

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

House Bill 2742

BY DELEGATES RILEY, LINVILLE, D. CANNON, AND

ELDRIDGE

[Passed April 11, 2025; 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
10 for projects that have been reviewed and determined to be technically feasible and approved by
11 the Infrastructure and Jobs Development Council.

12 (b) Upon the filing of any application for the certificate, and after hearing, the commission
13 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
14 convenience and necessity: *Provided,* That the commission, after it gives proper notice and if no
15 substantial protest is received within 30 days after the notice is given, may waive formal hearing
16 on the application. Notice shall be given by publication which shall state that a formal hearing may
17 be waived in the absence of substantial protest, made within 30 days, to the application. The
18 notice shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of
19 this code. The publication area shall be the proposed area of operation.

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

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

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

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or §24-2-11a of this code within 400 days of the filing of the application and within 90 days after final submission of any such application for decision after a hearing.

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

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

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

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

55 (2) Natural gas produced by the person.

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

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

64 (l) Water or sewer utilities that are political subdivisions of the state and having at least
65 4,500 customers and combined gross revenues of \$3 million dollars or more desiring to pursue
66 construction projects that are not in the ordinary course of business shall provide adequate prior
67 public notice of the contemplated construction and proposed changes to rates, fees, and charges,
68 if any, as a result of the construction to both current customers and those persons who will be
69 affected by the proposed construction as follows:

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

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

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

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

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

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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby
certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2025.

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Governor