

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 409

FISCAL
NOTE

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SMITH, SYPOLT, TRUMP, AND BALDWIN

[Introduced January 23, 2019; Referred

to the Committee on Energy, Industry, and Mining; and

then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and
 3 reenact §24-2-1 of said code, all relating to permitting third-party ownership of all
 4 renewable and alternative generating facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1c. Legislative findings.

1 (1) It is in the public interest to facilitate retail electric customers to invest in and install on
 2 their properties, renewable and alternative energy resource facilities of their choice;

3 (2) Existing statutes and regulations with respect to net metering and interconnection
 4 requirements provide a satisfactory regulatory framework to govern the sale of energy from on-
 5 site renewable and alternative energy resource facilities;

6 (3) Free-market financing may provide more customers with opportunities to install
 7 renewable or alternative energy resource facilities;

8 (4) Installation of such resource facilities will stabilize long term energy costs to make the
 9 state more attractive for industry and commercial investment;

10 (5) Financing arrangements, including those in which payments are based on the
 11 performance and output of the energy resource facility installed on the property of a retail electric
 12 customer, will help reduce or eliminate upfront costs involved in the investments and installation
 13 by such customers; and

14 (6) Individuals and entities which offer or receive these types of financing arrangements
 15 should not be considered or treated as public utilities.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from the context, the words “public
 2 utility”, when used in this chapter, shall mean and include any person or persons, or association
 3 of persons, however associated, whether incorporated or not, including municipalities, engaged

4 in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a
 5 public service: Provided, That "public utility" shall not include individuals or entities owning a
 6 renewable or alternative energy resource facility located on the premises of a retail electric
 7 customer: (1) That is leased to such retail electric customer; or (2) the output of which is subject
 8 to a power purchase agreement with the retail electric customer. Whenever in this chapter the
 9 words "commission" or "Public Service Commission" occur, such word or words shall, unless a
 10 different intent clearly appears from the context, be taken to mean the Public Service Commission
 11 of West Virginia. Whenever used in this chapter, "customer" shall mean and include any person,
 12 firm, corporation, municipality, public service district, or any other entity who purchases a product
 13 or services of any utility and shall include any such person, firm, corporation, municipality, public
 14 service district, or any other entity who purchases such services or product for resale. Whenever
 15 in this chapter the words "governing body" occur, such word or words shall, unless a different
 16 intent clearly appears from the context, be taken to mean the municipal body charged with the
 17 authority and responsibility of enacting ordinances of the municipality, as defined in §8-1-2 of this
 18 code, or a public service board of a public service district, as defined in §16-13A-3 of this code.

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,
 5 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its
 6 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping
 7 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation
 8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,
 9 whether directly or through a distributing utility: Provided, That the provision of a renewable or

10 alternative energy resource facility located on the premises of a retail electric customer: (1) That
11 is leased to the retail electric customer; or (2) the output of which is subject to a power purchase
12 agreement with the retail electric customer, shall not constitute a “public service”; supplying water,
13 gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms
14 other than the owner of the sewer systems: *Provided, however,* That if a public utility other than
15 a political subdivision intends to provide sewer service by an innovative, alternative method, as
16 defined by the federal Environmental Protection Agency, the innovative, alternative method is a
17 public utility function and subject to the jurisdiction of the Public Service Commission regardless
18 of the number of customers served by the innovative, alternative method; any public service
19 district created under the provisions of §16-13A-1, *et seq.* of this code, except that the Public
20 Service Commission will have no jurisdiction over the provision of stormwater services by a public
21 service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service:
22 *Provided further,* That natural gas producers who provide natural gas service to not more than 25
23 residential customers are exempt from the jurisdiction of the commission with regard to the
24 provisions of such residential service: *And provided further,* That upon request of any of the
25 customers of such natural gas producers, the commission may, upon good cause being shown,
26 exercise such authority as the commission may deem appropriate over the operation, rates, and
27 charges of such producer and for such length of time as the commission may consider to be
28 proper.

29 (b) The jurisdiction of the commission over political subdivisions of this state providing
30 separate or combined water and/or sewer services and having at least 4,500 customers and
31 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
32 is limited to:

- 33 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;
34 (2) Regulation of measurements, practices, acts, or services, as granted and described in
35 §24-2-7 of this code;

36 (3) Regulation of a system of accounts to be kept by a public utility that is a political
37 subdivision of the state, as granted and described in §24-2-8 of this code;

38 (4) Submission of information to the commission regarding rates, tolls, charges, or
39 practices, as granted and described in §24-2-9 of this code;

40 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
41 in any proceeding before or conducted by the commission, as granted and described in §24-2-10
42 of this code; and

43 (6) Investigation and resolution of disputes between a political subdivision of the state
44 providing wholesale water and/or wastewater treatment or other services, whether by contract or
45 through a tariff, and its customer or customers, including, but not limited to, rates, fees and
46 charges, service areas and contested utility combinations: *Provided*, That any request for an
47 investigation related to such a dispute that is based on the act or omission of the political
48 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
49 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
50 of the dispute may be tolled by the commission until the necessary information showing the basis
51 of the rates, fees, and charges or other information as the commission considers necessary is
52 filed: *Provided, however*, That the disputed rates, fees, and charges so fixed by the political
53 subdivision providing separate or combined water and/or sewer services shall remain in full force
54 and effect until set aside, altered or, amended by the commission in an order to be followed in the
55 future.

56 (7) Customers of water and sewer utilities operated by a political subdivision of the state
57 may bring formal or informal complaints regarding the commission's exercise of the powers
58 enumerated in this section and the commission shall resolve these complaints.

59 (8) In the event that a political subdivision has a deficiency in either its bond revenue or
60 bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may
61 petition the Public Service Commission for such redress as will bring the accounts to current

62 status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to
63 fully resolve the alleged deficiency or breach.

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

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

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

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

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

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

77 (1) An owner or operator of an electric generating facility located or to be located in this
78 state that has been designated as an exempt wholesale generator under applicable federal law,
79 or will be so designated prior to commercial operation of the facility, and for which such facility
80 the owner or operator holds a certificate of public convenience and necessity issued by the
81 commission on or before July 1, 2003, shall be subject to §24-2-11c(e) through §24-2-11c(j) of
82 this code as if the certificate of public convenience and necessity for such facility were a siting
83 certificate issued under §24-2-11c of this code 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 §24-2-1(d)(5) of this code.

86 (2) Any person, corporation, or other entity that intends to construct or construct and
87 operate an electric generating facility to be located in this state that has been designated as an

88 exempt wholesale generator under applicable federal law, or will be so designated prior to
89 commercial operation of the facility, and for which facility the owner or operator does not hold a
90 certificate of public convenience and necessity issued by the commission on or before July 1,
91 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
92 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
93 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
94 operator of an electric generating facility as is described in this subdivision for which a siting
95 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
96 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to
97 the provisions of this chapter with respect to such facility except for the making or constructing of
98 a material modification thereof as provided in §24-2-1(d)(5) of this code.

99 (3) An owner or operator of an electric generating facility located in this state that had not
100 been designated as an exempt wholesale generator under applicable federal law prior to
101 commercial operation of the facility that generates electric energy solely for sale at retail outside
102 this state or solely for sale at wholesale in accordance with any applicable federal law that
103 preempts state law or solely for both such sales at retail and such sales at wholesale and that
104 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall
105 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect
106 to such facility, regardless of whether such facility subsequent to its construction has been or will
107 be designated as an exempt wholesale generator under applicable federal law: *Provided*, That
108 such owner or operator shall be subject to §24-2-1(d)(5) of this code if a material modification of
109 such facility is made or constructed.

110 (4) Any person, corporation, or other entity that intends to construct or construct and
111 operate an electric generating facility to be located in this state that has not been or will not be
112 designated as an exempt wholesale generator under applicable federal law prior to commercial
113 operation of the facility that will generate electric energy solely for sale at retail outside this state

114 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
115 law or solely for both such sales at retail and such sales at wholesale and that had not been
116 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
117 prior to commencement of construction of the facility, obtain a siting certificate from the
118 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
119 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
120 operator of an electric generating facility as is described in this subdivision for which a siting
121 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
122 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to
123 the provisions of this chapter with respect to such facility except for the making or constructing of
124 a material modification thereof as provided in §24-2-1(d)(5) of this code.

125 (5) An owner or operator of an electric generating facility described in this subsection shall,
126 before making or constructing a material modification of the facility that is not within the terms of
127 any certificate of public convenience and necessity or siting certificate previously issued for the
128 facility or an earlier material modification thereof, obtain a siting certificate for the modification
129 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
130 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
131 this code and, except for the provisions of §24-2-11c of this code, shall not otherwise be subject
132 to the jurisdiction of the commission or to the provisions of this chapter with respect to such
133 modification.

134 (6) The commission shall consider an application for a certificate of public convenience
135 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
136 described in this subsection or to make or construct a material modification of such electric
137 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
138 application for the certificate of public convenience and necessity was filed with the commission
139 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

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

145 (e) The commission shall not have jurisdiction of Internet protocol-enabled service or
146 voice-over Internet protocol-enabled service. As used in this subsection:

147 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
148 application provided using Internet protocol, or any successor protocol, that enables an end user
149 to send or receive a communication in Internet protocol format, or any successor format,
150 regardless of whether the communication is voice, data, or video.

151 (2) "Voice-over Internet protocol service" means any service that:

152 (i) Enables real-time two-way voice communications that originate or terminate from the
153 user's location using Internet protocol or a successor protocol; and

154 (ii) Uses a broadband connection from the user's location.

155 (3) The term "voice-over Internet protocol service" includes any service that permits users
156 to receive calls that originate on the public-switched telephone network and to terminate calls on
157 the public-switched telephone network.

158 (f) Notwithstanding any other provisions of this article, the commission shall not have
159 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
160 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
161 ownership.

162 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
163 systems are most fairly and effectively regulated by the local governing body. Therefore,
164 notwithstanding any other provisions of this article, the commission shall not have jurisdiction over
165 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the

166 jurisdiction of the Public Service Commission over municipal power systems is limited to that
167 granted specifically in this code.

NOTE: The purpose of this bill is to permit third-party ownership of all renewable and alternative generating facilities.

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