

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 458

**FISCAL
NOTE**

BY SENATORS SMITH, SYPOLT AND BLAIR

[Introduced February 28, 2017; Referred
to the Committee on Energy, Industry and Mining; and then
to the Committee on Government Organization]

1 A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating
 2 to eliminating the need for certain power-generating facilities to obtain siting certificates
 3 from the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

1 (a) The jurisdiction of the commission shall extend to all public utilities in this state and
 2 shall include any utility engaged in any of the following public services:

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

19 the commission with regard to the provisions of such residential service: *Provided further*, That
20 upon request of any of the customers of such natural gas producers, the commission may, upon
21 good cause being shown, exercise such authority as the commission may deem appropriate over
22 the operation, rates and charges of such producer and for such length of time as the commission
23 may consider to be proper. (b) The jurisdiction of the commission over political subdivisions of
24 this state providing separate or combined services and having at least four thousand five hundred
25 customers and annual combined gross revenues of \$3 million or more that are political
26 subdivisions of the state is limited to:

27 (1) General supervision of public utilities, as granted and described in section five of this
28 article;

29 (2) Regulation of measurements, practices, acts or services, as granted and described in
30 section seven of this article;

31 (3) Regulation of a system of accounts to be kept by a public utility that is a political
32 subdivision of the state, as granted and described in section eight of this article;

33 (4) Submission of information to the commission regarding rates, tolls, charges or
34 practices, as granted and described in section nine of this article;

35 (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness
36 in any proceeding before or conducted by the commission, as granted and described in section
37 ten of this article; and

38 (6) Investigation and resolution of disputes involving political subdivisions of the state
39 regarding inter-utility agreements, rates, fees and charges, service areas and contested utility
40 combinations.

41 (7) Customers of water and sewer utilities operated by a political subdivision of the state
42 and customers of stormwater utilities operated by a public service district may bring formal or
43 informal complaints regarding the commission's exercise of the powers enumerated in this section
44 and the commission shall resolve these complaints.

45 (8) In the event that a political subdivision has a deficiency in either its bond revenue or
46 bond reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition
47 the Public Service Commission for such redress as will bring the accounts to current status or
48 otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully
49 resolve the alleged deficiency or breach.

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

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

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

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

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

62 (d) Any other provisions of this chapter to the contrary notwithstanding:

63 ~~(1) An owner or operator of an electric generating facility located or to be located in this~~
64 ~~state that has been designated as an exempt wholesale generator under applicable federal law,~~
65 ~~or will be so designated prior to commercial operation of the facility, and for which such facility~~
66 ~~the owner or operator holds a certificate of public convenience and necessity issued by the~~
67 ~~commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j),~~
68 ~~section eleven c of this article as if the certificate of public convenience and necessity for such~~
69 ~~facility were a siting certificate issued under said section and shall not otherwise be subject to the~~
70 ~~jurisdiction of the commission or to the provisions of this chapter with respect to such facility~~

71 ~~except for the making or constructing of a material modification thereof as provided in subdivision~~
72 ~~(5) of this subsection.~~

73 ~~(2) Any person, corporation or other entity that intends to construct or construct and~~
74 ~~operate an electric generating facility to be located in this state that has been designated as an~~
75 ~~exempt wholesale generator under applicable federal law, or will be so designated prior to~~
76 ~~commercial operation of the facility, and for which facility the owner or operator does not hold a~~
77 ~~certificate of public convenience and necessity issued by the commission on or before July 1,~~
78 ~~2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from~~
79 ~~the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate~~
80 ~~of public convenience and necessity pursuant to the provisions of section eleven of this article.~~
81 ~~An owner or operator of an electric generating facility as is described in this subdivision for which~~
82 ~~a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),~~
83 ~~(h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction~~
84 ~~of the commission or to the provisions of this chapter with respect to such facility except for the~~
85 ~~making or constructing of a material modification thereof as provided in subdivision (5) of this~~
86 ~~subsection.~~

87 ~~(3) (1)~~ An owner or operator of an electric generating facility located in this state that had
88 not been designated as an exempt wholesale generator under applicable federal law prior to
89 commercial operation of the facility that generates electric energy solely for sale at retail outside
90 this state or solely for sale at wholesale in accordance with any applicable federal law that
91 preempts state law or solely for both such sales at retail and such sales at wholesale and that
92 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall
93 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect
94 to such facility, regardless of whether such facility subsequent to its construction has been or will
95 be designated as an exempt wholesale generator under applicable federal law. ~~Provided, That~~
96 ~~such owner or operator shall be subject to subdivision (5) of this subsection if a material~~

97 ~~modification of such facility is made or constructed.~~

98 ~~(4) Any person, corporation or other entity that intends to construct or construct and~~
99 ~~operate an electric generating facility to be located in this state that has not been or will not be~~
100 ~~designated as an exempt wholesale generator under applicable federal law prior to commercial~~
101 ~~operation of the facility that will generate electric energy solely for sale at retail outside this state~~
102 ~~or solely for sale at wholesale in accordance with any applicable federal law that preempts state~~
103 ~~law or solely for both such sales at retail and such sales at wholesale and that had not been~~
104 ~~constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,~~
105 ~~prior to commencement of construction of the facility, obtain a siting certificate from the~~
106 ~~commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of~~
107 ~~public convenience and necessity pursuant to the provisions of section eleven of this article. An~~
108 ~~owner or operator of an electric generating facility as is described in this subdivision for which a~~
109 ~~siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),~~
110 ~~(h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction~~
111 ~~of the commission or to the provisions of this chapter with respect to such facility except for the~~
112 ~~making or constructing of a material modification thereof as provided in subdivision (5) of this~~
113 ~~subsection.~~

114 ~~(5) An owner or operator of an electric generating facility described in this subsection shall,~~
115 ~~before making or constructing a material modification of the facility that is not within the terms of~~
116 ~~any certificate of public convenience and necessity or siting certificate previously issued for the~~
117 ~~facility or an earlier material modification thereof, obtain a siting certificate for the modification~~
118 ~~from the commission pursuant to the provisions of section eleven-c of this article in lieu of a~~
119 ~~certificate of public convenience and necessity for the modification pursuant to the provisions of~~
120 ~~section eleven of this article and, except for the provisions of section eleven-c of this article, shall~~
121 ~~not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter~~
122 ~~with respect to such modification.~~

123 ~~(6) The commission shall consider an application for a certificate of public convenience~~
124 ~~and necessity filed pursuant to section eleven of this article to construct an electric generating~~
125 ~~facility described in this subsection or to make or construct a material modification of such electric~~
126 ~~generating facility as an application for a siting certificate pursuant to section eleven-c of this~~
127 ~~article if the application for the certificate of public convenience and necessity was filed with the~~
128 ~~commission prior to July 1, 2003, and if the commission has not issued a final order thereon as~~
129 ~~of that date.~~

130 ~~(7)~~ (2) The limitations on the jurisdiction of the commission over, and on the applicability
131 of the provisions of this chapter to, the owner or operator of an electric generating facility as
132 imposed by and described in this subsection shall not be deemed to affect or limit the
133 commission's jurisdiction over contracts or arrangements between the owner or operator of such
134 facility and any affiliated public utility subject to the provisions of this chapter.

NOTE: The purpose of this bill is to eliminate requirement that any power generation facility obtain a siting certificate from the State Public Service Commission under WV Code §24-2-1.

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