

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3281

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[Introduced March 16, 2021; Referred to the
Committee on Government Organization]

1 A BILL to repeal §24D-1-26 of the Code of West Virginia, 1931, as amended; to amend and
 2 reenact §24-2-1 of said code; to amend said code by adding thereto a new section,
 3 designated §24-2-1q; and to amend and reenact §24D-1-5 of said code, all relating to
 4 recognizing cable television as a utility; establishing jurisdiction of the Public Service
 5 Commission over cable television providers; requiring commission determine if effective
 6 competition for cable services exists throughout the state and setting rates in localities
 7 where it does not; repealing section regarding cable television's status as utility.

Be it enacted by the Legislature of West Virginia:

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; provision
 8 of cable television service; generation and transmission of electrical energy by hydroelectric or
 9 other utilities for service to the public, whether directly or through a distributing utility; supplying
 10 water, gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons
 11 or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a
 12 political subdivision intends to provide sewer service by an innovative, alternative method, as
 13 defined by the federal Environmental Protection Agency, the innovative, alternative method is a
 14 public utility function and subject to the jurisdiction of the Public Service Commission regardless

15 of the number of customers served by the innovative, alternative method; any public service
16 district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public
17 Service Commission will have no jurisdiction over the provision of stormwater services by a public
18 service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service:
19 *Provided, however,* That natural gas producers who provide natural gas service to not more than
20 25 residential customers are exempt from the jurisdiction of the commission with regard to the
21 provisions of the residential service: *Provided further,* That upon request of any of the customers
22 of the natural gas producers, the commission may, upon good cause being shown, exercise such
23 authority as the commission may deem appropriate over the operation, rates, and charges of the
24 producer and for such length of time as the commission may consider to be proper.

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

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

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

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

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

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

39 (6) Investigation and resolution of disputes between a political subdivision of the state
40 providing wholesale water and/or wastewater treatment or other services, whether by contract or

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

52 (7) Customers of water and sewer utilities operated by a political subdivision of the state
53 may bring formal or informal complaints regarding the commission's exercise of the powers
54 enumerated in this section and the commission shall resolve these complaints: *Provided*, That
55 any formal complaint filed under this section that is based on the act or omission of the political
56 subdivision shall be filed within 30 days of the act or omission complained of and the commission
57 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
58 dispute may be tolled by the commission until the necessary information showing the basis of the
59 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the
60 commission finds any regulations, measurements, practices, acts or service to be unjust,
61 unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of
62 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
63 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
64 measurement, regulations, acts, practices or services, to be furnished, imposed, observed and
65 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
66 inadequate or otherwise in violation of this chapter, and shall make such other order respecting

67 the same as shall be just and reasonable: *Provided further*, That if the matter complained of would
68 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined
69 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until
70 set aside, altered or amended by the commission in an order to be followed in the future.

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

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

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

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

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

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

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

89 (1) An owner or operator of an electric generating facility located or to be located in this
90 state that has been designated as an exempt wholesale generator under applicable federal law,
91 or will be so designated prior to commercial operation of the facility, and for which such facility
92 the owner or operator holds a certificate of public convenience and necessity issued by the

93 commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code
94 as if the certificate of public convenience and necessity for the facility were a siting certificate
95 issued under §24-2-11c of this code and is not otherwise subject to the jurisdiction of the
96 commission or to the provisions of this chapter with respect to the facility except for the making
97 or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

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

111 (3) An owner or operator of an electric generating facility located in this state that had not
112 been designated as an exempt wholesale generator under applicable federal law prior to
113 commercial operation of the facility that generates electric energy solely for sale at retail outside
114 this state or solely for sale at wholesale in accordance with any applicable federal law that
115 preempts state law or solely for both sales at retail and sales at wholesale and that had been
116 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject
117 to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,
118 regardless of whether the facility subsequent to its construction has been or will be designated as

119 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
120 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
121 constructed.

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

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

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

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

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

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

162 (2) "Voice-over internet protocol service" means any service that:

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

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

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

169 (f) Notwithstanding any other provisions of this article, the commission has jurisdiction to
170 review or approve any transaction involving a telephone company otherwise subject to §24-2-12

171 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

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

§24-2-1q. Jurisdiction of commission over cable television services.

1 Effective July 1, 2021, in addition to all other powers and duties of the commission as
 2 defined in this article, the commission shall establish, prescribe, and enforce rates and fees for
 3 certain basic tier cable services as prescribed in §24D-1-5 of this code.

CHAPTER 24D. CABLE TELEVISION.

ARTICLE 1. CABLE TELEVISION SYSTEMS ACT.

§24D-1-5. Duties of the Public Service Commission.

1 In addition to its other duties, the Public Service Commission shall:

2 (a) To the extent permitted by, and not contrary to applicable federal law, rules and
 3 regulations:

4 (1) Prescribe standards for procedures and practices which franchising authorities shall
 5 follow in considering the issuance of cable franchises, which standards shall provide for the forms
 6 of applications and proposals, the filing of all franchise applications, proposals and related
 7 documents as public records, with reasonable notice to the public that such records are open to
 8 inspection and examination during reasonable business hours; the holding of a public hearing,
 9 upon reasonable notice to the public, at which the applications or proposals shall be examined
 10 and members of the public and interested parties are afforded a reasonable opportunity to
 11 express their views thereon; the rendition of a written report by the franchising authority made to

12 the public, setting forth the reasons for its decision in awarding or not awarding the franchise; and
13 such other procedural standards governing the issuance of cable franchises mandated by the
14 provisions of this article or as the commission may otherwise deem necessary or appropriate to
15 assure maximum public participation and competition and to protect the public interest;

16 (2) Prescribe minimum standards for inclusion in franchises, including maximum initial and
17 renewal terms; minimum channel capacity; provisions regarding public, educational or
18 governmental access facilities; a requirement that no such franchise may be exclusive; standards
19 necessary or appropriate to protect the interests of viewers of free broadcast television and the
20 public generally, which prohibit or limit cable operators from prohibiting or entering into
21 agreements prohibiting the sale or other transfer of rights for the simultaneous or subsequent
22 transmission over free broadcast television; and such other standards for inclusion in franchises
23 as the commission shall deem necessary or appropriate to protect the public interest, including
24 any provision regulating the rates for cable services to the extent that the same is not in conflict
25 with federal law, rules or regulations;

26 (3) Prescribe standards by which a franchising authority shall determine whether an
27 applicant possesses: (i) The technical ability; (ii) the financial ability; (iii) the good character; and
28 (iv) other qualifications necessary to operate a cable system in the public interest;

29 (4) Prescribe standards for the construction and operation of cable systems, which
30 standards shall be designed to promote: (i) Safe, adequate and reliable service to subscribers;
31 (ii) the construction and operation of systems consistent with the most advanced state of the art;
32 (iii) a construction schedule providing for maximum penetration as rapidly as possible within the
33 limitations of economic feasibility; (iv) the construction of systems with the maximum practicable
34 channel capacity, facilities for local program origination, facilities to provide service in areas
35 conforming to various community interests, facilities with the technical capacity for interconnection
36 with other systems within regions as established in the commission's statewide plan and facilities
37 capable of transmitting signals from subscribers to the cable system or to other points; and (v)

38 the prompt handling of inquiries, complaints and requests for repairs;

39 (5) Prescribe such standards for the prohibition or limitation of concentration of control
40 over mass media and communication companies and facilities and methods of enforcing such
41 standards, as the commission may determine to be necessary or appropriate to protect the public
42 interest: *Provided*, That nothing contained herein shall be construed to authorize the impairment
43 of any existing rights of any mass media and communication company or any subsidiary thereof;

44 (b) Effective July 1, 2021, the commission shall have the authority to determine whether
45 effective competition among cable providers exist in the state by locality. For areas in which
46 effective competition does not exist, the commission shall undertake a review and setting of rates
47 for basic tier cable services, and also provide a mechanism for bill reduction upon the loss of
48 channels within the basic tier package.

49 ~~(b)~~(c) Provide advice and technical assistance to other franchising authorities and
50 community organizations in matters relating to cable franchises and services;

51 ~~(e)~~ (d) Establish minimum specifications for equipment, service and safety of cable;

52 ~~(d)~~(e) Represent the interests of citizens of this state before the federal communications
53 commission and make available information to the public on communications developments at
54 the federal level;

55 ~~(e)~~(f) Stimulate and encourage cooperative arrangements among organizations,
56 institutions, counties and municipalities in the development of public, educational or governmental
57 access facilities;

58 ~~(f)~~(g) Maintain liaison with the communications industry and other parties, both public and
59 private, having an interest therein, other states and political subdivisions of this state to promote
60 the rapid and harmonious development of cable services as set forth in the legislative findings
61 and intent of this article;

62 ~~(g)~~(h) Undertake such studies as may be necessary to meet the responsibilities and
63 objectives of this article; and

64 ~~(h)~~(i) Implement the provisions of this article in a manner which is cognizant of the differing
65 financial and administrative capabilities of cable systems of different sizes.

§24D-1-26. Cable television industry not regulated as a utility.

1 [Repealed]

NOTE: The purpose of this bill is to place cable television under some review by the Public Service Commission with respect to setting rates and creating a mechanism for payment reduction when channels are discontinued.

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