

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5089**

By Delegates Burkhammer and Riley

[Introduced January 25, 2024; Referred to the  
Committee on Technology and Infrastructure]

1 A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to  
2 creating limited waiver from certificate of public convenience and necessity requirement for  
3 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 dollars or more may not begin the construction of any plant,  
4 equipment, property, or facility for furnishing to the public any of the services enumerated in §24-2-  
5 1 of this code, nor apply for, nor obtain any franchise, license, or permit from any municipality or  
6 other 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 for  
10 projects that: i) are funded in whole or in part by American Rescue Plan Act of 2021 (ARPA) or  
11 Coronavirus State Fiscal Recovery Fund (SFR) monies, propose a rate increase solely related to  
12 the project of 20 percent or less, and have been reviewed and determined to be technically  
13 feasible and approved by the Infrastructure and Jobs Development Council (IJDC); or ii) are  
14 funded in whole or in part by ARPA or SFR monies through Economic Enhancement Grant (EEG)  
15 funding, propose a rate increase solely related to the project of 20 percent or less, and have been  
16 reviewed and determined to be technically feasible by the IJDC and approved by the Water  
17 Development Authority: *Provided, however,* That this waiver shall expire on January 1, 2025.

18 (b) Upon the filing of any application for the certificate, and after hearing, the commission  
19 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of  
20 convenience and necessity: *Provided,* That the commission, after it gives proper notice and if no

21 substantial protest is received within 30 days after the notice is given, may waive formal hearing on  
22 the application. Notice shall be given by publication which shall state that a formal hearing may be  
23 waived in the absence of substantial protest, made within 30 days, to the application. The notice  
24 shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code.  
25 The publication area shall be the proposed area of operation.

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

33 (d) The commission shall render its final decision on any application filed under the  
34 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application  
35 and within 90 days after final submission of any such application for decision following a hearing:  
36 *Provided*, That if the application is for authority to construct a water and sewer project and the  
37 projected total cost is less than \$10 million, the commission shall render its final decision within  
38 225 days of the filing of the application.

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

46 (f) If the projected total cost of a project which is the subject of an application filed pursuant

47 to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render its  
48 final decision on any such application filed under the provisions of this section or §24-2-11a of this  
49 code within 400 days of the filing of the application and within 90 days after final submission of any  
50 such application for decision after a hearing.

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

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

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

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

61 (2) Natural gas produced by the person.

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

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

70 (l) Water or sewer utilities that are political subdivisions of the state and having at least  
71 4,500 customers and combined gross revenues of \$3 million dollars or more desiring to pursue  
72 construction projects that are not in the ordinary course of business shall provide adequate prior

73 public notice of the contemplated construction and proposed changes to rates, fees, and charges,  
74 if any, as a result of the construction to both current customers and those persons who will be  
75 affected by the proposed construction as follows:

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

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

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

99 subdivision and be heard with respect to the proposed construction and the proposed rates, fees,  
100 and charges, if any.

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

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

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

125 may be extended by official action of both the board proposing the rates, fees, and charges and  
126 the appointing county commission.

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

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

NOTE: The purpose of this bill is to establish a waiver of the requirement to obtain a certificate of public convenience and necessity for projects that are approved by the Infrastructure and Jobs Development Council and funded by ARPA/SFR monies through Economic Enhancement Grant Fund grants. The waiver shall expire on January 1, 2025.

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