptions to the regularly scheduled
5 pickup service based on such conditions will be at the motor carrier's discretion. Any interruption
6 of service in this regard that lasts beyond five days shall be reported by the motor carrier to the
7 commission and the motor carrier and the staff of the commission shall establish a contingency
8 pickup arrangement for the affected customers that the motor carrier shall implement until the
9 condition causing the service interruption is alleviated.

NOTE: The purpose of this bill is to modernize the Public Service Commission's regulation of solid waste motor carriers and solid waste facilities.

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