

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 649**

BY SENATOR NELSON

[Introduced February 16, 2022; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating  
 2 to requiring communication providers providing service in West Virginia or obtaining West  
 3 Virginia area codes to register with the Public Service Commission; defining  
 4 “communication provider”; and combining into one section, the two versions of this section  
 5 that were amended during the regular session of the Legislature, 2021.

*Be it enacted by the Legislature of West Virginia:*

**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 (1) Common carriage of passengers or goods, whether by air, railroad, street railroad,  
 4 motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by  
 5 land, water, or air;

6 (2) Transportation of oil, gas, or water by pipeline;

7 (3) Transportation of coal and its derivatives and all mixtures and combinations thereof  
 8 with other substances by pipeline;

9 (4) Sleeping car or parlor car services;

10 (5) Transmission of messages by telephone, telegraph, or radio; generation and  
 11 transmission of electrical energy by hydroelectric or other utilities for service to the public, whether  
 12 directly or through a distributing utility;

13 (6) Generation and transmission of electrical energy by hydroelectric or other utilities for  
 14 service to the public, whether directly or through a distributing utility;

15 (7) Supplying water, gas, or electricity by municipalities or others: *Provided*, That natural  
 16 gas producers who provide natural gas service to not more than 25 residential customers are  
 17 exempt from the jurisdiction of the commission with regard to the provisions of the residential  
 18 service: *Provided, however*, That upon request of any of the customers of the natural gas

19 producers, the commission may, upon good cause being shown, exercise authority as the  
20 commission may consider appropriate over the operation, rates, and charges of the producer and  
21 for the length of time determined proper by the commission: *Provided further*, That the provision  
22 of a solar photovoltaic energy facility located on and designed to meet only the electrical needs  
23 of the premises of a retail electric customer, the output of which is subject to a power purchase  
24 agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject  
25 to the following conditions and limitations:

26 (i) PPAs must be 11-point font or larger.

27 (ii) The aggregate of all PPAs and net metering arrangements in the state for any utility  
28 shall not exceed three percent of the utility's aggregate customer peak demand in the state during  
29 the previous year;

30 (iii) There shall be individual customer onsite generator limits of designing the photovoltaic  
31 energy facility to meet only the electrical needs of the premises of the retail electric customer and  
32 which in no case may exceed 25kW for residential customers, 500 kW for commercial customers,  
33 and 2,000 kW for industrial customers;

34 (iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility  
35 of their intent to enter into a transaction. In response, the utility shall notify within 30 days if any  
36 of the caps have been reached. If the utility does not respond within 30 days, the generator may  
37 proceed, and the caps will be presumed not to have been reached; and

38 (v) The Public Service Commission may promulgate rules to govern and implement the  
39 provisions of interconnections for PPAs, except the PSC does not have authority over the power  
40 rates for the arrangements between the onsite generator and the customer;

41 (8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer  
42 systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer  
43 service by an innovative, alternative method, as defined by the federal Environmental Protection  
44 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction

45 of the Public Service Commission regardless of the number of customers served by the  
46 innovative, alternative method;

47 (9) Any public service district created under the provisions of §16-13A-1 et seq. of this  
48 code, except that the Public Service Commission will have no jurisdiction over the provision of  
49 stormwater services by a public service district;

50 (10) Toll bridges located more than five miles from a toll-free bridge which crosses the  
51 same body of water or obstacle, wharves, ferries; solid waste facilities; and

52 (11) Any other public service: *Provided*, That natural gas producers who provide natural  
53 gas service to not more than 25 residential customers are exempt from the jurisdiction of the  
54 commission with regard to the provisions of the residential service: *Provided, however*, That upon  
55 request of any of the customers of the natural gas producers, the commission may, upon good  
56 cause being shown, exercise such authority as the commission may deem appropriate over the  
57 operation, rates, and charges of the producer and for such length of time as the commission may  
58 consider to be proper.

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

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

64 (2) Regulation of measurements, practices, acts, or services, as granted and described in  
65 §24-2-7 of this code;

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

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

70 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness  
71 in any proceeding before or conducted by the commission, as granted, and described in §24-2-  
72 10 of this code; and

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

86 (7) Customers of water and sewer utilities operated by a political subdivision of the state  
87 may bring formal or informal complaints regarding the commission's exercise of the powers  
88 enumerated in this section and the commission shall resolve these complaints: *Provided*, That  
89 any formal complaint filed under this section that is based on the act or omission of the political  
90 subdivision shall be filed within 30 days of the act or omission complained of and the commission  
91 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the  
92 dispute may be tolled by the commission until the necessary information showing the basis of the  
93 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the  
94 commission finds any regulations, measurements, practices, acts, or service to be unjust,  
95 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of

96 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot  
97 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable  
98 measurement, regulations, acts, practices, or services, to be furnished, imposed, observed, and  
99 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,  
100 inadequate, or otherwise in violation of this chapter, and shall make such other order respecting  
101 the same as shall be just and reasonable: *Provided further*, That if the matter complained of will  
102 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined  
103 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until  
104 set aside, altered, or amended by the commission in an order to be followed in the future.

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

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

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

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

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

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

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

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

132 (2) Any person, corporation, or other entity that intends to construct or construct and  
133 operate an electric generating facility to be located in this state that has been designated as an  
134 exempt wholesale generator under applicable federal law, or will be so designated prior to  
135 commercial operation of the facility, and for which facility the owner or operator does not hold a  
136 certificate of public convenience and necessity issued by the commission on or before July 1,  
137 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from  
138 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public  
139 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or  
140 operator of an electric generating facility as is described in this subdivision for which a siting  
141 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of  
142 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of  
143 this chapter with respect to the facility except for the making or constructing of a material  
144 modification thereof as provided in §24-2-1(d)(5) of this code.

145 (3) An owner or operator of an electric generating facility located in this state that has not  
146 been designated as an exempt wholesale generator under applicable federal law prior to  
147 commercial operation of the facility that generates electric energy solely for sale at retail outside

148 this state or solely for sale at wholesale in accordance with any applicable federal law that  
149 preempts state law or solely for both sales at retail and sales at wholesale and that has been  
150 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject  
151 to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,  
152 regardless of whether the facility subsequent to its construction has been or will be designated as  
153 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or  
154 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or  
155 constructed.

156 (4) Any person, corporation, or other entity that intends to construct or construct and  
157 operate an electric generating facility to be located in this state that has not been or will not be  
158 designated as an exempt wholesale generator under applicable federal law prior to commercial  
159 operation of the facility that will generate electric energy solely for sale at retail outside this state  
160 or solely for sale at wholesale in accordance with any applicable federal law that preempts state  
161 law or solely for both sales at retail and sales at wholesale and that had not been constructed and  
162 had not been engaged in commercial operation on or before July 1, 2003, shall, prior to  
163 commencement of construction of the facility, obtain a siting certificate from the commission  
164 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience  
165 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an  
166 electric generating facility as is described in this subdivision for which a siting certificate has been  
167 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not  
168 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with  
169 respect to the facility except for the making or constructing of a material modification thereof as  
170 provided in §24-2-1(d)(5) of this code.

171 (5) An owner or operator of an electric generating facility described in this subsection shall,  
172 before making or constructing a material modification of the facility that is not within the terms of  
173 any certificate of public convenience and necessity or siting certificate previously issued for the



174 facility or an earlier material modification thereof, obtain a siting certificate for the modification  
175 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of  
176 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of  
177 this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the  
178 jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

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

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

190 (e) The commission does not have jurisdiction of internet protocol-enabled service or  
191 voice-over internet protocol-enabled service, except as provided in subsection (f) of this section.

192 As used in this subsection:

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

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

198 (i) Enables real-time, two-way voice communications that originate or terminate from the  
199 user's location using internet protocol or a successor protocol; and

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

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

204 (f)(1) All communications providers providing service in West Virginia or obtaining West  
205 Virginia numbering resources (area codes) from West Virginia shall file a registration form with  
206 the commission. A communications provider which provides such service prior to July 1, 2022,  
207 and which will continue to provide such service after July 1, 2022, shall register with the  
208 commission no later than January 1, 2023. Any communications provider which begins to provide  
209 service in West Virginia or seeks to obtain West Virginia numbering resources from West Virginia  
210 after July 1, 2022, shall register with the commission prior to providing such service or obtaining  
211 West Virginia numbering resources from West Virginia.

212 (2) The commission shall prescribe the registration form to be filed pursuant to this  
213 section. Communications providers as defined in subdivision (5) of this section shall provide:

214 (A) The name, address, telephone number and email address of a contact person  
215 concerning the federal Telecommunications Relay Service law and related surcharges, if  
216 applicable.

217 (B) The name, address, telephone number and email address of a contact person  
218 concerning the West Virginia Enhanced Wireless 911 Services law in §24-6-6b of this code and  
219 related surcharges, if applicable; and

220 (C) The name, address, telephone number and email address of a contact person  
221 concerning consumer complaints and inquiries.

222 (D) The areas in the state of West Virginia where the communications provider will be  
223 providing service by county.

224 (3) Communications providers as defined in subdivision (5) of this section shall provide  
225 the commission with the name, address, telephone number and email address of a person with

226 managerial responsibility for its West Virginia operations;

227 (4) The communications provider shall keep the information required by this section  
228 current and shall notify the commission of any changes to such information within 60 days after  
229 the change;

230 (5) For purposes of this section, “communications provider” means any entity that:

231 (A) Uses telephone numbers or internet protocol addresses or their functional equivalent  
232 or successors to provide information of a user’s choosing by aid of wire, cable, wireless, satellite,  
233 or other like connection, whether part of a bundle of services or offered separately, (i) which  
234 provides or enables real time or interactive voice communications; and (ii) in which the voice  
235 component is the primary function; or

236 (B) Provides any service, whether part of a bundle of services or offered separately, used  
237 for transmission of information of a user’s choosing regardless of the transmission medium or  
238 technology employed, that connects to a network that permits the end user to engage in electronic  
239 communications, including, but not limited to, service provided directly (i) to the public or (ii) to  
240 such classes of users as to be effectively available directly to the public; or

241 (C) Provides telecommunication services as defined in the commission’s *Rules for the*  
242 *Government of Telephone Utilities.*

243 (g) Notwithstanding any other provisions of this article, the commission does not have  
244 jurisdiction to review or approve any transaction involving a telephone company otherwise subject  
245 to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common  
246 ownership.

247 (h) The Legislature finds that the rates, fees, charges, and ratemaking of municipal  
248 power systems are most fairly and effectively regulated by the local governing body. Therefore,  
249 notwithstanding any other provisions of this article, the commission does not have jurisdiction  
250 over the setting or adjustment of rates, fees, and charges of municipal power systems. Further,

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

NOTE: The purpose of this bill is to require communication providers providing service in West Virginia or obtaining area codes from West Virginia to register with the Public Service Commission. "Communication provider" is defined. This section was amended twice in two separate bills in 2021. The two versions have been combined. As a result, this version has been completely underscored as the section has basically been rewritten.

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