

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENGROSSED

House Bill 2969

BY DELEGATES CONLEY, BARNHART, HOLSTEIN AND

STEELE

[Introduced March 08, 2021; referred to the Committee on Government Organization]

1 A BILL to amend and reenact §17-16A-6 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §17-16D-6 and § 17-16D-10 of said code; to amend and reenact §17-
3 17-10, §17-17-11, §17-17-12, §17-17-21, §17-17-22 and §17-17-37; to amend said code
4 by adding thereto a new section, designated §17-17-38; to amend and reenact §17A-2A-
5 9; and to amend and reenact §24-2-1 of said code, all relating to privately owned toll
6 bridges; providing for the sale of a municipally owned toll bridge to a private toll
7 transportation facility under certain circumstances; defining the term “private toll
8 transportation facility”; authorizing the retention and collection of tolls on a privately owned
9 toll bridge; clarifying procedures for the electronic collection of tolls by a private toll
10 transportation facility; clarifying the tax treatment of toll bridges sold by a municipality to a
11 private toll transportation facility; providing for the imposition of liability and nonrenewal of
12 vehicle registration for failure to pay tolls on a privately owned toll bridge; clarifying the
13 application of provisions of code to state owned and privately owned toll bridges;
14 authorizing the West Virginia Parkways Authority and Division of Motor Vehicles to enter
15 into agreements with a private toll transportation facility for purposes of toll collection
16 enforcement; and clarifying the jurisdiction of the Public Service Commission over toll
17 bridges.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16D. ELECTRONIC TOLL COLLECTION ACT.

§17-16D-6. Liability of owner.

1 (a) All owners and operators of motor vehicles shall pay the posted toll when on any toll
2 road, highway or bridge authorized by the Legislature, including any toll collected by a private toll
3 transportation facility pursuant to §17-17-38 of this code, either by paying the toll at a toll collection
4 facility on the toll road, highway or bridge at the time of travel thereon or by paying the toll within

5 the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll
6 collection system. These tolls may be collected by electronic toll collection. If an owner or operator
7 of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this
8 article.

9 (b) If a violation occurs, the registration plate number of the vehicle as recorded by a video
10 collection system establishes a rebuttable presumption for civil enforcement purposes that the
11 owner of the vehicle was operating the vehicle, or had consented to another person operating the
12 vehicle, at that time. This presumption may be overcome only if the owner (1) proves by a
13 preponderance of the evidence that he or she was not in fact operating the vehicle at the time;
14 (2) identifies by name and mailing address the person who was operating the vehicle.

15 (c) If the presumption is not overcome by a preponderance of the evidence, the owner of
16 the vehicle shall be found to have violated this article and be held responsible for payment of the
17 tolls and the administrative fees and money penalties imposed by this article for failure to timely
18 pay the tolls.

19 (d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation
20 to a person in control of a vehicle for a violation of this article or other provisions of law at the time
21 of the violation; ~~or~~ (2) the Parkways Authority from issuing reminder notices or making other
22 communications directly or indirectly in connection with toll collection efforts or efforts to enforce
23 violations of this article. The Parkways Authority is authorized to use secondary sources of
24 information and services including, but not limited to, services such as the National Change of
25 Address Service or skip tracing services; or (3) a private toll transportation facility from issuing
26 any notices, reminders or other communications in connection with its toll collection efforts
27 pursuant to §17-17-38(c) and §17-17-38(d) of this code.

**§17-16D-10. Evading tolls; damaging, interfering with or obstructing video toll collection
or infrastructure; violations and criminal penalties.**

1 (a) Any person who knowingly or intentionally evades or seeks to evade the payment of
2 tolls, rents, fees or charges established by the Parkways Authority for the use of any toll facility

3 under the jurisdiction of the Authority, or of any private toll transportation facility pursuant to §17-
4 17-38 of this code, is guilty of a misdemeanor and, upon conviction, shall be fined not more than
5 \$50 for each violation of this article.

6 (b) Any person who deliberately damages, defaces or obstructs a video collection system
7 infrastructure or power supply with the intent to interfere with or alter or prevent the functioning of
8 the system or electronic toll collection, or who obstructs a license plate or causes it to be
9 unreadable by the video collection system, or who causes a transponder or other device used in
10 an electronic toll system to be inoperable or unreadable thereby causing no toll to be charged,
11 including a private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a
12 misdemeanor and, in addition to any other penalties provided by the code, and upon conviction,
13 shall be fined not more than \$500 for each such action and, if applicable, is additionally liable to
14 the Parkways Authority or the private toll transportation facility for all costs incurred ~~by the~~
15 ~~Authority~~ to repair the damaged, defaced or obstructed property.

ARTICLE 17. TOLL BRIDGES.

§17-17-10. Payment of toll prior to passage; demand of excessive toll; evading payment of toll.

1 The proprietor of any toll bridge may require lawful toll to be paid previous to a passage
2 thereover. ~~But if there be demanded at any such bridge more than is lawful, the proprietor shall~~
3 ~~forfeit to the party aggrieved so much as is illegally demanded and a further sum of not less than~~
4 ~~two nor more than \$15~~ Whoever shall knowingly or intentionally defraud, or attempt to defraud,
5 the proprietor of any toll bridge by evading, or attempting to evade, the payment of lawful toll for
6 crossing such bridge, or whoever shall aid another to evade, or attempt to evade, the payment of
7 such toll, shall be guilty of a misdemeanor and, for every such offense shall, upon conviction
8 thereof, be fined not in excess of \$10.

§17-17-11. Gatekeeper to keep small change.

1 A gatekeeper on any toll bridge without an electronic toll collection system, as defined in
2 §17-16D-2 of this code, shall keep such money of small denomination on hand, as may

3 reasonably be required in the ordinary course of business, for making change for passengers,
4 and it is the duty of passengers to offer money for passage of a denomination as near as possible
5 to the amount charged for such passage. This section shall not apply to persons now having a
6 lawful right to pass on such bridge without the payment of toll.

§17-17-12. Failure to provide gatekeeper and to allow prompt passage.

1 If at any toll bridge without an electronic toll collection system there be a failure to give any
2 person or property a passage over the same in a reasonable time, the proprietor thereof shall
3 forfeit to such person not less than \$2 nor more than \$20. If the keeper of any toll bridge without
4 an electronic toll collection system shall absent himself therefrom without leaving any person in
5 charge of the gates thereon, he shall leave the gates open. Any keeper of a toll bridge without an
6 electronic toll collection who shall fail to comply with the requirements of this section shall be guilty
7 of a misdemeanor, and, upon conviction thereof, shall be fined \$50 for every such offense; and
8 any person injured by such failure shall be entitled to recover therefor from such keeper all
9 damages sustained thereby.

§17-17-21. General supervision of bridges under jurisdiction of commissioner.

1 The ~~state road~~ commissioner of highways shall properly maintain, repair, operate, manage
2 and control the bridges owned by the State, fix the rates of tolls and establish bylaws and rules
3 and regulations for the use and operation of the bridges owned by the State, and may make and
4 enter into all contracts or agreements necessary and incidental to the performance of his duties
5 and the execution of his powers under this article, including power to permit use of such bridges
6 owned by the State by street railways and other transportation lines, and telephone, telegraph,
7 pipe and other lines, and contract with them for such use and fix the terms and conditions thereof
8 and the charges or tolls for such use of the bridges owned by the State.

**§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included
in one issue; purchasing of existing bridges; disposition of tolls.**

1 Tolls shall be fixed, charged and collected for transit over such bridges owned by the State
2 and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges

3 owned by the State for which a single issue of bonds is issued, as to provide a fund sufficient to
4 pay the principal and interest of such issue of bonds and to provide an additional fund to pay the
5 cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any
6 applicable law or regulation of the United States of America now in force or hereafter to be enacted
7 or made. Two or more bridges owned by the State may be included in one issue of bonds, and
8 intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing
9 bridge or bridges owned by the State shall be acquired by purchase, eminent domain, or
10 otherwise, unless the ~~state road~~ commissioner of highways shall have determined that the income
11 therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be
12 sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest
13 and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if
14 such existing bridge or bridges owned by the State are to be combined with any other bridge or
15 bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent
16 domain, or otherwise, as provided in section twenty-three-b following, unless the ~~state road~~
17 commissioner of highways shall have determined that the income from such combined bridges,
18 based upon the toll receipts for the next preceding fiscal or calendar year in the case of any
19 existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or
20 bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such
21 combined bridges, in addition to the interest and sinking fund requirements of any bonds issued
22 to pay the purchase price of such existing bridge or bridges and the interest and sinking fund
23 requirements of any bonds issued to pay the cost of construction, acquiring, modernizing,
24 repairing, reconstructing or improving any bridge or bridges and approaches thereto, with which
25 such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for
26 which a single issue of bonds is issued, except such part thereof, as may be necessary to pay
27 such cost of maintaining, repairing and operating during any period in which such cost is not
28 otherwise provided for (during which period the tolls may be reduced accordingly), shall be

29 transmitted each month to the West Virginia Municipal Bond Commission and by it placed in a
30 special fund which is hereby pledged to and charged with the payment of the principal of such
31 bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special
32 fund to be a fund for all such bonds without distinction or priority of one over another. The moneys
33 in such special fund, less a reserve for payment of interest, if not used by the West Virginia
34 Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation
35 at a price not exceeding the market price and not exceeding the redemption price, shall be applied
36 to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the
37 foregoing, payments of principal and interest on any bonds owned by the United States or any
38 governmental agency or department thereof may be made by the governing body directly thereto.

39 Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise,
40 or reconstructed, repaired or improved, under the provisions of this article and forming a
41 connecting link between two or more state highways, or providing a river crossing for a state
42 highway, are hereby adopted as a part of the state road system, but no such bridge or bridges
43 shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed,
44 repaired or improved by the State, under the provisions of this article without the approval in
45 writing of the ~~state road~~ commissioner of highways and the Governor. If there be in the funds of
46 the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and
47 sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase,
48 eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges,
49 the state road commissioner is authorized and directed to allocate to said commission, from the
50 state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof,
51 as either may become due and payable.

§17-17-37. Transfer of toll bridge to county.

1 Notwithstanding any provision of this code to the contrary, in the event the municipality
2 which owns and operates a toll bridge does not retain ownership of the bridge under the provisions

3 of section thirty-five of this article within twelve months of defeasement of the bonds related to the
4 acquisition or construction of such toll bridge, the county commission of the county in which the
5 municipality is located has the option to take over the ownership and operation of the bridge. The
6 commissioner of the Division of Highways shall notify the county commission in writing when the
7 opportunity to exercise the option exists. The county commission has ninety days from receipt of
8 the notification to exercise its option. If the county commission decides to assume the ownership
9 and control of the bridge, it shall comply with all applicable provisions of this article that are
10 imposed on a municipality that chooses to retain ownership of a toll bridge.

**§17-17-38. Municipal sale of ownership of toll bridges to private toll transportation facility;
maintenance of tolls; imposition of liability for collection and payment; tax
treatment and divestment.**

1 (a) Sale of municipally owned toll bridge. – Any municipality which owns and operates a
2 toll bridge pursuant to this article may, at the sole discretion of the municipality, and upon adoption
3 of a resolution to such effect by the council of such municipality, sell and convey such toll bridge
4 to a private toll transportation facility subject to such terms and conditions as the council of such
5 municipality may agree.

6 (b) Privilege to maintain tolls. – Any private toll transportation facility purchasing a
7 municipally owned toll bridge located less than five miles from a toll-free bridge which crosses the
8 same body of water or obstacle pursuant to subsection (a) may retain, modify and collect any
9 such toll charges for the use thereof on persons and things passing over any such bridge as the
10 entity may, by resolution, from time to time prescribe.

11 (c) Electronic collection of tolls and imposition of liability for payment. – The collection and
12 enforcement of tolls for the use of any such bridge may be accomplished by electronic toll
13 collection in the same manner and procedures as provided in §17-16D-1 et seq. of this code, and
14 the imposition of liability for payment of such tolls shall apply as set forth specifically in §17-16D-

15 5, §17-16D-6, §17-16D-7, and §17-16D-10 of this code: *Provided*, That the toll rates provided for
16 in §17-17-9 of this code shall not apply to a private toll transportation facility.

17 (d) *Nonrenewal of vehicle registration.* – If an owner of a vehicle has received at least one
18 invoice from a private toll transportation facility for any unpaid tolls and has (1) failed to pay the
19 unpaid tolls and administrative fees, and (2) failed to file a notice to contest liability for a toll
20 violation as provided for in the invoice, then the private toll transportation facility may notify the
21 Commissioner of Motor Vehicles, who shall, if no form contesting liability has been timely filed
22 with the private toll transportation facility, refuse to register or renew the registration of any vehicle
23 of which the person committing the violation is a registered owner or co-owner until such time as
24 the private toll transportation facility has notified the Commissioner that such fees and unpaid tolls
25 have been paid or satisfied.

26 (e) *Tax treatment of municipally owned toll bridge sold to private toll transportation facility.*
27 – A municipally owned toll bridge sold to a private transportation facility pursuant to this section
28 shall be considered exempt for purposes of ad valorem property taxation under §11-1-1 *et seq.*
29 of this code: *Provided*, That if said exemption is in any way held to be invalid, then the value of a
30 municipally owned toll bridge purchased by a private toll transportation facility, for purposes of ad
31 valorem property taxation under §11-1-1 *et seq.* of this code, shall in no event be valued at more
32 than its salvage value, which for purposes of this article is the lower of fair market salvage value
33 or five percent of the original cost of the property.

34 (f) *Divestment of private toll bridge.* – Nothing in this section shall be construed to limit or
35 prevent the subsequent sale, lease, assignment or transfer of a municipally owned toll bridge
36 purchased by a private toll transportation facility, provided that all other requirements of this
37 section are met.

38 (g) *Definitions.* – For purposes of this section, the term “private toll transportation facility”
39 means any natural person, corporation, general partnership, limited liability company, limited
40 partnership, joint venture, business trust, public benefit corporation, nonprofit entity or other

41 business entity engaged in the collecting or charging of tolls on a previously municipal owned toll
42 bridge pursuant to this article.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION,
CERTIFICATION OF TITLE, AND ANTITHEFT PROVISIONS.**

ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.

§17A-2A-9. Fees.

1 Any person making a request for disclosure of personal information required or permitted
2 under sections five through eight of this article, both inclusive, shall pay to the division all
3 reasonable fees related to providing the information: *Provided*, That all fees under this section
4 shall be set by legislative rule pursuant to article three, chapter twenty-nine-a of this code:
5 *Provided, however, That nothing herein shall prohibit the division from entering into a separate*
6 *fee agreement with a private toll transportation facility to facilitate permitted disclosures pursuant*
7 *to §17A-2A-7 of this code.*

CHAPTER 24. PUBLIC SERVICE COMMISSION.

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; supplying water, gas, or electricity by

10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the
11 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision
12 intends to provide sewer service by an innovative, alternative method, as defined by the federal
13 Environmental Protection Agency, the innovative, alternative method is a public utility function
14 and subject to the jurisdiction of the Public Service Commission regardless of the number of
15 customers served by the innovative, alternative method; any public service district created under
16 the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission will
17 have no jurisdiction over the provision of stormwater services by a public service district; toll
18 bridges located more than five miles from a toll-free bridge which crosses the same body of water
19 or obstacle, wharves, ferries; solid waste facilities; and any other public service: *Provided*,
20 *however*, That natural gas producers who provide natural gas service to not more than 25
21 residential customers are exempt from the jurisdiction of the commission with regard to the
22 provisions of the residential service: *Provided further*, That upon request of any of the customers
23 of the natural gas producers, the commission may, upon good cause being shown, exercise such
24 authority as the commission may deem appropriate over the operation, rates, and charges of the
25 producer and for such length of time as the commission may consider to be proper.

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

30 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

31 (2) Regulation of measurements, practices, acts, or services, as granted and described in
32 §24-2-7 of this code;

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

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

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

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

53 (7) Customers of water and sewer utilities operated by a political subdivision of the state
54 may bring formal or informal complaints regarding the commission's exercise of the powers
55 enumerated in this section and the commission shall resolve these complaints: *Provided*, That
56 any formal complaint filed under this section that is based on the act or omission of the political
57 subdivision shall be filed within 30 days of the act or omission complained of and the commission
58 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
59 dispute may be tolled by the commission until the necessary information showing the basis of the
60 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the

61 commission finds any regulations, measurements, practices, acts or service to be unjust,
62 unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of
63 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
64 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
65 measurement, regulations, acts, practices or services, to be furnished, imposed, observed and
66 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
67 inadequate or otherwise in violation of this chapter, and shall make such other order respecting
68 the same as shall be just and reasonable: *Provided further*, That if the matter complained of would
69 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined
70 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until
71 set aside, altered or amended by the commission in an order to be followed in the future.

72 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
73 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
74 Service Commission for such redress as will bring the accounts to current status or otherwise
75 resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the
76 alleged deficiency or breach.

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

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

81 (2) The area can be provided with utility service by a utility which operates in a state
82 adjoining West Virginia;

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

85 (4) The number of customers to be served is not substantial. The rates the out-of-state
86 utility charges West Virginia customers shall be the same as the rate the utility is duly authorized

87 to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke
88 its waiver of jurisdiction for good cause.

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

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

99 (2) Any person, corporation, or other entity that intends to construct or construct and
100 operate an electric generating facility to be located in this state that has been designated as an
101 exempt wholesale generator under applicable federal law, or will be so designated prior to
102 commercial operation of the facility, and for which facility the owner or operator does not hold a
103 certificate of public convenience and necessity issued by the commission on or before July 1,
104 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
105 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
106 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
107 operator of an electric generating facility as is described in this subdivision for which a siting
108 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of
109 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of
110 this chapter with respect to the facility except for the making or constructing of a material
111 modification thereof as provided in §24-2-1(d)(5) of this code.

112 (3) An owner or operator of an electric generating facility located in this state that had not
113 been designated as an exempt wholesale generator under applicable federal law prior to
114 commercial operation of the facility that generates electric energy solely for sale at retail outside
115 this state or solely for sale at wholesale in accordance with any applicable federal law that
116 preempts state law or solely for both sales at retail and sales at wholesale and that had been
117 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject
118 to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,
119 regardless of whether the facility subsequent to its construction has been or will be designated as
120 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
121 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
122 constructed.

123 (4) Any person, corporation, or other entity that intends to construct or construct and
124 operate an electric generating facility to be located in this state that has not been or will not be
125 designated as an exempt wholesale generator under applicable federal law prior to commercial
126 operation of the facility that will generate electric energy solely for sale at retail outside this state
127 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
128 law or solely for both sales at retail and sales at wholesale and that had not been constructed and
129 had not been engaged in commercial operation on or before July 1, 2003, shall, prior to
130 commencement of construction of the facility, obtain a siting certificate from the commission
131 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
132 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
133 electric generating facility as is described in this subdivision for which a siting certificate has been
134 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not
135 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
136 respect to the facility except for the making or constructing of a material modification thereof as
137 provided in §24-2-1(d)(5) of this code.

138 (5) An owner or operator of an electric generating facility described in this subsection shall,
139 before making or constructing a material modification of the facility that is not within the terms of
140 any certificate of public convenience and necessity or siting certificate previously issued for the
141 facility or an earlier material modification thereof, obtain a siting certificate for the modification
142 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
143 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
144 this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the
145 jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

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

152 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
153 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
154 by and described in this subsection do not affect or limit the commission's jurisdiction over
155 contracts or arrangements between the owner or operator of the facility and any affiliated public
156 utility subject to the provisions of this chapter.

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

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

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

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

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

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

170 (f) Notwithstanding any other provisions of this article, the commission has jurisdiction to
171 review or approve any transaction involving a telephone company otherwise subject to §24-2-12
172 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

173 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
174 systems are most fairly and effectively regulated by the local governing body. Therefore,
175 notwithstanding any other provisions of this article, the commission has jurisdiction over the
176 setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
177 jurisdiction of the Public Service Commission over municipal power systems is limited to that
178 granted specifically in this code.

NOTE: The purpose of this bill is to clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

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