

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**ENROLLED**

**House Bill 2969**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2021 APR 28 P 4: 28

FILED

BY DELEGATES CONLEY, BARNHART, HOLSTEIN AND

STEELE

[Passed April 7, 2021; in effect from passage.]

HB 2969

1 AN ACT to amend and reenact §17-16D-6 and §17-16D-10 of the Code of West Virginia, 1931,  
2 as amended; to amend and reenact §17-17-10, §17-17-11, §17-17-12, §17-17-21, and  
3 §17-17-22; to amend said code by adding thereto a new section, designated §17-17-38;  
4 to amend and reenact §17A-2A-7 and §17A-2A-9; and to amend and reenact §24-2-1 of  
5 said code, all relating to privately owned toll bridges; providing for the sale of a municipally  
6 owned toll bridge to a private toll transportation facility under certain circumstances;  
7 defining the term "private toll transportation facility"; authorizing disclosure of certain  
8 information in anticipation of litigation; authorizing the retention and collection of tolls on a  
9 privately owned toll bridge; clarifying procedures for the electronic collection of tolls by a  
10 private toll transportation facility; clarifying the tax treatment of toll bridges sold by a  
11 municipality to a private toll transportation facility; providing for the imposition of liability  
12 and nonrenewal of vehicle registration for failure to pay tolls on a privately owned toll  
13 bridge; clarifying the application of provisions of code to state owned and privately owned  
14 toll bridges; clarifying the jurisdiction of the Public Service Commission over toll bridges;  
15 and providing that commission does not have jurisdiction over certain telephone  
16 companies or municipal power systems.

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

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 16D. ELECTRONIC TOLL COLLECTION ACT.**

#### **§17-16D-6. Liability of owner.**

1 (a) All owners and operators of motor vehicles shall pay the posted toll when on any toll  
2 road, highway, or bridge authorized by the Legislature, including any toll collected by a private toll  
3 transportation facility pursuant to §17-17-38 of this code, either by paying the toll at a toll collection  
4 facility on the toll road, highway, or bridge at the time of travel thereon or by paying the toll within  
5 the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll  
6 collection system. These tolls may be collected by electronic toll collection. If an owner or operator

7 of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this  
8 article.

9 (b) If a violation occurs, the registration plate number of the vehicle as recorded by a video  
10 collection system establishes a rebuttable presumption for civil enforcement purposes that the  
11 owner of the vehicle was operating the vehicle, or had consented to another person operating the  
12 vehicle, at that time. This presumption may be overcome only if the owner: (1) proves by a  
13 preponderance of the evidence that he or she was not in fact operating the vehicle at the time;  
14 and (2) identifies by name and mailing address the person who was operating the vehicle.

15 (c) If the presumption is not overcome by a preponderance of the evidence, the owner of  
16 the vehicle shall be found to have violated this article and be held responsible for payment of the  
17 tolls and the administrative fees and money penalties imposed by this article for failure to timely  
18 pay the tolls.

19 (d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation  
20 to a person in control of a vehicle for a violation of this article or other provisions of law at the time  
21 of the violation; (2) the Parkways Authority from issuing reminder notices or making other  
22 communications directly or indirectly in connection with toll collection efforts or efforts to enforce  
23 violations of this article. The Parkways Authority is authorized to use secondary sources of  
24 information and services including, but not limited to, services such as the National Change of  
25 Address Service or skip tracing services; or (3) a private toll transportation facility from issuing  
26 any notices, reminders, or other communications in connection with its toll collection efforts  
27 pursuant to §17-17-38(c) and §17-17-38(d) of this code.

**§17-16D-10. Evading tolls; damaging, interfering with, or obstructing video toll collection  
or infrastructure; violations and criminal penalties.**

1 (a) Any person who knowingly or intentionally evades or seeks to evade the payment of  
2 tolls, rents, fees, or charges established by the Parkways Authority for the use of any toll facility  
3 under the jurisdiction of the Authority, or of any private toll transportation facility pursuant to §17-

17-38 of this code, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$50 for each violation of this article.

(b) Any person who deliberately damages, defaces, or obstructs a video collection system infrastructure or power supply with the intent to interfere with, alter, or prevent the functioning of the system or electronic toll collection, or who obstructs a license plate or causes it to be unreadable by the video collection system, or who causes a transponder or other device used in an electronic toll system to be inoperable or unreadable thereby causing no toll to be charged, including a private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, in addition to any other penalties provided by the code, and upon conviction, shall be fined not more than \$500 for each such action and, if applicable, is additionally liable to the Parkways Authority or the private toll transportation facility for all costs incurred to repair the damaged, defaced, or obstructed property.

#### **ARTICLE 17. TOLL BRIDGES.**

##### **§17-17-10. Payment of toll prior to passage; demand of excessive toll; evading payment of toll.**

The proprietor of any toll bridge may require lawful toll to be paid previous to a passage thereover. Whoever shall knowingly or intentionally defraud, or attempt to defraud, the proprietor of any toll bridge by evading, or attempting to evade, the payment of lawful toll for crossing such bridge, or whoever shall aid another to evade, or attempt to evade, the payment of such toll, shall be guilty of a misdemeanor and, for every such offense shall, upon conviction thereof, be fined not in excess of \$10.

##### **§17-17-11. Gatekeeper to keep small change.**

A gatekeeper on any toll bridge without an electronic toll collection system, as defined in §17-16D-2 of this code, shall keep such money of small denomination on hand, as may reasonably be required in the ordinary course of business, for making change for passengers, and it is the duty of passengers to offer money for passage of a denomination as near as possible

5 to the amount charged for such passage. This section shall not apply to persons now having a  
6 lawful right to pass on such bridge without the payment of toll.

**§17-17-12. Failure to provide gatekeeper and to allow prompt passage.**

1 If at any toll bridge without an electronic toll collection system there be a failure to give any  
2 person or property a passage over the same in a reasonable time, the proprietor thereof shall  
3 forfeit to such person not less than \$2 nor more than \$20. If the keeper of any toll bridge without  
4 an electronic toll collection system shall absent himself therefrom without leaving any person in  
5 charge of the gates thereon, he shall leave the gates open. Any keeper of a toll bridge without an  
6 electronic toll collection who shall fail to comply with the requirements of this section shall be guilty  
7 of a misdemeanor, and, upon conviction thereof, shall be fined \$50 for every such offense; and  
8 any person injured by such failure shall be entitled to recover therefor from such keeper all  
9 damages sustained thereby.

**§17-17-21. General supervision of bridges under jurisdiction of commissioner.**

1 The commissioner of highways shall properly maintain, repair, operate, manage, and  
2 control the bridges owned by the state, fix the rates of tolls and establish bylaws and rules and  
3 regulations for the use and operation of the bridges owned by the state, and may make and enter  
4 into all contracts or agreements necessary and incidental to the performance of his duties and  
5 the execution of his powers under this article, including power to permit use of such bridges owned  
6 by the state by street railways and other transportation lines, and telephone, telegraph, pipe, and  
7 other lines, and contract with them for such use and fix the terms and conditions thereof and the  
8 charges or tolls for such use of the bridges owned by the state.

**§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included  
in one issue; purchasing of existing bridges; disposition of tolls.**

1 Tolls shall be fixed, charged, and collected for transit over such bridges owned by the  
2 state and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or  
3 bridges owned by the state for which a single issue of bonds is issued, as to provide a fund  
4 sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund

5 to pay the cost of maintaining, repairing, and operating such bridge or bridges, subject, however,  
6 to any applicable law or regulation of the United States of America now in force or hereafter to be  
7 enacted or made. Two or more bridges owned by the state may be included in one issue of bonds,  
8 and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no  
9 existing bridge or bridges owned by the state shall be acquired by purchase, eminent domain, or  
10 otherwise, unless the commissioner of highways shall have determined that the income  
11 therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be  
12 sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest  
13 and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if  
14 such existing bridge or bridges owned by the state are to be combined with any other bridge or  
15 bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent  
16 domain, or otherwise, as provided in §17-17-23b of this code, unless the commissioner of  
17 highways shall have determined that the income from such combined bridges, based upon the  
18 toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or  
19 bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be  
20 constructed, will be sufficient to pay all expenses of operating and maintaining such combined  
21 bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the  
22 purchase price of such existing bridge or bridges and the interest and sinking fund requirements  
23 of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing,  
24 reconstructing, or improving any bridge or bridges and approaches thereto, with which such  
25 existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a  
26 single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost  
27 of maintaining, repairing, and operating during any period in which such cost is not otherwise  
28 provided for (during which period the tolls may be reduced accordingly), shall be transmitted each  
29 month to the West Virginia Municipal Bond Commission and by it placed in a special fund which  
30 is hereby pledged to and charged with the payment of the principal of such bonds and the interest

thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved by the state, under the provisions of this article without the approval in writing of the commissioner of highways and the Governor. If there be in the funds of the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing, or improving, such bridge or bridges, the commissioner of highways is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

**§17-17-38. Municipal sale of ownership of toll bridges to private toll transportation facility; maintenance of tolls; imposition of liability for collection and payment; tax treatment and divestment.**

(a) *Sale of municipally owned toll bridge.* – Any municipality which owns and operates a toll bridge pursuant to this article may, at the sole discretion of the municipality, and upon adoption

3 of a resolution to such effect by the council of such municipality, sell and convey such toll bridge  
4 to a private toll transportation facility subject to such terms and conditions as the council of such  
5 municipality may agree.

6 (b) *Privilege to maintain tolls.* – Any private toll transportation facility purchasing a  
7 municipally-owned toll bridge located fewer than five miles from a toll-free bridge which crosses  
8 the same body of water or obstacle pursuant to subsection (a) of this section may retain, modify,  
9 and collect any such toll charges for the use thereof on persons and things passing over any such  
10 bridge as the facility may, by resolution, from time to time prescribe.

11 (c) *Electronic collection of tolls and imposition of liability for payment.* – The collection and  
12 enforcement of tolls for the use of any such bridge may be accomplished by electronic toll  
13 collection in the same manner and procedures as provided in §17-16D-1 *et seq.* of this code, and  
14 the imposition of liability for payment of such tolls shall apply as set forth specifically in §17-16D-  
15 5, §17-16D-6, §17-16D-7, and §17-16D-10 of this code: *Provided*, That the toll rates provided for  
16 in §17-17-9 of this code shall not apply to a private toll transportation facility.

17 (d) *Nonrenewal of vehicle registration.* – If an owner of a vehicle has received at least one  
18 invoice from a private toll transportation facility for any unpaid tolls and has: (1) failed to pay the  
19 unpaid tolls and administrative fees, and (2) failed to file a notice to contest liability for a toll  
20 violation as provided for in the invoice, then the private toll transportation facility may notify the  
21 Commissioner of the Division of Motor Vehicles, who shall, if no form contesting liability has been  
22 timely filed with the private toll transportation facility, refuse to register or renew the registration  
23 of any vehicle of which the person committing the violation is a registered owner or co-owner until  
24 such time as the private toll transportation facility has notified the commissioner that such fees  
25 and unpaid tolls have been paid or satisfied.

26 (e) *Tax treatment of municipally owned toll bridge sold to private toll transportation facility.*  
27 – A municipally owned toll bridge sold to a private transportation facility pursuant to this section  
28 shall be considered exempt for purposes of ad valorem property taxation under §11-1-1 *et seq.*



of this code: *Provided*, That if said exemption is in any way held to be invalid, then the value of a municipally owned toll bridge purchased by a private toll transportation facility, for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code, shall in no event be valued at more than its salvage value, which for purposes of this article is the lower of fair market salvage value or five percent of the original cost of the property.

(f) *Divestment of private toll bridge.* – Nothing in this section shall be construed to limit or prevent the subsequent sale, lease, assignment, or transfer of a municipally-owned toll bridge purchased by a private toll transportation facility, provided that all other requirements of this section are met.

(g) *Definitions.* – For purposes of this section, the term “private toll transportation facility” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity engaged in the collecting or charging of tolls on a previously municipal-owned toll bridge pursuant to this article.

## **CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATION OF TITLE, AND ANTITHEFT PROVISIONS.**

### **ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.**

#### **§17A-2A-7. Permitted disclosures.**

The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;

8 (2) For use in connection with matters of motor vehicle or driver safety and theft, motor  
9 vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor  
10 vehicle parts and dealers, motor vehicle market research activities including survey research and  
11 removal of nonowner records from the original owner records of motor vehicle manufacturers;

12 (3) For use in the normal course of business by a legitimate business or its agents,  
13 employees or contractors:

14 (A) For the purpose of verifying the accuracy of personal information submitted by the  
15 individual to the business or its agents, employees or contractors; and

16 (B) If the information as submitted is not correct or is no longer correct, to obtain the correct  
17 information, but only for the purposes of preventing fraud by, pursuing legal remedies against or  
18 recovering on a debt or security interest against the individual;

19 (4) For use in conjunction with any civil, criminal, administrative, or arbitral proceeding in  
20 any court or governmental agency or before any self-regulatory body, including investigation in  
21 anticipation of litigation, the service of process, the execution or enforcement of judgments and  
22 orders, or pursuant to an order of any court;

23 (5) For use in research and producing statistical reports, so long as the personal  
24 information is not published, redisclosed or used to contact individuals;

25 (6) For use by any insurer or insurance support organization or by a self-insured entity, its  
26 agents, employees or contractors in connection with claim investigation activities, antifraud  
27 activities, rating or underwriting;

28 (7) For use in providing notice to the owners of towed or impounded vehicles;

29 (8) For use by any licensed private investigator agency or licensed security service for any  
30 purpose permitted under this section;

31 (9) For use by an employer or its agent or insurer to obtain or verify information relating to  
32 a holder of a commercial driver's license that is required under the Commercial Motor Vehicle  
33 Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

34 (10) For use in connection with the operation of private toll transportation facilities; and

35 (11) For any other use specifically authorized by law that is related to the operation of a

36 motor vehicle or public safety.

**§17A-2A-9. Fees.**

1 Any person making a request for disclosure of personal information required or permitted  
2 under sections five through eight of this article, inclusive, shall pay to the division all reasonable  
3 fees related to providing the information: *Provided*, That all fees under this section shall be set by  
4 legislative rule pursuant to §29A-3-1 *et seq.* of this code: *Provided, however*, That nothing herein  
5 shall prohibit the division from entering into a separate fee agreement with a private toll  
6 transportation facility to facilitate permitted disclosures pursuant to §17A-2A-7 of this code.

**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; generation  
8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,  
9 whether directly or through a distributing utility; supplying water, gas, or electricity by  
10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the  
11 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision  
12 intends to provide sewer service by an innovative, alternative method, as defined by the federal

Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries; solid waste facilities; and any other public service: *Provided, however,* That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: *Provided further,* That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates, and charges of the producer and for such length of time as the commission may consider to be proper.

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

- (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;
- (2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;
- (3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;
- (4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

163 (2) "Voice-over Internet protocol service" means any service that:

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

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

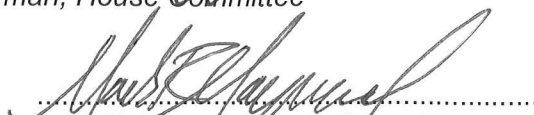
167           (3) The term “voice-over Internet protocol service” includes any service that permits users  
168 to receive calls that originate on the public-switched telephone network and to terminate calls on  
169 the public-switched telephone network.

170           (f) Notwithstanding any other provisions of this article, the commission shall not have  
171 jurisdiction to review or approve any transaction involving a telephone company otherwise subject  
172 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common  
173 ownership.

174           (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power  
175 systems are most fairly and effectively regulated by the local governing body. Therefore,  
176 notwithstanding any other provisions of this article, the commission shall not have jurisdiction over  
177 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the  
178 jurisdiction of the Public Service Commission over municipal power systems is limited to that  
179 granted specifically in this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman, House Committee

  
Chairman, Senate Committee

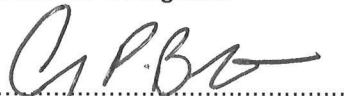
Originating in the House.

In effect from passage.

  
Clerk of the House of Delegates

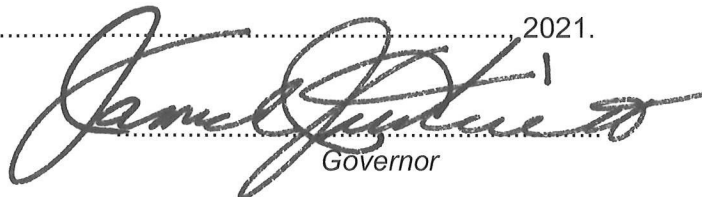
  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

FILED  
2021 APR 28 P 4: 28  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within is approved this the 28<sup>th</sup>  
day of April, 2021.

  
Governor

PRESENTED TO THE GOVERNOR

APR 14 2021

Time 4:41 p.m.