

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 1040

FISCAL
NOTE

By Senators Rose, Helton, M. Maynard, Rucker, and

Tarr

[Introduced February 21, 2026; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended to amend
 2 the code by adding a new section, designated §24-2-23; and to repeal §24-21-11c, relating
 3 to creating the West Virginia Energy Freedom Act; providing findings and purpose;
 4 providing for registration of power generation companies; requiring grid interconnectivity;
 5 creating incentives; exempting certain electric generation facilities from attaining a
 6 certificate of public convenience and necessity; and eliminating requirement for siting
 7 certificates for certain electric generating facilities.

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~~ obtains from the Public Service Commission a certificate
 8 of public convenience and necessity authorizing the construction franchise, license, or permit.
 9 ~~Provided, That the~~ The requirement to obtain a certificate of public convenience and necessity
 10 shall be waived for projects that have been reviewed and determined to be technically feasible and
 11 approved by the Infrastructure and Jobs Development Council. This subsection does not apply to:

12 (1) A political subdivision of the state that provides water or sewer services and has at least
 13 4,500 customers and annual gross combined revenues of \$3 million or more; nor

14 (2) Construction, modification, or operation of an electric generation facility that is not
 15 owned or operated by a public utility as defined in §24-1-2 of this code and does not produce
 16 power from an intermittent power source. Such facilities shall comply instead with the registration

17 requirements set forth in §24-2-23 of this code, applicable environmental permits from the
18 Department of Environmental Protection, local zoning and land-use approvals, and
19 interconnection standards established by the applicable regional transmission organization. As
20 used in this chapter, "intermittent power source" means an energy source whose electrical output
21 is inherently variable, is not continuously available due to its dependence on external natural
22 conditions, and cannot be fully controlled or dispatched on demand.

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

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

39 (d) The commission shall render its final decision on:

40 (1) On any application filed under the provisions of this section or §24-2-11a of this code
41 within 270 days of the filing of the application and within 90 days after final submission of any such
42 application for decision following a hearing; ~~Provided, That if the application is or~~

43 (2) On any application for authority to construct a water and sewer project and the
44 projected total cost is less than \$10 million, ~~the commission shall render its final decision~~ within
45 225 days of the filing of the application.

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

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

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

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

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

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

68 (2) Natural gas produced by the person.

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

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

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

83 (1) Adequate prior public notice of the contemplated construction by causing a notice of
84 intent to pursue a project that is not in the ordinary course of business to be specified on the
85 monthly billing statement of the customers of the utility for the month immediately preceding the
86 month in which an ordinance or resolution approving the proposed construction and proposed
87 changes to rates, fees, and charges, if any, is to be before the governing body for the public
88 hearing on the ordinance or resolution approving the proposed construction and proposed
89 changes to rates, fees, and charges, if any;

90 (2) Adequate prior public notice of the contemplated construction by causing to be
91 published as a Class I legal advertisement of the proposed public hearing on the ordinance or
92 resolution approving the proposed construction and proposed changes to rates, fees, and
93 charges, if any, in compliance with §59-3-1 *et seq.* of this code. The publication area for publication
94 shall be all territory served by the political subdivision. If the political subdivision provides service

95 in more than one county, publication shall be made in a newspaper of general circulation in each
96 county that the political subdivision provides service;

97 (3) The public notice of the proposed construction shall state the scope of the proposed
98 construction; a summary of the current rates, fees, and charges, and proposed changes to said
99 the rates, fees, and charges, if any; the date, time, and place of the public hearing on the ordinance
100 or resolution approving the proposed construction and proposed changes to rates, fees, and
101 charges, if any; and the place or places within the political subdivision where the ordinance or
102 resolution approving the proposed construction and proposed changes to rates, fees, and
103 charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance or
104 resolution shall be kept at the place or places and be made available for public inspection. The
105 notice shall also advise that interested parties may appear at the public hearing before the political
106 subdivision and be heard with respect to the proposed construction and the proposed rates, fees,
107 and charges, if any;

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

113 (5) Enactment or adoption of the ordinance or resolution approving the proposed
114 construction and the proposed rates, fees, and charges shall follow an affirmative vote of the
115 governing body and the approved rates shall go into effect no sooner than 45 days following the
116 action of the governing body. If the political subdivision proposes rates that will go into effect prior
117 to the completion of construction of the proposed project, the 45-day waiting period may be waived
118 by public vote of the governing body only if the political subdivision finds and declares the political
119 subdivision to be in financial distress such that the 45-day waiting period would be detrimental to
120 the ability of the political subdivision to deliver continued and compliant public services. *Provided,*

121 ~~That if~~ If the political subdivision is a public service district, ~~in no event may~~ the rate may not
122 become effective prior to the date that the county commission has entered an order approving or
123 modifying the action of the public service district board;

124 (6) Rates, fees, and charges approved by an affirmative vote of the public service district
125 board shall be forwarded in writing to the county commission with the authority to appoint the
126 members of the public service board of the public service district. The county commission shall,
127 within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify,
128 or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county
129 commission has not taken final action to approve, modify, or reject the proposed rates, fees, and
130 charges, the proposed rates, fees, and charges, as presented to the county commission, shall be
131 effective with no further action by the board or county commission. ~~In any event this~~ This 45-day
132 period may be extended by official action of both the board proposing the rates, fees, and charges
133 and the appointing county commission;

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

138 (8) A public service district, or a customer aggrieved by the changed rates or charges who
139 presents to the circuit court a petition signed by 25 percent of the customers served by the public
140 service district, when dissatisfied by the approval, modification, or rejection by the county
141 commission of the proposed rates, fees, and charges under the provisions of this subsection, may
142 file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act
143 by, the county commission in the circuit court of the county in which the county commission sits.
144 ~~Provided, That any~~ Any complaint or petition filed ~~hereunder~~ pursuant to this section shall be filed
145 within 30 days of the county commission's final action approving, modifying, or rejecting the rates,
146 fees, and charges, or the expiration of the 45-day period from the receipt by the county

147 commission, in writing, of the rates, fees, and charges approved by resolution of the board ~~without~~
 148 ~~final action by~~ if the county commission has failed to approve, modify, or reject the rates, fees, and
 149 charges. ~~and the~~ The circuit court shall resolve said the complaint or petition. ~~Provided, however,~~
 150 ~~That the~~ The rates, fees, and charges so fixed by the county commission, or those adopted by the
 151 district upon which the county commission failed to act, shall remain in full force and effect until set
 152 aside, altered, or amended by the circuit court in an order to be followed in the future.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

1 [Repealed.]

§24-2-23. West Virginia Energy Freedom Act.

1 (a) Short title. – This section is and may be cited as the "West Virginia Energy Freedom
 2 Act".

3 (b) Legislative findings. – The Legislature finds that streamlining the approval process for
 4 new electric generation facilities, particularly dispatchable resources such as natural gas, and for
 5 coal-fired plants, is essential to promoting economic development, enhancing energy reliability,
 6 attracting investment in the state’s abundant natural resources, and supporting job creation
 7 throughout the state.

8 (c) Purpose. – The purpose of this section is to reform the regulatory framework for new
 9 electric generation facilities by:

10 (1) Eliminating the mandatory certificate of public convenience and necessity or siting
 11 certificate for a non-utility project;

12 (2) Shifting oversight to a simplified registration process, local permitting, environmental
 13 compliance, and grid interconnection standards; and

14 (3) Preserving necessary safeguards for public health, safety, environmental protection,
 15 and grid reliability.

16 (d) Registration of power generation companies. –

17 (1) Any person, corporation, or entity seeking to construct, own, or operate an electric
18 generation facility in West Virginia, excluding public utilities subject to §24-2-11 of this code and
19 energy facilities that produce power from an intermittent power source, shall register as a power
20 generation company with the commission prior to commencing construction.

21 (2) The commission shall provide a registration process which includes:

22 (A) The legal name, business address, and principal place of business of the registrant;

23 (B) A description of the proposed facility, including type, such as natural gas or coal,
24 capacity in megawatts, location, and anticipated commercial operation date;

25 (C) Contact information for primary and secondary emergency contacts and a regulatory
26 representative;

27 (D) Evidence of compliance with applicable federal requirements, including any Federal
28 Energy Regulatory Commission registrations, if applicable; and

29 (E) An affidavit attesting to the accuracy of the information provided.

30 (3) The commission shall review the registration for completeness within 15 business days
31 of receipt. If incomplete, the commission shall notify the registrant of deficiencies, and the
32 registrant shall have 20 business days to cure. If not cured, the registration may be rejected
33 without prejudice.

34 (4) Upon approval, the commission shall issue a registration number, which is required for
35 obtaining local permits, environmental approvals, and grid interconnection.

36 (5) Registrants shall update their registration biennially or upon material changes, such as
37 changes in ownership, facility modifications exceeding 10 percent of capacity, or cessation of
38 operations.

39 (6) The commission may establish reasonable fees for registration to cover administrative
40 costs, not to exceed \$1,000 per application.

41 (7) Failure to register prior to construction may result in civil penalties not exceeding
42 \$5,000 per day, enforceable by the commission.

43 (8) As used in this chapter, "intermittent power source" means an energy source whose
44 electrical output is inherently variable, is not continuously available due to its dependence on
45 external natural conditions, and cannot be fully controlled or dispatched on demand.

46 (e) Environmental and Local Permitting. –

47 (1) This section does not exempt electric generation facilities from complying with:

48 (A) Air, water, and waste permits issued by the Department of Environmental Protection
49 pursuant to chapters §22-1-1 et seq., §22A-1-1 et seq., and §22B-1-1 et seq. of this code;

50 (B) Local zoning, building, and land-use permits from county commissions or municipal
51 authority; and

52 (C) Any applicable federal environmental or safety regulation.

53 (2) The Department of Environmental Protection shall:

54 (A) Prioritize and expedite permit reviews for dispatchable generation facilities, including
55 without limitation natural gas and coal, and excluding energy facilities that produce power from an
56 intermittent power source; and

57 (B) Maintain a goal of issuing decisions within 180 days of complete application
58 submission to facilitate timely development of the facilities, absent substantial public opposition or
59 environmental concerns, as determined by the commission.

60 (f) Grid interconnection. –

61 (1) Electric generation facilities shall comply with interconnection standards and processes
62 established by the applicable regional transmission organization, such as PJM Interconnection,
63 for access to the interstate grid.

64 (2) The commission shall coordinate with the regional transmission organization to ensure
65 that interconnection studies and agreements do not unduly delay facility development and may
66 intervene in cases of unreasonable delays.

67 (g) Incentives for dispatchable generation. –

68 (1) To encourage investment in reliable, dispatchable generation, the Division of Economic

69 Development shall establish a program providing low-interest loans or grants for qualifying new
70 natural gas or coal-fired facilities that add at least 100 megawatts of capacity.

71 (2) Eligible projects must demonstrate a substantial positive impact on the local economy
72 and employment, with priority given to facilities utilizing West Virginia-sourced fuel.

73 (3) The Division shall report annually by December 1 to the Joint Committee on
74 Government and Finance on program utilization and outcomes.

NOTE: The purpose of this bill is to create the West Virginia Energy Freedom Act related to power generation companies in the state.

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