

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

**Senate Bill 656**

BY SENATOR SWOPE

[Introduced March 17, 2021; referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §24A-5-2a of the Code of West Virginia, 1931, as amended, relating  
 2 to use of a federal index in setting rates for collection and haulage of solid waste;  
 3 mandating that the Public Service Commission calculate year over year percentage  
 4 increase from the adjusted federal index; adjusting reference dates; and providing for  
 5 notice and order for the amount by which rates will be adjusted.

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

**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~~ §24A-5-2 of this code and the commission's existing rules and  
 3 ~~regulations~~, effective July 1, 2020, no solid waste motor carrier subject to this chapter shall  
 4 change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the  
 5 collection or hauling of solid waste, except after 30 days' notice to the commission and the  
 6 carrier's customers, with such notice to customers being sent as a bill insert or separately mailed  
 7 statement that plainly states the changes proposed to be made in the schedule then in force and  
 8 the time when the changed rates or charges will go into effect. The motor carrier shall file its  
 9 proposed public notice with the commission for review. Within five business days of the filing of  
 10 the notice with the commission, 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  
23 by 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 or after January 1 of each year, without the filing of an application for approval  
39 by the 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)~~ (1) The percentage of the increase over the prior rate is  
42 equal to or less than the year over year percentage of any increase in the United States  
43 Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (the "Index")

44 ~~from January 1~~ as of September 30 of the ~~preceding~~ preceding year preceding the effective date of the  
45 increase; (2) the carrier files a revised tariff in compliance with the commission tariff rules; and (3)  
46 notice is provided as directed by the commission. The commission shall calculate the year over  
47 year percentage increase in the Index between the September preceding the year of the effective  
48 date of the requested rate increase and the previous September (the relevant time period). After  
49 September 30 of each year, the commission shall issue a general order stating its calculation of  
50 the percentage increase in the Index and the inflation factor to apply to rates currently in effect to  
51 calculate the maximum increased rates authorized under this subsection. Any rate increase that  
52 a motor carrier believes is at or below the aforementioned increase in the Index shall be identified  
53 as such when filed with the commission. Such rate increases shall be subject to challenge by the  
54 commission only if it determines that the increase is in fact in excess of the amount of the increase  
55 in the Index for the relevant time period. If the commission determines a rate increase filed  
56 pursuant to this subsection is in excess of the increase in the Index for the relevant time period,  
57 it may enter an order suspending the rate increase ~~consistent with subsection (c) of this section.~~  
58 If such an order is entered, the motor carrier shall be entitled to a hearing pursuant to the process  
59 authorized in subsection (c) of this section or it may correct its requested rates, in which case the  
60 suspension will be lifted and the rates may go into effect as of the original requested effective  
61 date or the date that the carrier corrects its rates, whichever comes later. Notwithstanding any  
62 provision to the contrary, the fact that a solid waste motor carrier has already raised its rates in a  
63 given year pursuant to this subsection shall not preclude that carrier from applying for and  
64 receiving from the commission a rate increase pursuant to subsection (c) of this section: *Provided,*  
65 That the commission shall take into account the prior rate increase taken pursuant to this  
66 subsection when considering the carrier's application to increase rates. A motor carrier may  
67 implement up to four annual indexed rate increases under this subsection before filing for a rate  
68 increase under Chapter 24A of this code: *Provided, however,* That the commission shall not  
69 engage in retroactive rate making.

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

NOTE: The purpose of this bill is to calculate how a U.S. Department of Labor index of solid waste collection rates is to be used in calculation of West Virginia rates for collection and haulage of solid waste, specify when revised tariff information must be filed; and to add flexibility to the timing of notice and effective date of new rates.

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