

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 400

By Senators Jeffries, Deeds, Queen, Phillips, and

Plymale

[Passed February 22, 2024; in effect from passage]

1 AN ACT to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating
2 to creating limited waiver from certificate of public convenience and necessity requirement
3 for certain water or sewer services projects.

Be it enacted by the Legislature of West Virginia:

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 or sewer services and having at least 4,500 customers and annual gross
3 combined revenues of \$3 million or more may not begin the construction of any plant, equipment,
4 property, or facility for furnishing to the public any of the services enumerated in §24-2-1 of this
5 code, nor apply for, nor obtain any franchise, license, or permit from any municipality or other
6 governmental agency, except ordinary extensions of existing systems in the usual course of
7 business, unless and until it shall obtain from the Public Service Commission a certificate of public
8 convenience and necessity authorizing the construction franchise, license, or permit: *Provided,*
9 That the requirement to obtain a certificate of public convenience and necessity shall be waived for
10 projects that:

11 (1) Are funded, in whole or in part, by American Rescue Plan Act of 2021 (ARPA) or
12 Coronavirus State Fiscal Recovery Fund (SFR) moneys and have been reviewed and determined
13 to be technically feasible and approved by the Infrastructure and Jobs Development Council; or

14 (2) Are funded, in whole or in part, by ARPA or SFR moneys through Economic
15 Enhancement Grant funding and have been reviewed and determined to be technically feasible by
16 the Infrastructure and Jobs Development Council and approved by the Water Development
17 Authority: *Provided,* That this waiver shall expire on April 30, 2025.

18 (b) Upon the filing of any application for the certificate, and after hearing, the commission
19 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
20 convenience and necessity: *Provided,* That the commission, after it gives proper notice and if no

21 substantial protest is received within 30 days after the notice is given, may waive formal hearing on
22 the application. Notice shall be given by publication which shall state that a formal hearing may be
23 waived in the absence of substantial protest, made within 30 days, to the application. The notice
24 shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code.
25 The publication area shall be the proposed area of operation.

26 (c) Any public utility, person, or corporation subject to the provisions of this section other
27 than a political subdivision of the state providing water and/or sewer services having at least 4,500
28 customers and combined annual gross revenue of \$3 million dollars or more shall give the
29 commission at least 30 days' notice of the filing of any application for a certificate of public
30 convenience and necessity under this section: *Provided*, That the commission may modify or
31 waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects
32 approved by the Infrastructure and Jobs Development Council.

33 (d) The commission shall render its final decision on any application filed under the
34 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application
35 and within 90 days after final submission of any such application for decision following a hearing:
36 *Provided*, That if the application is for authority to construct a water and sewer project and the
37 projected total cost is less than \$10 million, the commission shall render its final decision within
38 225 days of the filing of the application.

39 (e) The commission shall render its final decision on any application filed under the
40 provisions of this section that has received the approval of the Infrastructure and Jobs
41 Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the
42 application: *Provided*, That if a substantial protest is received within 30 days after the notice is
43 provided pursuant to subsection (b) of this section, the commission shall render its final decision
44 within 270 days or 225 days of the filing of the application, whichever is applicable as determined
45 in subsection (d) of this section.

46 (f) If the projected total cost of a project which is the subject of an application filed pursuant

47 to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render its
48 final decision on any such application filed under the provisions of this section or §24-2-11a of this
49 code within 400 days of the filing of the application and within 90 days after final submission of any
50 such application for decision after a hearing.

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

53 (h) The commission shall prescribe rules it considers proper for the enforcement of the
54 provisions of this section; and, in establishing that public convenience and necessity do exist, the
55 burden of proof shall be upon the applicant.

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

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

61 (2) Natural gas produced by the person.

62 (j) A public utility, including a public service district, which has received a certificate of
63 public convenience and necessity after July 8, 2005, from the commission and has been approved
64 by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled
65 to, reopen the proceeding if the cost of the project changes but the change does not affect the
66 rates established for the project.

67 (k) Any public utility, person, or corporation proposing any electric power project that
68 requires a certificate under this section is not required to obtain the certificate before applying for
69 or obtaining any franchise, license, or permit from any municipality or other governmental agency.

70 (l) Water or sewer utilities that are political subdivisions of the state and having at least
71 4,500 customers and combined gross revenues of \$3 million dollars or more desiring to pursue
72 construction projects that are not in the ordinary course of business shall provide adequate prior

73 public notice of the contemplated construction and proposed changes to rates, fees, and charges,
74 if any, as a result of the construction to both current customers and those persons who will be
75 affected by the proposed construction as follows:

76 (1) Adequate prior public notice of the contemplated construction by causing a notice of
77 intent to pursue a project that is not in the ordinary course of business to be specified on the
78 monthly billing statement of the customers of the utility for the month immediately preceding the
79 month in which an ordinance or resolution approving the proposed construction and proposed
80 changes to rates, fees, and charges, if any, is to be before the governing body for the public
81 hearing on the ordinance or resolution approving the proposed construction and proposed
82 changes to rates, fees, and charges, if any.

83 (2) Adequate prior public notice of the contemplated construction by causing to be
84 published as a Class I legal advertisement of the proposed public hearing on the ordinance or
85 resolution approving the proposed construction and proposed changes to rates, fees, and
86 charges, if any, in compliance with §59-3-1 *et seq.* of this code. The publication area for publication
87 shall be all territory served by the political subdivision. If the political subdivision provides service
88 in more than one county, publication shall be made in a newspaper of general circulation in each
89 county that the political subdivision provides service.

90 (3) The public notice of the proposed construction shall state the scope of the proposed
91 construction; a summary of the current rates, fees, and charges, and proposed changes to said
92 rates, fees, and charges, if any; the date, time, and place of the public hearing on the ordinance or
93 resolution approving the proposed construction and proposed changes to rates, fees, and
94 charges, if any; and the place or places within the political subdivision where the ordinance or
95 resolution approving the proposed construction and proposed changes to rates, fees, and
96 charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance or
97 resolution shall be kept at the place or places and be made available for public inspection. The
98 notice shall also advise that interested parties may appear at the public hearing before the political

99 subdivision and be heard with respect to the proposed construction and the proposed rates, fees,
100 and charges, if any.

101 (4) The ordinance or resolution on the proposed construction and the proposed rates, fees,
102 and charges shall be read at two meetings of the governing body with at least two weeks
103 intervening between each meeting. The public hearing may be conducted prior to, or at, the
104 meeting of the governing body at which the ordinance or resolution approving the proposed
105 construction is considered on second reading.

106 (5) Enactment or adoption of the ordinance or resolution approving the proposed
107 construction and the proposed rates, fees, and charges shall follow an affirmative vote of the
108 governing body and the approved rates shall go into effect no sooner than 45 days following the
109 action of the governing body. If the political subdivision proposes rates that will go into effect prior
110 to the completion of construction of the proposed project, the 45-day waiting period may be waived
111 by public vote of the governing body only if the political subdivision finds and declares the political
112 subdivision to be in financial distress such that the 45-day waiting period would be detrimental to
113 the ability of the political subdivision to deliver continued and compliant public services: *Provided,*
114 That, if the political subdivision is a public service district, in no event may the rate become
115 effective prior to the date that the county commission has entered an order approving or modifying
116 the action of the public service district board.

117 (6) Rates, fees, and charges approved by an affirmative vote of the public service district
118 board shall be forwarded in writing to the county commission with the authority to appoint the
119 members of the public service board of the public service district. The county commission shall,
120 within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify,
121 or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county
122 commission has not taken final action to approve, modify, or reject the proposed rates, fees, and
123 charges, the proposed rates, fees, and charges, as presented to the county commission, shall be
124 effective with no further action by the board or county commission. In any event this 45-day period

125 may be extended by official action of both the board proposing the rates, fees, and charges and
126 the appointing county commission.

127 (7) The county commission shall provide notice to the public by a Class I legal
128 advertisement of the proposed action, in compliance with §59-3-1 *et seq.* of this code, of the
129 meeting where it shall consider the proposed increases in rates, fees, and charges no later than
130 one week prior to the meeting date.

131 (8) A public service district, or a customer aggrieved by the changed rates or charges who
132 presents to the circuit court a petition signed by 25 percent of the customers served by the public
133 service district when dissatisfied by the approval, modification, or rejection by the county
134 commission of the proposed rates, fees, and charges under the provisions of this subsection may
135 file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act
136 by, the county commission in the circuit court of the county in which the county commission sits:
137 *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county
138 commission's final action approving, modifying, or rejecting the rates, fees, and charges, or the
139 expiration of the 45-day period from the receipt by the county commission, in writing, of the rates,
140 fees, and charges approved by resolution of the board, without final action by the county
141 commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall
142 resolve said complaint: *Provided, however*, That the rates, fees, and charges so fixed by the
143 county commission, or those adopted by the district upon which the county commission failed to
144 act, shall remain in full force and effect until set aside, altered, or amended by the circuit court in an
145 order to be followed in the future.