

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3059

FISCAL  
NOTE

By Delegates Reynolds, Dean, Bridges, Linville,  
Worrell, Willis, Honaker, Zatezalo, Barnhart,  
Burkhammer and Holstein

[Introduced January 25, 2023; Referred to the  
Committee on Technology and Infrastructure]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §24-2G-1, §24-2G-2, §24-2G-3, §24-2G-4, §24-2G-5, §24-2G-6, §24-2G-7,  
3 §24-2G-8, §24-2G-9, §24-2G-10, §24-2G-11, §24-2G-12, §24-2G-13, §24-2G-14, §24-2G-  
4 15, §24-2G-16, §24-2G-17, §24-2G-18, §24-2G-19, §24-2G-20, §24-2G-21, §24-2G-22,  
5 §24-2G-23, §24-2G-24, §24-2G-25, §24-2G-26, §24-2G-27, §24-2G-28, §24-2G-29, §24-  
6 2G-30, §24-2G-31, §24-2G-32, §24-2G-33, §24-2G-34, §24-2G-35, §24-2G-36, §24-2G-  
7 37, §24-2G-38, §24-2G-39, §24-2G-40, and §24-2G-41, all relating to railroad powers of  
8 the Public Service Commission; providing a definition; clarifying regulation of service  
9 applicable to railroads; providing exceptions; allowing for inquiries into management of  
10 railroads and investigation into violations of interstate commerce law; allowing for inquiries  
11 into neglect or violations of law; authorizing examinations and production of books and  
12 papers; providing for forfeiture for refusal to comply with subpoena; requiring annual  
13 statement to commission and identification of officers and directors; requiring disclosure to  
14 commission of certain leases, contracts, and agreements, including transportation  
15 contracts; providing a prohibition against directing a violation of law; creating a duty to  
16 report certain accidents and provide adequate service and facilities; requiring filing of  
17 schedules, joint rates, and changes in schedules; directing that charges conform to  
18 schedule; requiring maintenance of depots, switches, and sidetracks; recognizing  
19 commission's authority over private tracks; requiring proper facilities for interchange of  
20 traffic; prohibiting unlawful preference; authorizing commission to regulate dangerous  
21 structures; creating a duty to repair defective track; providing for forfeiture for  
22 noncompliance; addressing installation and regulation of crossing signals; providing for  
23 expenses associated with dangerous crossings; allowing for the regulation of safety  
24 devices at grade crossings; providing for forfeiture for noncompliance with commission  
25 order; allowing claims for damages and an immediate trial; providing for counsel for the  
26 commission; providing for forfeiture for violation of article; allowing for punitive damages;

27 prohibiting violations of article; setting forth penalties for violations; and providing  
28 rulemaking authority.

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

**ARTICLE 2G. PUBLIC SERVICE COMMISSION – RAILROAD POWERS.**

**§24-2G-1. Definition.**

1 Notwithstanding any other provision of code to the contrary, the following definition shall  
2 apply to this article:

3 "Railroad" includes any corporation, company, individual, or association of individuals, or  
4 its lessees, trustees, or receivers appointed by a court, which owns, operates, manages, or  
5 controls a railroad or part of a railroad as a common carrier in this state, or which owns, operates,  
6 manages, or controls any cars or other equipment used on such a railroad, or which owns,  
7 operates, manages, or controls any bridges, terminals, union depots, sidetracks, docks, wharves,  
8 or storage elevators used in connection with such a railroad, whether owned by such railroad or  
9 otherwise, and means and includes express companies, water transportation companies, freight-  
10 line companies, sleeping car companies, and interurban railroad companies, and all persons and  
11 association of persons, whether incorporated or not, operating such agencies for public use in the  
12 conveyance of persons or property within this state.

**§24-2G-2. Regulation of service applicable to railroads.**

- 1 (a) Regulation of service applicable to railroads shall include:  
2 (1) The transportation of passengers and property between points within the state;  
3 (2) The receiving, switching, delivering, storing, and handling of such property;  
4 (3) All charges connected with this section of code, including icing charges and mileage  
5 charges;  
6 (4) All railroad companies, sleeping car companies, equipment companies, express  
7 companies, car companies, freight and freight-line companies, and all associations of persons,  
8 incorporated or otherwise, which do business as common carriers, upon or over a line of railroad

9 within this state;

10 (5) A common carrier engaged in the transportation of passengers or property wholly by  
11 rail, partly by rail and partly by water, or wholly by water;

12 (6) The regulation of all other duties, services, practices, and charges of the railroad  
13 company, incident to the shipping and receiving of freight, which are proper subjects of regulation.

14 (7) Such regulation shall not include or apply to the regulation of commerce with foreign  
15 nations, commerce among the several states, and commerce with the Indian tribes.

**§24-2G-3. Exceptions.**

1 This article does not apply to street and electric railways engaged solely in the  
2 transportation of passengers within the limits of cities, or to other private railroads not doing  
3 business as common carriers.

**§24-2G-4. Inquiry into management of railroads.**

1 The Public Service Commission ("commission") may inquire into the management of the  
2 business of any railroad, and shall keep itself informed as to the manner and method in which it is  
3 conducted. It may obtain from a railroad the information necessary to enable it to perform the  
4 duties and carry out the objects for which it was created.

**§24-2G-5. Investigation into violations of the interstate commerce law.**

1 The commission may, and on complaint shall, investigate any freight rates on interstate  
2 traffic on railroads in this state. If in its opinion they are excessive, discriminatory, levied in violation  
3 of the interstate commerce law, or in conflict with the rulings, orders, or regulations of the interstate  
4 commerce commission, it shall present the facts to the railroad with the request to make such  
5 changes as the Public Service Commission advises. If such changes are not made within a  
6 reasonable time, the Public Service Commission shall apply by petition to the interstate commerce  
7 commission for relief.

**§24-2G-6. Inquiry into neglect or violations of laws.**

1 (a) The commission shall inquire into any neglect or violation of the laws of this state by a

2 railroad doing business in this state, by its officers, agents, or employees, or by any person  
3 operating a railroad. The commission shall enforce this article, as well as other laws relating to  
4 railroads, and report violations thereof to the attorney general.

5 (b) If, upon complaint or otherwise, the commission has reason to believe that a railroad or  
6 any officer, agent, or employee of a railroad has violated or is violating any law of this state, or if it  
7 has reason to believe that differences have arisen between citizens of the state and any railroad  
8 operating as a common carrier within this state, it shall examine the matter.

**§24-2G-7. Power of commission to regulate in cases not designated.**

1 If, after hearing and investigation under this chapter, the commission finds any charges,  
2 regulation, or practice affecting the transportation of passengers or property, or any service in  
3 connection therewith, not specifically designated, unreasonable or unjustly discriminatory, it may  
4 regulate it as the commission so chooses.

**§24-2G-8. Commission may make examinations.**

1 Upon demand, the commission or any commissioner, or any person employed by the  
2 commission for that purpose, may inspect the books and papers of a railroad and examine under  
3 oath any officer, agent, or employee of a railroad, in relation to any matter which is the subject of  
4 complaint and investigation. A person, other than one of the commissioners, who makes such  
5 demand shall produce his authority to make such inspection, under the hand of a commissioner, or  
6 under the seal of the commission.

**§24-2G-9. Commission may require production of books and papers.**

1 By order or subpoena served on a railroad as a summons is served in a civil action in the  
2 court of common pleas, the commission may require, at such time and place within this state as it  
3 designates, the production of books, papers, or accounts relating to any matter which is the  
4 subject of complaint or investigation, kept by such railroad in any office or place outside of this  
5 state, or verified copies thereof, in order that an examination of such books, papers, or accounts  
6 may be made by the commission or under its direction. Such subpoena may issue to a sheriff of

7 any county of this state.

**§24-2G-10. Forfeiture for refusal to comply with subpoena.**

1 A railroad, or any officer or agent of a railroad, that fails or refuses to comply within a  
2 reasonable time with an order or subpoena from the commission issued under this article shall  
3 forfeit and pay into the state treasury, for each day it so fails or refuses, not less than \$100 nor  
4 more than \$1,000 to be recovered in a civil action in the name of the Public Service Commission.

**§24-2G-11. Annual statement under oath to commission.**

1 Every railroad company, incorporated or doing business in this state, shall file with the  
2 Public Service Commission a full and true statement of the affairs of such railroad relative to this  
3 state, covering the yearly period fixed by the commission. Such statement shall be made under  
4 oath of the proper officers of such company and shall be similar in character and detail to the  
5 annual report required to be made by railroad companies to the interstate commerce commission.  
6 If any such report is defective or erroneous, the Public Service Commission may order it to be  
7 amended within a prescribed time. Such annual reports shall be preserved in the office of the  
8 commission, which commission may require specific answers to questions upon which it desires  
9 information.

**§24-2G-12. List of officers and directors.**

1 Within 30 days after the election of the directors of a railroad doing business in the state,  
2 the railroad shall forward to the commission a list of the officers and directors thereof, giving the  
3 place of residence and post-office address of each. If a change occurs in the organization of the  
4 officers or board of directors of a railroad, the railroad shall notify the commission of such change  
5 and the residence and post-office address of each of the officers and directors.

**§24-2G-13. Commission shall be furnished copies of certain leases, contracts, and agreements.**

1 On demand of the Public Service Commission, each railroad operating within this state  
2 shall furnish copies of all leases, contracts, and agreements with express, sleeping car, freight, or

3 rolling stock companies, or other companies doing business upon or in connection with such  
4 railroad, to the commission. The commission or its authorized agent may examine any officer,  
5 agent, or employee of a railroad or of such other companies, under oath, relative to the stock  
6 which he or she has in any of such companies, and his or her pecuniary interests, direct or indirect,  
7 in such companies.

**§24-2G-14. Commission may demand copies of transportation contracts.**

1 When required by the Public Service Commission and within a time fixed by it, each  
2 railroad shall deliver to the commission for its use, copies of all contracts which relate to the  
3 transportation of persons or property or any service in connection therewith, made or entered into  
4 by such railroad with any other railroad, terminal, depot, car, or equipment company, express or  
5 other transportation company, bridge company, or any shipper, producer, consumer, or other  
6 person doing business with it.

**§24-2G-15. Prohibition against directing violation.**

1 No railroad shall, by itself or by a general officer thereof, by direction, instruction, or  
2 request, cause an officer, agent, or employee of such railroad to violate this article or any state law.

**§24-2G-16. Duty of railroad to report certain accidents.**

1 (a) Whenever an accident attended with loss of human life occurs within this state upon the  
2 line of any railroad, or on the depot grounds or yards of any railroad, such railroad shall be given  
3 immediate notice of such accident to the commission.

4 (b) In case of such accident, the commission, if it deems the public interest requires it, shall  
5 cause an investigation to be made forthwith, which shall be held in the locality of the accident,  
6 unless for greater convenience of those concerned, the commission orders such investigation  
7 held at some other place. Such investigation may be adjourned from place to place as is  
8 necessary and convenient. The commission shall give reasonable notice to an officer or station  
9 agent of the company of the time and place of the investigation.

10 (c) The cost of such investigation shall be certified by the chairman of the commission, and

11 audited and paid by the state as other expenses. The commission shall keep a record or file of the  
12 proceedings and evidence.

**§24-2G-17. Adequate service and facilities.**

1 Each railroad shall furnish reasonably adequate service and facilities. The charges made  
2 for any service rendered or to be rendered in the transportation of passengers or property, for any  
3 service in connection therewith, or for the receiving, switching, delivering, storing, or handling of  
4 such property, shall be reasonable and just. Every unjust and unreasonable charge for such  
5 service is prohibited.

**§24-2G-18. Railroad shall file schedules.**

1 (a) Each railroad shall print in plain type and file with the commission, within a time fixed by  
2 the commission, schedules, showing all rates, fares, and charges for transportation of passengers  
3 and property, and any service in connection therewith, which such railroad has established and  
4 which are in force at such time between all points in this state upon its railroad, or upon any  
5 railroad controlled or operated by it. Such schedules shall be open to public inspection.

6 (b) Such schedules shall plainly state the places upon such railroad or upon any railroad  
7 controlled or operated by it in this state between which passengers and property will be carried,  
8 and there shall be filed with such schedule the classification of freight in force. As part of such  
9 schedules, each railroad shall publish the rules and regulations affecting the rates charges or to be  
10 charged for transportation of passengers or property, and also its charges for delay in loading or  
11 unloading cars, for track and car service, rental, demurrage, switching, terminal or transfer service,  
12 or for any other service in connection with transportation of persons or property. Two copies of  
13 such schedules, in such form and places as are accessible for inspection by the public, shall be  
14 filed and kept on file in every depot, station, and office of such railroad where passengers or freight  
15 are received for transportation.

**§24-2G-19. Schedules of joint rates.**

1 When passengers or property are transported over connecting railroads in this state



2 operated by two or more railroads which establish joint rates, fares, and charges, a schedule  
3 thereof, compiled as provided in this article, shall be printed, filed with the Public Service  
4 Commission, and filed in every depot, station, and office of such railroads where passengers or  
5 property are received for transportation.

**§24-2G-20. Changes in schedules.**

1 (a) After schedules are filed as provided in this article, no change shall be made in any  
2 schedule, including a schedule of joint rates, in any classification, except upon 30 days' notice to  
3 the Public Service Commission. All such changes shall be plainly indicated upon existing  
4 schedules, or by filing new schedules 30 days prior to the time they are to take effect. The  
5 commission may, for good cause shown, allow changes upon less than the notice specified in this  
6 section, or modify the requirements of this section in respect to publishing, posting, and filing of  
7 tariffs, either in particular instances or by a general order applicable to special or peculiar  
8 circumstances or conditions. Copies of all new schedules shall be filed as provided in this article in  
9 every depot, station, and office of such railroad 30 days prior to the time they are to take effect,  
10 unless the commission prescribes a less time.

11 (b) When a change is made in an existing schedule, including schedules of joint rates, the  
12 railroad shall post a notice in a conspicuous place in every depot, station, and office, stating that  
13 changes have been made in the schedules on file, specifying the class or commodity affected, and  
14 stating the date when such changes will take effect.

**§24-2G-21. Charges shall conform to schedule.**

1 No railroad shall charge, demand, collect, or receive a greater or less compensation for the  
2 transportation of passengers or property, or for any service in connection therewith, than is  
3 specified in the printed schedules referred to in this article, including schedules of joint rates, as  
4 being then in force. The rates, fares, and charges named in such schedules shall be the lawful  
5 rates, fares, and charges until they are changed as provided in this article.

**§24-2G-22. Depots, switches, and sidetracks.**

1        Each railroad shall provide and maintain adequate depots and depot buildings at its  
2 regular stations for the accommodation of passengers. Such depot buildings shall be kept clean,  
3 well-lighted, and warmed, for the comfort and accommodation of the traveling public. Each  
4 railroad shall provide and maintain adequate and suitable freight depots, buildings, switches, and  
5 sidetracks for receiving, handling, and delivering freight, transported or to be transported by such  
6 railroad.

**§24-2G-23. Control over private tracks.**

1        The Public Service Commission has the same control over private tracks, so far as such  
2 tracks are used by common carriers in connection with a railroad for the transportation of freight,  
3 as it has over the tracks of such railroad.

**§24-2G-24. Interchange of traffic.**

1        Railroad companies as between themselves, and interurban railroads and electric railways  
2 as between themselves, shall afford reasonable and proper facilities for interchange of traffic  
3 between their respective lines, for forwarding and delivering passengers and property, and shall  
4 transfer and deliver, without unreasonable delay or discrimination, loaded or empty cars, freight, or  
5 passengers, destined to a point on its own or connecting lines. Precedence over other freight may  
6 be given to livestock and perishable freight.

**§24-2G-25. Unlawful preference.**

1        No common carrier subject to the provisions of this article shall make or give undue or  
2 unreasonable preference or advantage to a particular person, company, firm, corporation, or  
3 locality, or to any particular description of traffic, or subject any particular person, company, firm,  
4 corporation, or locality, or any particular description of traffic, to any undue or unreasonable  
5 prejudice or disadvantage in any respect.

**§24-2G-26. Duty of commission as to dangerous structures.**

1        (a) A railroad subject to regulation by the Public Service Commission shall, in accordance  
2 with American railway engineers association codes of rules for inspection or other standards

3 approved by the commission, inspect annually every bridge used for transportation of freight,  
4 passengers, or railroad crews on which the railroad performs all or part of the structural  
5 maintenance work. Inspection shall be made or supervised by a professional engineer. If at any  
6 time a bridge is found to be dangerous or unfit for transportation of passengers, freight, or railroad  
7 crews, the railroad shall immediately report the condition of the bridge to the commission. When  
8 the bridge passes over a public highway, such report shall also be given to the public authority  
9 having jurisdiction over such highway. The railroad shall file the annual inspection report with the  
10 commission on forms furnished by the commission or in a form acceptable to the commission.

11 (b) The commission shall examine all inspection reports. If, as a result of examination of inspection  
12 reports, on complaint, or otherwise, the commission has reasonable grounds to believe that any of  
13 the tracks, bridges, or other structures of a railroad are in a condition which renders them  
14 dangerous or unfit for the transportation of passengers, freight, or railroad crews, it shall forthwith  
15 inspect and examine them. If the commission is of the opinion that such structures are unfit for the  
16 transportation of passengers, freight, or railroad crews with safety, it shall immediately give to the  
17 superintendent, or other executive officer of the company operating such railroad, notice of the  
18 condition thereof, and of the repairs or reconstruction necessary to place them in a safe condition.  
19 The commission shall prescribe the time within which such repairs or reconstruction must be  
20 made, and the rate of speed for trains passing over such dangerous or defective track, bridge, or  
21 other structure, until the repairs or reconstruction required are made. If of the opinion that it is  
22 needful and proper, the commission shall forbid the running of all trains over such defective track,  
23 bridge, or other structure.

**§24-2G-27. Repair of defective track.**

1 No superintendent or other executive officer of a company operating a railroad who  
2 receives from the commission notice of a prescribed rate of speed for trains passing over a  
3 defective track, bridge, or other structure, or notice forbidding the running of passenger trains over  
4 such defective track, bridge, or other structure, shall neglect, within two days after receiving such

5 notice, to direct the proper subordinate officers to run the passenger trains over such defective  
 6 track, bridge, or other structure at a speed not greater than that so prescribed, or, if the running of a  
 7 passenger train is so forbidden, to stop running passenger trains over it. No engineer, conductor,  
 8 or other employee shall knowingly disobey such an order.

**§24-2G-28. Forfeiture in case of noncompliance.**

1 If the company operating a railroad neglects or without good cause fails to make the  
 2 repairs or reconstruction prescribed by the commission within the time limited by it under this  
 3 article, such company shall forfeit to the state \$100 for each day that such repairs or reconstruction  
 4 is delayed beyond the time prescribed.

**§24-2G-29. Installing crossing signals.**

1 (a) Notwithstanding any provision of this code to the contrary, if, after public hearing as to  
 2 the necessity for installing protective devices at a public railroad highway grade crossing, written  
 3 notice of which is published once a week for three consecutive weeks in a newspaper of general  
 4 circulation in the county in which the crossing is located and is given the railroad and public  
 5 authority involved at least 30 days in advance of such hearing, it is the opinion of the Public  
 6 Service Commission that the public safety requires a gate, automatic alarm bell, or other  
 7 mechanical device to be erected and maintained at any place where a public road or street is  
 8 crossed at the same level by a railroad, and the crossing has been declared by the commission to  
 9 be so dangerous and hazardous as to require additional protective devices, or the public safety  
 10 requires that a flagman be stationed and maintained at such crossing, the commission shall give  
 11 the superintendent, manager, or other officer in charge of such railroad a written order of what is  
 12 required, and shall assign the cost of installing any such device between the railroad and the  
 13 public in any proportion it determines proper that is consistent with any applicable federal  
 14 requirements, after giving due consideration to the factors listed in this section of code.

15 (b) In assigning the cost of any such device, the commission shall consider factors of  
 16 volume of vehicular traffic, volume of train traffic, train type and speed, limitations of view and the

17 causes thereof, savings, if any, which will inure to the railroad as the result of the installation,  
18 benefits to the public resulting from the reduction of hazard at the crossing, the probable cost of  
19 the installation, the future cost to the railroad of maintaining any such device, and any other special  
20 factors and conditions that the commission considers relevant. The commission may accept a  
21 railroad's agreement to maintain the installation as being its share of the cost for the protection. If  
22 any part of the cost is assigned to the public, it shall be apportioned to the state agency or political  
23 subdivision having jurisdiction over such crossing, and may be paid from any funds levied and  
24 made available for highway or street purposes; provided, that funds from the grade crossing  
25 protection fund created by this article may be used to pay the public's share of the cost. After the  
26 commission has issued an appropriate order requiring that additional protective devices be  
27 installed by a specific date, which shall be a reasonable time from the date of the order, the railroad  
28 concerned shall erect or install the additional protective devices or station the flagman within the  
29 time prescribed by the order. If the additional protective devices are not erected or installed within  
30 that time, the commission may reduce or eliminate the amount of any funds in the grade crossing  
31 protection fund obligated to pay the public's share of the costs relating to the erection, installation,  
32 and maintenance of the additional protective devices and, consistent with any applicable federal  
33 requirements, may assign to the railroad concerned any amount, up to 100 percent of the total  
34 amount, of the costs of erecting, installing, and maintaining the additional protective devices.

35 (c) Any person owning or operating a railroad and neglecting or refusing to erect or  
36 maintain such gate, automatic alarm bell, or other mechanical device, or to maintain such flagman,  
37 when required by the commission pursuant to this article, and after the commission has issued an  
38 appropriate order finding that the public funds will be made available with respect to any protective  
39 device it has ordered installed, shall forfeit to the state, for every such neglect or refusal, one  
40 thousand dollars, and in addition, shall forfeit one thousand dollars for each day such neglect or  
41 refusal continues.

**§24-2G-30. Regulation of crossing signals.**

1        All gates, bells, or devices erected under the direction of the commission shall be built  
2 within the time, in the manner, and of materials approved by the commission. Such devices so  
3 authorized shall be located in the highway or street on one or both sides of the railroad tracks, as  
4 the commission deems the public safety requires. Such gates shall be so constructed that when  
5 closed they obstruct or prevent passage across such railroad from the side on which a gate is  
6 located. Such bell must be so constructed that it will ring before the approach of every train of cars  
7 or locomotive within 300 feet or more of such crossing, and continue to ring until such train or  
8 locomotive has reached the crossing. A person shall be in charge of such gate who shall close it at  
9 the approach of each train or locomotive and keep it open at all other times. If an automatic bell or  
10 other mechanical device is required at such crossing, the railroad shall keep such bell or device in  
11 good working order. For every neglect of duty imposed by this section such railroad shall forfeit  
12 \$25.

**§24-2G-31. Dangerous crossings.**

1        (a) When two or more railroads cross a public highway or street at a dangerous crossing,  
2 the expenses incurred in the erection and maintenance of gates, bells, or other devices, and of  
3 necessary gatekeepers or flaggers, and apportioned by the commission as railroad expense, shall  
4 be shared equally by the railroads.

5        (b) Nothing in this article shall prevent the use of automatic bells or other mechanical  
6 devices by a railroad at a public crossing not declared dangerous by the commission, nor do they  
7 prevent state, county, township, or municipal officials from entering into an agreement with a  
8 railroad to pay all or part of the expense of erecting a warning device. Any funds levied and made  
9 available for highways or street purposes may be used to pay the public share of the cost under  
10 such an agreement. If a gate is erected or a flagger is stationed and maintained by a railroad,  
11 either alone or pursuant to such an agreement, the gate or flagger shall not be abandoned nor an  
12 automatic bell or other mechanical device substituted for the gate or flagger, unless the  
13 commission consents to the abandonment or substitution.

**§24-2G-32. Safety devices at grade crossings.**

1           (a) When two railroads, a railroad and an interurban railroad or electric or street railway,  
2 two interurban railroads, or a railroad or electric railway and a street or highway cross at grade, if,  
3 in the opinion of the commission, public safety requires protection, the commission, upon its own  
4 motion or upon complaint, after notice to the railroads interested and full investigation, may make  
5 an order requiring the railroads so intersecting and crossing to install such devices as in the  
6 opinion of the commission will properly protect such crossing.

7           (b) The commission may make any other orders regulating the speed and running of trains  
8 or of cars and the switching of cars over such crossing or street, and it shall apportion the expense  
9 of installation or maintenance of such devices between the railroad companies whose tracks are  
10 thus protected.

**§24-2G-33. Forfeiture for noncompliance with order.**

1           A railroad or electric railway refusing or neglecting to comply with an order of the Public  
2 Service Commission concerning the protection of persons and property from danger at grade  
3 crossings of any such railroad over another, or over a swing bridge or drawbridge and at junction  
4 points, by providing interlocking works or other fixtures, shall forfeit \$500 per week for each week  
5 such railroad refuses or neglects to obey such orders. Such forfeiture shall be recovered in an  
6 action in the name of the state, and, when collected, paid into the treasury of the county in which  
7 such suit was brought.

**§24-2G-34. Damage claims.**

1           (a) All claims, charges, or demands against a railroad for loss of or damage to property  
2 occurring while in the custody of such railroad and unreasonable delay in transportation and  
3 delivery, for overcharges upon a shipment, or for any other service in violation of this article, if not  
4 paid within 60 days from the date of the filing thereof with such railroad, may be submitted to the  
5 commission by a formal complaint. Such complaint shall be made upon blank forms which the  
6 commission shall provide upon demand of the claimant.

7           (b) Such complaint shall be verified as petitions in civil actions and may be accompanied  
8 by the sworn statements of any witnesses who have knowledge of any fact material to the inquiry.  
9 Upon the filing of such complaint the commission shall forthwith cite the railroad to answer the  
10 complaint, and the citation shall be accompanied with a brief statement of the claim. The answer of  
11 the railroad shall be filed within three weeks from the service of the citation and shall be verified as  
12 answers in civil cases, and may be accompanied with the affidavits of any witnesses having  
13 knowledge of facts material to the inquiry.

14           (c) The burden of proof shall be upon the railroad to show that loss or damage to property  
15 was not due to its negligence. The railroad to which property is delivered for shipment shall prima  
16 facie be liable for loss or damage occurring to such property in transit notwithstanding such  
17 property may be delivered to other railroads before reaching its destination. The claim referred to  
18 in this section for loss of or damage to property may be made to any carrier over whose lines the  
19 lost or damaged property was consigned, and such claimant may at the claimant's option join all of  
20 such railroads as parties defendant in the complaint before said commission. The railroad shall  
21 furnish the claimant with a copy of its answer and affidavits, and within two weeks from the filing of  
22 such answers the claimant may file a reply, with affidavits in support thereof, verified as replies in  
23 civil cases. At the expiration of said period of two weeks the commission shall proceed summarily  
24 to examine the complaint, answer, reply, and affidavits, and shall determine the existence and  
25 validity of the claim presented. If the commission finds in favor of the claimant it shall certify its  
26 findings to the circuit clerk of the court of the county in which the claimant resides or where the  
27 railroad or any of its offices is maintained.

**§24-2G-35. Immediate trial.**

1           (a) Within 30 days from the receipt of the findings referred to in this article by the circuit  
2 clerk of the county in which the claimant resides or where the railroad or any of its offices is  
3 maintained, the railroad may by motion cause the matter to be docketed as a civil action in said  
4 court in which case the original pleadings shall be used and the case shall be advanced for



5 immediate trial. If no such motion is filed, the clerk shall enter up the finding of the Public Service  
6 Commission as a judgment which shall be in all respects treated as a judgment at law with all the  
7 incidents thereof and upon which execution may issue as in other cases.

8 (b) If said matter is docketed for trial, the action shall proceed as in other civil actions for  
9 damages except that upon trial a copy of the findings and certified order of the commission is  
10 competent testimony and is prima-facie evidence of the facts stated in such finds and order, and  
11 except that the plaintiff shall not be liable for any costs unless they accrue upon his appeal.

**§24-2G-36. Counsel for commission.**

1 Upon request of the Public Service Commission, the attorney general or the prosecuting  
2 attorney of the proper county shall aid in an investigation, prosecution, hearing, or trial had under  
3 this article, and shall institute and prosecute necessary actions or proceedings for the  
4 enforcement of such article and of other laws of this state relating to railroads, and for the  
5 punishment of all violations of such article and such other laws.

**§24-2G-37. Forfeiture for violation.**

1 If a railroad fails to perform a duty enjoined upon it by this article, or does any act prohibited  
2 herein, for which failure or act no penalty or forfeiture has been provided by law, or fails to obey a  
3 lawful requirement or order made by the Public Service Commission or order of any court upon  
4 application of the commission, the railroad, except as otherwise specifically provided in this article,  
5 shall forfeit into the state treasury not less than \$100 nor more than \$10,000 for each violation or  
6 failure. In construing and enforcing this section, the act, omission, or failure of any officer, agent, or  
7 other person acting for or employed by a railroad, while acting within the scope of the officer's,  
8 agent's, or other person's employment, is the act, omission, or failure of the railroad.

**§24-2G-38. Punitive damages.**

1 If a railroad does, causes, or permits anything prohibited by this article to be done, or omits  
2 doing anything required to be done by this article, such railroad is liable to the person, firm, or  
3 corporation injured thereby in treble the amount of damages sustained in consequence of such

4 violation or omission. A recovery provided by this section shall not affect a recovery by the state of  
 5 the penalty prescribed for such violation.

**§24-2G-39. Violation.**

1 No officer, agent, or employee in an official capacity of a public utility or railroad shall  
 2 knowingly violate this article, or willfully fail to comply with any lawful order or direction of the Public  
 3 Service Commission made with respect to any public utility or railroad. Each day's continuance of  
 4 such failure is a separate offense.

**§24-2G-40.**

**Penalty.**

1 (a) Whoever violates §24-2G-15 of this code shall be fined not less than \$500 nor more  
 2 than \$1,000.

3 (b) Whoever violates §24-2G-27 of this code shall be fined not more than \$500, imprisoned  
 4 not more than one year, or both.

5 (c) Whoever violates §24-2G-39 of this code is guilty of a felony, and shall be fined not  
 6 more than \$500, and imprisoned for not less than one year nor more than five years, or both.

**§24-2G-41. Rulemaking authority.**

1 The Public Service Commission may propose rules required to administer any provision of  
 2 this article, including emergency rules.

NOTE: The purpose of this bill relates to railroad powers of the Public Service Commission. It provides a definition; clarifies regulation of service applicable to railroads; provides exceptions; allows for inquiries into management of railroads and investigation into violations of interstate commerce law; allows for inquiries into neglect or violations of law; authorizes examinations and production of books and papers; provides for forfeiture for refusal to comply with subpoena; requires annual statement to commission and identification of officers and directors; requires disclosure to commission of certain leases, contracts, and agreements, including transportation contracts; provides a prohibition against directing a violation of law; creates a duty to report certain accidents and provide adequate service and facilities; requires filing of schedules, joint rates, and changes in schedules; directs that charges conform to schedule; requires maintenance of depots, switches, and sidetracks; recognizes commission's authority over private tracks; requires proper facilities for interchange of traffic; prohibits unlawful preference; authorizes commission to regulate dangerous structures; creates a duty to repair defective track; provides for forfeiture for noncompliance; addresses installation and regulation of crossing signals; provides for expenses associated with dangerous crossings; allows for the

regulation of safety devices at grade crossings; provides for forfeiture for noncompliance with commission order; allows claims for damages and an immediate trial; provides for counsel for the commission; provides for forfeiture for violation of article; allows for punitive damages; prohibits violations of article; sets forth penalties for violations; and provides rulemaking authority.

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