

**H. B. 2744**

(By Delegates Howell, Sobonya, Westfall, H. White, Williams,  
Householder, Marcum and Cowles)

[Introduced February 13, 2015; referred to the

Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to all civil or criminal laws, rules, regulations, ordinances and policies now or hereafter created, administered, or enforced by any county, municipality or any other political subdivision of the state which are similar or otherwise related in any manner to the subject matter of any federal or state law or regulation governing, pertaining to, or otherwise regulating the environmental or operational aspects of any public utility within the jurisdiction of the Public Service Commission of West Virginia or any other entity regulated, in whole or in part, by the commission, except those public utilities owned and operated by any municipality or other political subdivision of the state; preempting and superseding such local laws, rules, regulations, ordinances and policies; and requiring express authorization of the Legislature before any such local law, rule, regulation, ordinance, or policy may be created.

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

That §24-2-1 of the Code of West Virginia, 1931, as amended be amended and reenacted to read as follows:

1 **ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.**

2 **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

3 (a) The jurisdiction of the commission shall extend to all public utilities in this state and shall  
4 include any utility engaged in any of the following public services: Common carriage of passengers  
5 or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by  
6 land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water  
7 by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with  
8 other substances by pipeline; sleeping car or parlor car services; transmission of messages by  
9 telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or  
10 other utilities for service to the public, whether directly or through a distributing utility; supplying  
11 water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more  
12 persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility intends  
13 to provide sewer service by an innovative, alternative method, as defined by the Federal  
14 Environmental Protection Agency, the innovative, alternative method is a public utility function and  
15 subject to the jurisdiction of the Public Service Commission regardless of the number of customers  
16 served by the innovative, alternative method; any public service district created under the provisions  
17 of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities;  
18 and any other public service: *Provided, however*, That natural gas producers who provide natural  
19 gas service to not more than twenty-five residential customers are exempt from the jurisdiction of  
20 the commission with regard to the provisions of such residential service: *Provided further*, That  
21 upon request of any of the customers of such natural gas producers, the commission may, upon good  
22 cause being shown, exercise such authority as the commission may deem appropriate over the

1 operation, rates and charges of such producer and for such length of time as the commission may  
2 consider to be proper: *And provided further*, That the jurisdiction the commission may exercise over  
3 the rates and charges of municipally operated public utilities is limited to that authority granted the  
4 commission in section four-b of this article: *And provided further*, That the decision-making  
5 authority granted to the commission in sections four and four-a of this article shall, in respect to an  
6 application filed by a public service district, be delegated to a single hearing examiner appointed  
7 from the commission staff, which hearing examiner shall be authorized to carry out all decision-  
8 making duties assigned to the commission by said sections, and to issue orders having the full force  
9 and effect of orders of the commission.

10 (b) The commission may, upon application, waive its jurisdiction and allow a utility  
11 operating in an adjoining state to provide service in West Virginia when:

12 (1) An area of West Virginia cannot be practicably and economically served by a utility  
13 licensed to operate within the State of West Virginia;

14 (2) Said area can be provided with utility service by a utility which operates in a state  
15 adjoining West Virginia;

16 (3) The utility operating in the adjoining state is regulated by a regulatory agency or  
17 commission of the adjoining state; and

18 (4) The number of customers to be served is not substantial. The rates the out-of-state utility  
19 charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge  
20 in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver  
21 of jurisdiction for good cause.

22 (c) Any other provisions of this chapter to the contrary notwithstanding:

1           (1) An owner or operator of an electric generating facility located or to be located in this state  
2 that has been designated as an exempt wholesale generator under applicable federal law, or will be  
3 so designated prior to commercial operation of the facility, and for which such facility the owner or  
4 operator holds a certificate of public convenience and necessity issued by the commission on or  
5 before July 1, 2003 , shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of  
6 this article as if the certificate of public convenience and necessity for such facility were a siting  
7 certificate issued under said section and shall not otherwise be subject to the jurisdiction of the  
8 commission or to the provisions of this chapter with respect to such facility except for the making  
9 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

10           (2) Any person, corporation or other entity that intends to construct or construct and operate  
11 an electric generating facility to be located in this state that has been designated as an exempt  
12 wholesale generator under applicable federal law, or will be so designated prior to commercial  
13 operation of the facility, and for which facility the owner or operator does not hold a certificate of  
14 public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior  
15 to commencement of construction of the facility, obtain a siting certificate from the commission  
16 pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public  
17 convenience and necessity pursuant to the provisions of section eleven of this article. An owner or  
18 operator of an electric generating facility as is described in this subdivision for which a siting  
19 certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and  
20 (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the  
21 commission or to the provisions of this chapter with respect to such facility except for the making  
22 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

1           (3) An owner or operator of an electric generating facility located in this state that had not  
2 been designated as an exempt wholesale generator under applicable federal law prior to commercial  
3 operation of the facility, that generates electric energy solely for sale at retail outside this state or  
4 solely for sale at wholesale in accordance with any applicable federal law that preempts state law or  
5 solely for both such sales at retail and such sales at wholesale, and that had been constructed and had  
6 engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction  
7 of the commission or to the provisions of this chapter with respect to such facility, regardless of  
8 whether such facility subsequent to its construction has been or will be designated as an exempt  
9 wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be  
10 subject to subdivision (5) of this subsection if a material modification of such facility is made or  
11 constructed.

12           (4) Any person, corporation or other entity that intends to construct or construct and operate  
13 an electric generating facility to be located in this state that has not been or will not be designated  
14 as an exempt wholesale generator under applicable federal law prior to commercial operation of the  
15 facility, that will generate electric energy solely for sale at retail outside this state or solely for sale  
16 at wholesale in accordance with any applicable federal law that preempts state law or solely for both  
17 such sales at retail and such sales at wholesale and that had not been constructed and had not been  
18 engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of  
19 construction of the facility, obtain a siting certificate from the commission pursuant to the provisions  
20 of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant  
21 to the provisions of section eleven of this article. An owner or operator of an electric generating  
22 facility as is described in this subdivision for which a siting certificate has been issued by the

1 commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article  
2 and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this  
3 chapter with respect to such facility except for the making or constructing of a material modification  
4 thereof as provided in subdivision (5) of this subsection.

5 (5) An owner or operator of an electric generating facility described in this subsection shall,  
6 before making or constructing a material modification of the facility that is not within the terms of  
7 any certificate of public convenience and necessity or siting certificate previously issued for the  
8 facility or an earlier material modification thereof, obtain a siting certificate for the modification  
9 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a  
10 certificate of public convenience and necessity for the modification pursuant to the provisions of  
11 section eleven of this article and, except for the provisions of section eleven-c of this article, shall  
12 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter  
13 with respect to such modification.

14 (6) The commission shall consider an application for a certificate of public convenience and  
15 necessity filed pursuant to section eleven of this article to construct an electric generating facility  
16 described in this subsection or to make or construct a material modification of such electric  
17 generating facility as an application for a siting certificate pursuant to section eleven-c of this article  
18 if the application for the certificate of public convenience and necessity was filed with the  
19 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of  
20 that date.

21 (7) The limitations on the jurisdiction of the commission over, and on the applicability of the  
22 provisions of this chapter to, the owner or operator of an electric generating facility as imposed by,

1 and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction  
2 over contracts or arrangements between the owner or operator of such facility and any affiliated  
3 public utility subject to the provisions of this chapter.

4 (d) This section shall preempt and supersede all civil or criminal laws, rules, regulations,  
5 ordinances and policies now or hereafter created, administered, or enforced by any county,  
6 municipality or any other political subdivision of this state which are similar or otherwise related in  
7 any manner to the subject matter of any federal or state law or regulation governing, pertaining to,  
8 or otherwise regulating the environmental or operational aspects of any public utility within the  
9 jurisdiction of the commission, the United States Department of Transportation Office of Pipeline  
10 Safety or any other entity regulated, in whole or in part, by the commission, except those public  
11 utilities owned and operated by any municipality or other political subdivision of the state:  
12 Provided, That such governmental utilities do not affect the operations of any non-governmental  
13 utilities. No such local law, rule, regulation, ordinance or policy may be created without express  
14 authorization of the Legislature. This section shall not apply to municipal building code ordinances  
15 under section thirteen, article twelve, chapter eight of this code, county building code ordinances  
16 under section three-n, article one, chapter seven of this code, or county building code ordinances  
17 under section three-v, article one, chapter seven of this code, if such ordinances are applied to  
18 structures that may be occupied by one or more persons.

NOTE: The purpose of this bill is to preempt any local law, rule, regulation, ordinance, or policy regulating the environmental or operational aspects of any public utility within the jurisdiction of the Public Service Commission of West Virginia or any other entity regulated, in whole or in part, by the commission, except those public utilities owned and operated by any municipality or other political subdivision of the state and to require express authorization from the Legislature before such law or policy may be created.

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