

WEST VIRGINIA LEGISLATURE
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ENROLLED

Senate Bill No. 585

(BY SENATOR PALUMBO)

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

SB 585

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

Be it enacted by the Legislature of West Virginia:

That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

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

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

46 **C. A.** (1) Ensure fair and prompt regulation of public utilities in
7 the interest of the using and consuming public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature]
.....
Member — ~~Chairman~~ Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within is affirmed..... this
the 28th Day of March....., 2014.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 pm