

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969



ENROLLED

Com. Sub. for
HOUSE BILL No. 649

(~~By~~ *Mr. Originating in the Committee*
on the Judiciary)



PASSED March 7, 1969

In Effect Ninety days for Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-17-69

649 #

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 649
(Originating in the Committee on the Judiciary)

[Passed March 7, 1969; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-four-b, relating to empowering the public service commission to regulate the safety aspects of certain pipeline facilities and the transportation of natural and other gas by pipeline in the state of West Virginia; and providing for compensation of the members of the public service commission of West Virginia in relation thereto, and for the payment of fees by certain pipeline companies.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter twenty-four-b, to read as follows:

CHAPTER 24B. GAS PIPELINE SAFETY.

ARTICLE 1. PURPOSE AND DEFINITIONS.

§24B-1-1. Purpose.

1 It is hereby declared to be the purpose and policy of
2 the Legislature in enacting this chapter to empower the
3 public service commission of West Virginia, in addition
4 to all other powers conferred and duties imposed upon
5 it by law, to prescribe and enforce safety standards for
6 pipeline facilities as hereinafter defined, and to regulate
7 safety practices of persons engaged in the transportation
8 of gas as hereinafter defined.

§24B-1-2. Definitions.

1 When used in this chapter:
2 (1) "Person" means any individual, firm, joint venture,
3 partnership, corporation, association, state, municipality,
4 cooperative association, or joint stock association, and
5 includes any trustee, receiver, assignee, or personal rep-
6 resentative thereof;

7 (2) "Gas" means natural gas, flammable gas, or gas
8 which is toxic or corrosive;

9 (3) "Transportation of gas" means the gathering,
10 transmission or distribution of gas by pipeline or its
11 storage;

12 (4) "Pipeline facilities" means without limitation, new
13 and existing pipe, pipe right-of-ways and any equipment,
14 facility, or building used in the transportation of gas or
15 the treatment of gas during the course of transportation;
16 but "right-of-ways" as used in this chapter does not
17 authorize the commission to prescribe the location or
18 routing of any pipeline facility;

19 (5) "Municipality" means a city, county, or any other
20 political subdivision of the state;

21 (6) "Interstate transmission facilities" means facilities
22 used in the transportation of gas which are subject to the
23 jurisdiction of the federal power commission under the
24 act of Congress known as the natural gas act;

25 (7) "Director" means the director of the gas pipeline
26 safety division of the commission;

27 (8) "Commission" means the public service commis-
28 sion of West Virginia;

29 (9) "Secretary" means the United States secretary of
30 transportation;

31 (10) "Pipeline company" means a person engaged in
32 the operation of pipeline facilities or the transportation
33 of gas subject to the provisions of this chapter; and

34 (11) "Act of 1968" means the act of Congress known
35 as the Natural Gas Pipeline Safety Act of 1968.

ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

§24B-2-1. Jurisdiction.

1 The commission shall have power and authority to
2 prescribe and enforce safety standards for pipeline facili-
3 ties, and to regulate safety practices of persons engaged
4 in the transportation of gas, to the extent permitted by
5 the "Act of 1968" and any amendments thereto. Such
6 standards may apply to the design, installation, inspection,
7 testing, construction, extension, operation, replacement
8 and maintenance of pipeline facilities. Standards affecting
9 the design, installation, construction, initial inspection
10 and initial testing shall not be applicable to pipeline
11 facilities in existence on the date such standards are
12 adopted. Whenever the commission shall find a particular

13 facility to be hazardous to life or property, it shall be
14 empowered to require the person operating such facility
15 to take such steps necessary to remove such hazards. Such
16 safety standards shall be practicable and designed to
17 meet the need for pipeline safety. In prescribing such
18 standards, the commission shall consider:

- 19 (a) Relevant available pipeline safety data;
- 20 (b) Whether such standards are appropriate for the
21 particular type of pipeline transportation;
- 22 (c) The reasonableness of any proposed standards;
- 23 and
- 24 (d) The extent to which such standards will contri-
25 bute to public safety.

§24B-2-2. Rules and regulations.

1 The commission shall prescribe such rules and regu-
2 lations as it may deem proper for the enforcement of the
3 provisions of this chapter without distinction based on the
4 interstate or intrastate character of the person, thing or
5 activity to which such rules and regulations apply.

§24B-2-3. General investigatory powers.

1 The commission shall have power to investigate all

2 methods and practices of pipeline companies; to require
3 the maintenance and filing of reports, records and other
4 information in such form and detail as the commission
5 may prescribe; to enter upon and to inspect the property,
6 buildings, plants, and offices of such pipeline companies;
7 and to inspect books, records, papers and documents
8 relevant to the enforcement of this chapter.

§24B-2-4. Cooperation with the federal government.

1 The commission shall cooperate with the secretary and
2 other agencies of the United States in the enforcement
3 of this chapter and the "Act of 1968" and amendments
4 thereto; and to this end, the commission shall take such
5 steps as may be necessary to make annual certifications
6 to the secretary under section five (a) of the "Act of
7 1968," and shall file such certificates with the secretary.
8 The commission is hereby authorized and empowered
9 (a) to act as the secretary's agent in the enforcement
10 of the "Act of 1968" and amendments thereto with re-
11 spect to interstate transmission facilities; and (b) to
12 accept for the state of West Virginia, and expend for
13 the purpose designated, any funds that may hereafter

14 be made available to the commission out of the federal
15 treasury by an act or acts of Congress and allocated to
16 this state for the purpose of carrying out the provisions
17 of this chapter and the "Act of 1968" and amendments
18 thereto.

ARTICLE 3. DUTIES OF PIPELINE COMPANIES.

§24B-3-1. General.

1 Every pipeline company shall comply with the provi-
2 sions of this chapter and of all valid regulations and
3 orders issued by the commission.

§24B-3-2. Inspection and maintenance plans.

1 Every pipeline company shall file with the commission
2 a plan for inspection and maintenance of the pipeline
3 facilities owned or operated by it, and shall subsequently
4 file any changes in such plan, in form and content as
5 the commission may prescribe.

§24B-3-3. Annual safety reports.

1 Every pipeline company shall file with the commission
2 an annual report showing: (1) Name and address of the
3 pipeline company filing the report; (2) All accidents or
4 incidents involving its pipeline facilities that occurred

5 during the preceding twelve months involving personal
6 injury requiring hospitalization, fatality, or property
7 damage exceeding one thousand dollars, together with
8 a summary of the pipeline company's investigation as
9 to the cause and circumstances surrounding such acci-
10 dent or incident; and (3) Such other information as the
11 commission may require.

§24B-3-4. Effect of chapter.

1 Nothing in this chapter shall affect the common law
2 or statutory tort liability of any person.

ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.

§24B-4-1. Hearings.

1 To carry out the purposes of this chapter, the com-
2 mission is authorized to conduct conferences, formal and
3 informal hearings, to make findings of fact and con-
4 clusions of law, and to enter orders with respect to any
5 issues that may arise under this chapter.

§24B-4-2. Burden of proof.

1 Where an issue is made of the propriety of a plan
2 submitted under section two, article three hereof, the
3 burden of proof of the propriety of such plan shall be
4 on the pipeline company submitting such plan.

§24B-4-3. Rules of practice and procedure.

1 The commission shall prescribe rules of practice and
2 procedure, the method and manner of holding hearings,
3 and for taking evidence on all matters that may come
4 before it, and enter such orders as may be just and law-
5 ful. In the investigations, preparations, and hearings of
6 cases, the commission shall not be bound by the technical
7 rules of pleadings and evidence, but in that respect it
8 may exercise such discretion as will facilitate its efforts
9 to understand and learn all the facts bearing upon the
10 right and justness of the matter before it.

§24B-4-4. Witnesses; testimony; subpoena.

1 The commission shall, either as a commission or by
2 any of its members, or by designated employees, sub-
3 poena witnesses, take testimony, administer oaths to any
4 witness in any proceeding or examination instituted be-
5 fore or conducted by it with reference to any matter
6 within its jurisdiction hereunder. In all hearings or
7 proceedings before the commission or its designated
8 employees, the evidence of witnesses and the production

9 of documentary evidence may be required at any desig-
10 nated place of hearing within the state; and in the case
11 of disobedience to a subpoena or other process, the com-
12 mission or any party to the proceedings before the com-
13 mission may invoke the aid of any circuit court in the
14 state in requiring the evidence and testimony of wit-
15 nesses and the production of papers, books, and docu-
16 ments. And such court, in case of refusal to obey this
17 subpoena issued to any person or other witness, shall
18 issue an order requiring such person or other witness
19 to appear before the commission or designated employees
20 and produce books and papers, if so ordered, and give
21 evidence touching the matter in question. Any failure
22 to obey such order of the court may be punished by such
23 court as contempt thereof. A claim that such testimonial
24 evidence may intend to incriminate the witness giving
25 the same shall not excuse any witness from testifying,
26 but such witness shall not be prosecuted for any offense
27 concerning which he is compelled hereunder to testify.

§24B-4-5. Enforcement of lawful orders.

1 The commission may compel obedience to its lawful
2 orders by mandamus or injunction or other proper pro-

3 ceedings in the name of the state in any circuit court
4 having jurisdiction of the parties or of the subject matter,
5 or the supreme court of appeals direct.

§24B-4-6. Penalties.

1 (a) Any person who violates any provision of this
2 chapter or any valid regulation or order issued there-
3 under, shall be subject to a civil penalty to be imposed
4 by the commission of not to exceed one thousand dollars
5 for each violation for each day that the violation persists:
6 *Provided*, That the maximum civil penalty shall not ex-
7 ceed two hundred thousand dollars for any related series
8 of violations.

9 (b) Any civil penalty may be compromised by the
10 commission. In determining the amount of penalty, or
11 the amount agreed upon in compromise, the appropriate-
12 ness of the penalty to the size of the business of the
13 person charged, the gravity of the violation, and the good
14 faith of the person charged in attempting to achieve
15 compliance, after notification of the violation, shall be
16 considered. The amount of the penalty, when finally
17 determined, or the amount agreed upon in compromise,

18 may be deducted from any sums owing by the state to
19 the person charged or may be recovered in a civil action
20 in the state courts.

21 (c) Civil penalties collected under this section shall
22 be paid into the state treasury and be kept in a special
23 fund established by subsection (b), section three, article
24 five hereof.

**ARTICLE 5. EMPLOYEES; COMPENSATION TO COMMISSIONERS;
FUNDING.**

§24B-5-1. Director and other employees.

1 The commission shall appoint a director of the gas
2 pipeline safety division of the public service commission,
3 and such other employees as may be necessary to carry
4 out the provisions of this chapter, and shall fix their
5 respective salaries or compensation. The commission may
6 designate such employees as it deems necessary to take
7 evidence at any hearing held or required by the pro-
8 visions of this chapter, which employees are hereby
9 empowered to administer oaths in all parts of this state
10 so far as the exercise of such power is properly incidental
11 to the performance of their duties in connection with
12 the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

1 Each member of the commission shall receive a salary
2 of one thousand dollars per annum as compensation for
3 the administration of this chapter in addition to all
4 other salary or compensation otherwise provided for by
5 law, to be paid in monthly installments from the public
6 service commission gas pipeline safety fund.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license
2 fee in addition to those now required by law. The amount
3 of such fees shall be fixed by the auditor and levied by
4 him upon each of such pipeline companies according to
5 the number of three inch equivalent pipeline miles in-
6 cluded in its pipeline facilities, and shall be apportioned
7 among such pipeline companies upon the basis of the
8 pipeline companies' reports submitted to the auditor in
9 such form as the commission may prescribe, so as to
10 produce a revenue of not more than ninety thousand
11 dollars per annum, which fees shall be paid on or before
12 the first day of July in each year: *Provided*, That the
13 expenses for the period between the effective date hereof

14 and June thirty, one thousand nine hundred sixty-nine,
15 shall be payable from the public service commission fund.

16 (b) Such sums collected under section six, article
17 four hereof and under subsection (a) of this section shall
18 be paid into the state treasury and kept as a special fund,
19 designated "public service commission gas pipeline safety
20 fund," to be appropriated as provided by law for the
21 purpose of paying the salaries of the commission, as
22 fixed by this chapter, its expenses and salaries, compen-
23 sation, costs and expenses of its employees. Any balance
24 in said fund at the end of any fiscal year shall not revert
25 to the treasury, but shall remain in said fund and may
26 be appropriated as provided in this subsection.

**ARTICLE 6. JUDICIAL REVIEW; NATURE OF COMMISSION'S
POWERS.**

§24B-6-1. Appeal from commission's action.

1 Any party feeling aggrieved by the entry of a final
2 order by the commission, affecting him or it, may present
3 a petition in writing to the supreme court of appeals,
4 or to a judge thereof in vacation, within thirty days
5 after the entry of such order, praying for the suspension
6 of such final order. The petitioner shall deliver a copy

7 of such petition to the secretary of the commission before
8 presenting the same to the court or the judge. The court
9 or judge shall fix a time for the hearing on the petition,
10 but such hearing, unless by agreement of the parties,
11 shall not be held sooner than five days after its presen-
12 tation; and notice of the time and place of such hearing
13 shall be forthwith delivered to the secretary of the com-
14 mission, so that the commission may be represented at
15 such hearing by one or more of its members or by counsel.
16 If the court or the judge after such hearing be of the
17 opinion that a suspending order should issue, the court
18 or the judge may require bond, upon such conditions
19 and in such penalty, and impose such terms and condi-
20 tions upon the petitioner, as are just and reasonable.
21 For such hearing the commission shall file with the clerk
22 of said court all papers, documents, evidence and records
23 or certified copies thereof as were before the commission
24 at the hearing or investigation resulting in the entry
25 of the order from which the petitioner appeals. The com-
26 mission shall file with the court before the day fixed
27 for the final hearing a written statement of its reasons

28 for the entry of such order, and after arguments by
29 counsel the court shall decide the matter in controversy
30 as may seem to be just and right.

§24B-6-2. Commission powers additional in nature.

1 The powers conferred and duties imposed upon the
2 commission by this chapter are in addition to, and not
3 in derogation of the powers conferred and duties imposed
4 upon the commission by chapter twenty-four and chapter
5 twenty-four-a of the code.

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

William Tompa
Chairman Senate Committee

Phillip J. Rutledge
Vice Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd Garrison
President of the Senate

Lois F. Bowersby
Speaker House of Delegates

The within *approved* this the *14th*
day of *March*, 1969.

Arch. Shaver Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date: 3/11/69
Time: 2:00 p.m.

RECEIVED

MAR 17 9 10 PM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA