

House or Senate Bill No. \_\_\_\_  
(By \_\_\_\_\_)

[Introduced January \_\_, 2016; referred to the Committee on \_\_\_\_\_; and then to the  
Committee on \_\_\_\_\_.]  
\_\_\_\_\_

A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a water, sewer and/or stormwater service project; forbidding the Public Service Commission from requiring final design materials to be submitted in support of an application for a certificate of convenience and necessity; directing an entity that has received a certificate of convenience and necessity to pursue a further rate increase through the normal rate changing process if an increase in rates is needed above the level approved by the Public Service Commission in granting a certificate of convenience and necessity for a project; prohibiting the Public Service Commission in rate proceedings from modifying on its own initiative the scope of a project to which a certificate of convenience and necessity was previously granted or rescinding a previously granted certificate of convenience and necessity if the rates expected to go in effect upon substantial completion of the project have increased by less than fifteen percent.

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

That §24-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**§24-2-11. Requirements for certificate of public convenience and necessity.**

(a) A public utility, person or corporation other than a political subdivision of the state providing water, sewer and/or stormwater services and having at least four thousand five hundred customers and annual gross combined revenues of \$3 million dollars or more may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) For certificate application for water, sewer and/or stormwater services, the application shall include a preliminary engineering report and a financial analysis of the effect of

the proposed project upon the rates to be charged by the applicant following substantial completion of construction of the proposed project. For a project that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code, the applicant may satisfy in full the requirement to provide a preliminary engineering report and financial analysis by including with the certificate application the same engineering information and financial analysis as it filed for the project with the Infrastructure and Jobs Development Council. The commission may not require certificate applications to include final engineering design information or plans and specifications for the proposed project, or approvals which can only be obtained by the applicant submitting final engineering design or plans and specifications to an agency, including but not limited to binding commitment letters from funding agencies. The commission may waive the requirement for an application to include a financial analysis for good cause shown.

(c) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(d) 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 four thousand five hundred customers and combined annual gross revenue of \$3 million dollars or more shall give the commission at least thirty 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 thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(e) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of

the filing of the application and within ninety 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 two hundred twenty-five days of the filing of the application.

(f) 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 article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(g) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.

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

(i) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(j) If, following the issuance of a certificate of convenience and necessity for a project to provide water, sewer and/or stormwater services but before construction has commenced, an applicant determines that the rates approved by the commission to be in effect following substantial completion of the project will not be sufficient, the applicant may pursue a further rate change through the procedure appropriate to it. If the Commission has jurisdiction over such a rate change proceeding, the commission may not in that proceeding consider rescinding

the order granting the applicant a certificate of convenience and necessity, or consider on the commission's initiative revising the scope of the project granted a certificate of convenience and necessity, provided that the applicant proposes a further rate change which is no greater than a fifteen percent increase over the rates previously approved by the commission in the certificate proceeding.

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

- (1) Natural gas sold by a producer, pipeline or other seller to the person; or
- (2) Natural gas produced by the person.

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

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

(1) Water, sewer and/or stormwater utilities that are political subdivisions of the state and having at least four thousand five hundred customers and combined gross revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide notice to both current customers and those citizens who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the contemplated construction is to be before the governing body on first reading.

(2) Adequate prior public notice of the contemplated construction by causing to be

published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges; the date, time and place of both a public hearing on the proposal and the proposed final vote on adoption; and the place or places within the political subdivision where the proposed construction and the rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees and charges.

(4) The proposed construction and the proposed rates, fees and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(5) Enactment of the proposed construction and the proposed rates, fees and charges shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-five days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior than the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided*, That in no event shall the rate become effective prior to the date that the county commission has entered an order approving the action of the public service district board.

(6) Rates, fees and charges approved by an affirmative vote of the public services district board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall, within forty-five days of receipt of the proposed rates, fees and charges, take action to approve or reject the proposed rates, fees and charges. After forty-five

days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later than one week prior to the meeting date.

NOTE: The purpose of this bill is to enable applicants for a certificate of convenience and necessity to the PSC for a water, sewer, and/or stormwater project to file complete applications without incurring the expense of an engineer's preparation of final engineering design materials or obtaining interests in real property related to the project, and to direct an entity that has received a certificate of convenience and necessity to pursue a rate change through the appropriate process when post-project rates have increased above the rate previously approved by the Public Service Commission by 15% or less, without being at risk that in such proceeding the Public Service Commission will rescind or modify the scope of the previously granted certificate of convenience and necessity.

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