

Senate Bill No. 352

(By Senator Walters)

[Introduced January 28, 2015; referred to the Committee on Natural Resources; and then to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
designated §22C-4-23a; and to amend and reenact §24A-2-5 of said code, all relating to
allowing certain county or regional solid waste authorities in growth areas to designate
common carriers of solid waste exempt from requirement for certificate of convenience and
necessity; establishing criteria for exemption; and establishing requirements for notice and
public hearing.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
section, designated §22C-4-23a; and that §24A-2-5 of said code be amended and reenacted, all to
read as follows:

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES,
COMMISSIONS AND COMPACTS.**

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

1 **§22C-4-23a. Providing for additional waste haulers.**

2 (a) The Legislature finds that certain populous counties that have experienced rapid
3 population growth may, nonetheless, be served by only one or two common carriers that have
4 certificates of convenience and necessity from the Public Service Commission authorizing the
5 carrier(s) to provide solid waste collection and hauling services. In these counties, solid waste
6 planning for the effective collection, recycling and disposal of solid waste can be enhanced by the
7 introduction of additional common carriers to service the area. However, the requirement that any
8 new carrier first obtain a certificate of convenience and necessity from the Public Service
9 Commission causes significant delay and uncertainty, impeding the ability of the local solid waste
10 authorities to effectively plan and provide for the rapidly increasing solid waste burdens imposed
11 upon those counties. The Legislature therefore finds that the local solid waste authorities in these
12 counties should be given limited authority to designate one or more common carriers as exempt from
13 the requirement for a certificate of convenience and necessity.

14 (b) Notwithstanding any other provision of this code or any rule promulgated pursuant
15 thereto, a county or regional solid waste authority may designate a common carrier as exempt from
16 obtaining a certificate of convenience and necessity from the Public Service Commission, as would
17 otherwise be required by chapter twenty-four-a of this code, for the operation of motor vehicles for
18 the collection or transportation of solid waste including, but not limited to, commercial waste,
19 residential waste, construction waste, demolition waste or recyclable materials that are generated
20 within the county or region by residential, commercial, industrial or institutional sources.

21 (c) No county or regional solid waste authority may designate any motor carrier as exempt
22 unless it determines that granting an exemption will satisfy one or more of the following criteria:

1 (1) Improvement of the dependability, quality or value of solid waste collection or recycling services
2 available to the county or region; (2) enhancement of the disposal, recycling or composting capacity
3 available to the county or region; (3) enhancement of economic development in the county or region;
4 and (4) facilitation of the development of the solid waste infrastructure in the county or region.

5 (d) Any applicant for an exemption shall establish to the satisfaction of the county or regional
6 solid waste authority that it has the financial resources and the ability to provide the services
7 proposed in its application. An applicant for an exemption shall be provided with written notice and
8 a reasonable opportunity to make written and oral submissions to the county or regional solid waste
9 authority prior to any decision on whether to grant, deny or revoke an exemption. When granting
10 an exemption, the county or regional solid waste authority may impose reasonable conditions not
11 inconsistent with the criteria set forth above. Prior to granting, denying, transferring or revoking an
12 exemption a public hearing shall be conducted by the county or regional solid waste authority to
13 afford interested persons a reasonable opportunity to submit written or oral comments. Notice of the
14 public hearing shall be in the form of a Class II legal advertisement placed in the newspaper with the
15 largest circulation serving the county. The county or regional solid waste authority shall consider
16 written comments for a period not to exceed ten days beyond the date of the public hearing.

17 (e) Any exemption granted is effective until revoked or abandoned. With the exception of
18 the requirement that it obtain a certificate of convenience and necessity, an exempt carrier shall be
19 subject to all statutes, rules and other requirements applicable to common carriers of solid waste, and
20 is subject to the jurisdiction of the Public Service Commission for these purposes. Upon finding that
21 a carrier has violated any of the above conditions or other requirements imposed upon it by the
22 county or regional solid waste authority or by law, or for other good cause, the county or regional

1 solid waste authority may revoke any exemption previously granted.

2 (f) If a county or regional solid waste authority grants, denies, transfers or revokes an
3 exemption for any common carrier of solid waste, the authority shall submit a certified copy of the
4 order reflecting that action to the Public Service Commission.

5 (g) No exemption granted under this subsection may be assigned or transferred without the
6 written approval of the appropriate county or regional solid waste authority.

7 (h) The provisions of this section do not alter the legal duties of any other common carrier
8 of solid waste.

9 **CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.**

10 **ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

11 **§24A-2-5. Certificate of convenience and necessity.**

12 (a) ***Required; application; hearing; granting.*** -- It ~~shall be~~ is unlawful for any common
13 carrier by motor vehicle to operate within this state without first having obtained from the
14 commission a certificate of convenience and necessity: Provided, That a county or regional solid
15 waste authority may grant an exemption to this requirement pursuant to the provisions of section
16 twenty-three-a, article four, chapter twenty-two-c of this code. Upon the filing of an application for
17 ~~such~~ a certificate, the commission shall set a time ~~a~~ and place for a hearing on the application:
18 *Provided, That the commission may, after giving proper notice and if no protest is received, waive*
19 *formal hearing on the application. Notice shall be by publication which shall state that a formal*
20 *hearing may be waived in the absence of a protest to ~~such~~ the application. The notice shall be*
21 *published as a Class I legal advertisement in compliance with the provisions of article three, chapter*
22 *fifty-nine of this code and the publication area for ~~such~~ the publication shall be the proposed area*

1 of operation. The notice shall be published at least ten days prior to the date of the hearing. After
2 the hearing or waiver by the commission of the hearing, if the commission finds from the evidence
3 that the public convenience and necessity require the proposed service or any part thereof, it shall
4 issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and
5 may attach to the exercise of the right granted by ~~such~~ the certificate ~~such~~ the terms and conditions
6 ~~as that~~ in its judgment the public convenience and necessity may require, and if the commission shall
7 be of the opinion that the service rendered by any common carrier holding a certificate of
8 convenience and necessity over any route or routes in this state is in any respect inadequate or
9 insufficient to met the public needs, ~~such~~ the certificate holder shall be given reasonable time and
10 opportunity to remedy ~~such~~ the inadequacy or insufficiency before any certificate shall be granted
11 to an applicant proposing to operate over ~~such~~ the route or routes as a common carrier. Before
12 granting a certificate to a common carrier by motor vehicle the commission shall take into
13 consideration existing transportation facilities in the territory for which a certificate is sought, and
14 in case it finds from the evidence that the service furnished by existing transportation facilities is
15 reasonably efficient and adequate, the commission shall not grant ~~such~~ the certificate.

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

22 (c) *Certificate not franchise, etc.; assignment or transfer.* -- No certificate issued in

1 accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable
 2 or to confer any proprietary or property rights in the use of the public highways. No certificate
 3 issued under this chapter shall be assigned or otherwise transferred without the approval of the
 4 commission. Upon the death of a person holding a certificate, his or her personal representative or
 5 representatives may operate under ~~such~~ the certificate while the same remains in force and effect and,
 6 with the consent of the commission, may transfer ~~such~~ the certificate.

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

10 (e) The commission ~~shall have~~ has the authority, after hearing, to ratify, approve and affirm
 11 those orders issued pursuant to this section since March 10, 1979. For the purposes of this
 12 subsection the commission may give notice by a Class I legal advertisement of such hearing in any
 13 newspaper or newspapers of general circulation in this state, and such other newspapers as the
 14 commission may designate.

NOTE: The purpose of this bill is to allow county or regional waste authorities in growth areas to designate common carriers of solid waste to grant an exemption from the requirement for a certificate of convenience and necessity; to establish criteria for the exemption; and to establish requirements for notice and public hearing.

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

§22C 4-23a is new; therefore strike-throughs and underscoring have been omitted.