

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4660

BY DELEGATE ESPINOSA

[Introduced February 22, 2016; Referred
to the Committee on Government Organization.]

1 A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating
 2 to the information required to be included in support of an application to the Public Service
 3 Commission for a certificate of convenience and necessity for a water, sewer and/or
 4 stormwater service project; preliminary engineering reports and financial analysis are
 5 required; the same engineering report and financial analysis information supplied to the
 6 Infrastructure and Jobs Development Council will suffice; final engineering report and
 7 design information or plans and specifications not required; waiver of financial analysis for
 8 good cause; directing an entity that has received a certificate of convenience and
 9 necessity, to pursue a further rate increase through the normal rate changing process, if
 10 an increase in rates is needed exceeding fifteen percent above the increase in rates
 11 approved by the Public Service Commission in granting a certificate of convenience and
 12 necessity for a project; and the Public Service Commission may not, on its own initiative,
 13 modify the scope of a project to which a certificate of convenience and necessity was
 14 previously granted, or rescind a previously granted certificate of convenience and
 15 necessity, if the rates expected to go in effect upon substantial completion of the project
 16 have increased by less than fifteen percent.

Be it enacted by the Legislature of West Virginia:

1 That §24-2-11 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) A public utility, person or corporation other than a political subdivision of the state
 2 providing water, sewer and/or stormwater services and having at least four thousand five hundred
 3 customers and annual gross combined revenues of \$3 million ~~dollars~~ or more may not begin the
 4 construction of any plant, equipment, property or facility for furnishing to the public any of the
 5 services enumerated in section one, article two of this chapter, nor apply for, nor obtain any

6 franchise, license or permit from any municipality or other governmental agency, except ordinary
7 extensions of existing systems in the usual course of business, unless and until it shall obtain
8 from the Public Service Commission a certificate of public convenience and necessity authorizing
9 such construction franchise, license or permit.

10 (b) For certificate application for water, sewer and/or stormwater services, the application
11 shall include a preliminary engineering report and a financial analysis of the effect of the proposed
12 project upon the rates to be charged by the applicant following substantial completion of
13 construction of the proposed project. For a project that has received the approval of the
14 Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of
15 this code, the applicant may satisfy in full the requirement to provide a preliminary engineering
16 report and financial analysis by including with the certificate application the same engineering
17 information and financial analysis as it filed for the project with the Infrastructure and Jobs
18 Development Council. The commission may not require certificate applications to include final
19 engineering design information or plans and specifications for the proposed project, or approvals
20 which can only be obtained by the applicant submitting final engineering design or plans and
21 specifications to an agency, including, but not limited to, binding commitment letters from funding
22 agencies. The commission may waive the requirement for an application to include a financial
23 analysis for good cause shown.

24 ~~(b)~~(c) Upon the filing of any application for the certificate, and after hearing, the
25 commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the
26 certificate of convenience and necessity: *Provided*, That the commission, after it gives proper
27 notice and if no substantial protest is received within thirty days after the notice is given, may
28 waive formal hearing on the application. Notice shall be given by publication which shall state that
29 a formal hearing may be waived in the absence of substantial protest, made within thirty days, to
30 the application. The notice shall be published as a Class I legal advertisement in compliance with
31 the provisions of article three, chapter fifty-nine of this code. The publication area shall be the

32 proposed area of operation.

33 ~~(e)~~(d) Any public utility, person or corporation subject to the provisions of this section other
34 than a political subdivision of the state providing water and/or sewer services having at least four
35 thousand five hundred customers and combined annual gross revenue of \$3 million ~~dollars~~ or
36 more shall give the commission at least thirty days' notice of the filing of any application for a
37 certificate of public convenience and necessity under this section: *Provided*, That the commission
38 may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice
39 requirement for projects approved by the Infrastructure and Jobs Development Council.

40 ~~(d)~~(e) The commission shall render its final decision on any application filed under the
41 provisions of this section or section eleven-a of this article within two hundred seventy days of the
42 filing of the application and within ninety days after final submission of any such application for
43 decision following a hearing: *Provided*, That if the application is for authority to construct a water
44 and sewer project and the projected total cost is less than \$10 million, the commission shall render
45 its final decision within two hundred twenty-five days of the filing of the application.

46 ~~(e)~~(f) The commission shall render its final decision on any application filed under the
47 provisions of this section that has received the approval of the Infrastructure and Jobs
48 Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one
49 hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received
50 within thirty days after the notice is provided pursuant to subsection (b) of this section, the
51 commission shall render its final decision within two hundred seventy days or two hundred twenty-
52 five days of the filing of the application, whichever is applicable as determined in subsection (d)
53 of this section.

54 ~~(f)~~(g) If the projected total cost of a project which is the subject of an application filed
55 pursuant to this section or section eleven-a of this article is greater than \$50 million, the
56 commission shall render its final decision on any such application filed under the provisions of
57 this section or section eleven-a of this article within four hundred days of the filing of the

58 application and within ninety days after final submission of any such application for decision after
59 a hearing.

60 ~~(g)~~(h) If a decision is not rendered within the time frames established in this section, the
61 commission shall issue a certificate of convenience and necessity as applied for in the application.

62 ~~(h)~~(i) The commission shall prescribe rules as it may deem proper for the enforcement of
63 the provisions of this section; and, in establishing that public convenience and necessity do exist,
64 the burden of proof shall be upon the applicant.

65 (j) If, following the issuance of a certificate of convenience and necessity for a project to
66 provide water, sewer and/or stormwater services, but before construction has commenced, an
67 applicant determines that the rates approved by the commission to be in effect following
68 substantial completion of the project will not be sufficient, the applicant may pursue a further rate
69 change through the procedure appropriate to it. If the commission has jurisdiction over such a
70 rate change proceeding, the commission may not in that proceeding consider rescinding the order
71 granting the applicant a certificate of convenience and necessity, or consider on the commission's
72 initiative revising the scope of the project granted a certificate of convenience and necessity:
73 Provided, That the applicant proposes a further rate change which is no greater than a fifteen
74 percent increase over the rates previously approved by the commission in the certificate
75 proceeding.

76 ~~(i)~~(k) Pursuant to the requirements of this section, the commission may issue a certificate
77 of public convenience and necessity to any intrastate pipeline, interstate pipeline or local
78 distribution company for the transportation in intrastate commerce of natural gas used by any
79 person for one or more uses, as defined by rule, by the commission in the case of:

80 (1) Natural gas sold by a producer, pipeline or other seller to the person; or

81 (2) Natural gas produced by the person.

82 ~~(j)~~(l) A public utility, including a public service district, which has received a certificate of
83 public convenience and necessity after July 8, 2005, from the commission and has been approved

84 by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled
85 to, reopen the proceeding if the cost of the project changes but the change does not affect the
86 rates established for the project.

87 ~~(k)~~(m) Any public utility, person or corporation proposing any electric power project that
88 requires a certificate under this section is not required to obtain such certificate before applying
89 for or obtaining any franchise, license or permit from any municipality or other governmental
90 agency.

91 ~~(h)~~(n) Water, sewer and/or stormwater utilities that are political subdivisions of the state
92 and having at least four thousand five hundred customers and combined gross revenues of \$3
93 million ~~dollars~~ or more desiring to pursue construction projects that are not in the ordinary course
94 of business shall provide notice to both current customers and those citizens who will be affected
95 by the proposed construction as follows:

96 (1) Adequate prior public notice of the contemplated construction by causing a notice of
97 intent to pursue a project that is not in the ordinary course of business to be specified on the
98 monthly billing statement of the customers of the utility for the month next preceding the month in
99 which the contemplated construction is to be before the governing body on first reading.

100 (2) Adequate prior public notice of the contemplated construction by causing to be
101 published as a Class I legal advertisement of the proposed action, in compliance with the
102 provisions of article three, chapter fifty-nine of the code. The publication area for publication shall
103 be all territory served by the district. If the political subdivision provides service in more than one
104 county, publication shall be made in a newspaper of general circulation in each county that the
105 political subdivision provides service.

106 (3) The public notice of the proposed construction shall state the scope of the proposed
107 construction, the current rates, fees and charges, the proposed changes to said rates, fees and
108 charges; the date, time and place of both a public hearing on the proposal and the proposed final
109 vote on adoption; and the place or places within the political subdivision where the proposed

110 construction and the rates, fees and charges may be inspected by the public. A reasonable
111 number of copies of the proposal shall be kept at the place or places and be made available for
112 public inspection. The notice shall also advise that interested parties may appear at the public
113 hearing before the political subdivision and be heard with respect to the proposed construction
114 and the proposed rates, fees and charges.

115 (4) The proposed construction and the proposed rates, fees and charges shall be read at
116 two meetings of the governing body with at least two weeks intervening between each meeting.
117 The public hearing may be conducted with or following the second reading.

118 (5) Enactment of the proposed construction and the proposed rates, fees and charges
119 shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-
120 five days following the action of the governing body. If the political subdivision proposes rates that
121 will go into effect prior than the completion of construction of the proposed project, the forty-five
122 day waiting period may be waived by public vote of the governing body only if the political
123 subdivision finds and declares the political subdivision to be in financial distress such that the
124 forty-five day waiting period would be detrimental to the ability of the political subdivision to deliver
125 continued and compliant public services: *Provided*, That in no event shall the rate become
126 effective prior to the date that the county commission has entered an order approving the action
127 of the public service district board.

128 (6) Rates, fees and charges approved by an affirmative vote of the public services district
129 board shall be forwarded in writing to the county commission appointing the approving board. The
130 county commission shall, within forty-five days of receipt of the proposed rates, fees and charges,
131 take action to approve or reject the proposed rates, fees and charges. After forty-five days, and
132 absent action by the county commission, the proposed rates, fees and charges shall be effective
133 with no further action by the board or county commission. In any event this forty-five day period
134 may be extended by official action of both the board proposing the rates, fees and charges and
135 the appointing county commission.

136 (7) The county commission shall provide notice to the public by a Class I legal
137 advertisement of the proposed action, in compliance with the provisions of article three, chapter
138 fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees
139 and charges no later than one week prior to the meeting date.

NOTE: The purpose of this bill is to enable an applicant for a certificate of convenience and necessity for a water, sewer, and/or stormwater project to file a complete application without incurring the expense of an engineer's final engineering design report, and obtaining interests in real property related to the project, and to direct an entity that has received a certificate of convenience and necessity to pursue a rate change through the appropriate process when post-project rates have increased above the rate previously approved by the Public Service Commission by 15% or less, without being at risk that in such proceeding the Public Service Commission will rescind or modify the scope of the previously granted certificate of convenience and necessity.

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