Committee Substitute for House Bill 4587

BY DELEGATES D. JEFFRIES, C. MARTIN, WORRELL, CADLE, HAMRICK, SYPOLT AND PORTERFIELD

[Passed March 7, 2020; in effect ninety days from passage.]
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for

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Enr. CS for HB 4587

AN ACT to amend and reenact §24-2-4a of the Code of West Virginia, 1931, as amended; to amend and reenact §24A-5-2 of said code; to amend said code by adding thereto two new sections, designated §24A-5-2a and §24A-5-2b; all relating to the regulation of the collection, hauling, and disposal of solid waste by motor carriers; authorizing indexed automatic rate increases for solid waste collection and hauling; setting procedures for the approval of rates; authorizing the Public Service Commission to approve alternative pick-up due to adverse conditions; and authorizing the Public Service 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.


(a) After June 30, 1981, no public utility subject to this chapter, except for those entities subject to the provisions of §24A-5-2a of this code and water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least 4,500 customers and annual gross revenue of $3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days’ notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: Provided, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.
(b) Whenever there shall be filed with the commission any schedule stating a change in
the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge
or joint classification or any new individual or joint regulation or practice affecting any rate or
charge, the commission may, either upon complaint or upon its own initiative without complaint,
enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or
practice; and, if the commission so orders, it may proceed without answer or other form of
pleading by the interested parties, but upon reasonable notice, and, pending such hearing and
the decisions thereon, the commission, upon filing with such schedule and delivering to the public
utility affected thereby a statement in writing of its reasons for such suspension, may suspend the
operation of such schedule and defer the use of such rate, charge, classification, regulation or
practice, but not for a longer period than two hundred seventy days beyond the time when such
rate, charge, classification, regulation or practice would otherwise go into effect; and after full
hearing, whether completed before or after the rate, charge, classification, regulation or practice
goes into effect, the commission may make such order in reference to such rate, charge,
classification, regulation or practice as would be proper in a proceeding initiated after the rate,
charge, classification, regulation or practice had become effective: Provided, That in the case of
a public utility having two thousand five hundred customers or less and which is not a political
subdivision and which is not principally owned by any other public utility corporation or public
utility holding corporation, the commission may suspend the operation of such schedule and defer
the use of such rate, charge, classification, regulation or practice, but not for a longer period than
one hundred twenty days beyond the time when such rate, charge, classification, regulation or
practice would otherwise go into effect; and in the case of a public utility having more than two
thousand five hundred customers, but not more than five thousand customers, and which is not
a political subdivision and which is not principally owned by any other public utility corporation or
public utility holding corporation, the commission may suspend the operation of such schedule
and defer the use of such rate, charge, classification, regulation or practice, but not for a longer
period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: Provided, however, That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. Notwithstanding the provisions of subsection (e) of this section, the public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the
public service district as a credit against each customer’s account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: Provided further, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: And provided further, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission’s failure to act thereon shall not affect the commission’s power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for
such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

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

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

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
upon which these rates are based are subject to modification by the commission or another
regulatory commission and to refund to the public utility. In such case the commission may require
such public utility to enter into a bond in an amount deemed by the commission to be reasonable
and conditioned upon the refund to the persons or parties entitled thereto of the amount of the
excess if such rates so put into effect are subsequently determined to be higher than those finally
fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a
genral rate increase while another general rate application is pending before the commission
and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
provisions of this subsection shall not be construed so as to prohibit any such rate application
from being made while a previous application which has been finally acted upon by the
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.


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

(b) *Rules and regulations; taking evidence at hearings; burden of proof.* — The
commission shall prescribe such rules and regulations as it may deem proper for the enforcement
of the provisions of this section and in establishing that public convenience and necessity do exist
the burden of proof shall be upon the applicant. The commission may designate any of its
employees to take evidence at the hearing of any application for a certificate and submit findings
of fact as a part of a report or reports to be made to the commission.

(c) *Certificate not franchise, etc.; assignment or transfer.* — No certificate issued in
accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable
or to confer any proprietary or property rights in the use of the public highways. No certificate
issued under this chapter shall be assigned or otherwise transferred without the approval of the
commission.
(1) Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate; and

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

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

(e) The commission shall have the authority, after hearing, to ratify, approve and affirm those orders issued pursuant to this section since March 10, nineteen hundred seventy-nine. For the purposes of this subsection the commission may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers of general circulation in this state, and such other newspapers as the commission may designate.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.


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

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

(c) Whenever a solid waste motor carrier shall file with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, except as set forth in subsection (d) below, the commission shall have authority, on its own initiative, or upon substantial protest filed with the commission within 30 days’ notice of the proposed increase or change demonstrated by the complaints submitted by the lesser of: (i) 25 percent of the customers impacted by the proposed change in rates or charges; or (ii) 750 customers impacted by the proposed change in rates or charges to suspend the rates pending a hearing and final determination that the rate, charge, classification, regulation or practice is just, reasonable, and based primarily on the cost of service. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation, or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just, reasonable, and based primarily on the cost of service, shall be upon the motor carrier making application for such
change. Any suspension of a rate, charge classification, regulation, or practice under this subsection shall not extend beyond such time that the commission enters a final decision in the case or 120 days from the date notice was first given. The commission may extend the time in which a final decision is due by an additional 30 days if a motor carrier fails to provide material information requested by the commission more than 30 days in advance of the hearing.

(d) *Urban Consumer Garbage Trash Collection Index rate change* – Effective July 1, 2020, solid waste motor carriers shall be permitted to increase rates for the collection and hauling of solid waste once on January 1 of each year, without the filing of an application for approval by the commission and such increase shall be considered just and reasonable and not unfairly discriminatory, prejudicial or preferential if: (1) The carrier complies with the notice requirements of subsection (a) of this section; and (2) the percentage of the increase over the prior rate is equal to or less than the percentage of any increase in the United States Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (the “Index”) from January 1, of the preceding year. Any rate increase that a motor carrier believes is at or below the aforementioned increase in the Index shall be identified as such when filed with the commission. Such rate increases shall be subject to challenge by the commission only if it determines that the increase is in fact in excess of the amount of the increase in the Index for the relevant time period. If the commission determines a rate increase filed pursuant to this subsection is in excess of the increase in the Index for the relevant time period, it may enter an order suspending the rate increase consistent with subsection (c) of this section. If such an order is entered, the motor carrier shall be entitled to a hearing pursuant to the process authorized in subsection (c) of this section. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier has already raised its rates in a given year pursuant to this subsection shall not preclude that carrier from applying for and receiving from the commission a rate increase pursuant to subsection (c) of this section: *Provided,* That the commission shall take into account the prior rate increase taken pursuant to this subsection when considering the carrier’s application to increase
rates. A motor carrier may implement up to four annual indexed rate increases under this subsection before filing for a rate increase under chapter 24A of this code: *Provided*, That the commission shall not engage in retroactive rate making.

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

§24A-5-2b. Authorizing Public Service Commission to approve alternative pick-up due to adverse conditions.

Every motor carrier of solid waste in residential service shall provide and maintain regularly scheduled pickup service. Exceptions to the regularly scheduled pickup service may be made for reasons beyond the motor carrier’s control, including, but not limited to, dangerous road conditions, inclement weather, flooding, road closures. Exceptions to the regularly scheduled pickup service based on such conditions will be at the motor carrier’s discretion: *Provided*, That nothing herein changes the universal service obligation of any motor carrier. Any interruption of service in this regard that lasts beyond five days shall be reported by the motor carrier to the commission and the motor carrier and the staff of the commission shall establish a contingency pickup arrangement for the affected customers that the motor carrier shall implement until the condition causing the service interruption is alleviated.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of March, 2020.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2020

Time: 1:15 pm