

RECEIVED

MAR 29 9 12 PM '83

OFFICE OF THE GOVERNOR

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

## ENROLLED

Com. Sub. for  
HOUSE BILL No. 1398

(By Mr. Allbright)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1398**  
**(By MR. ALBRIGHT)**

---

[Passed March 12, 1983; in effect ninety days from passage.]

---

AN ACT to amend and reenact section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section twelve-a, relating to the public service commission and its powers and duties generally; defining certain acts which may not be done by public utilities without the consent of the commission; requiring commission approval to the proposed reorganization or realignment of any such utility; requiring any such utility to show certain facts where such proposed reorganization or realignment will result in reducing the authority of the commission; establishing procedures for the transfer of certain activities by a public utility from one locality to another and the duties and authority of the commission with respect thereto; prohibiting such transfers without the consent of the commission; limiting the rates to be charged the customers of such utility in locality affected by such transfer; defining certain terms used with respect thereto; establishing procedures for transferring part of a utility's operations outside this state; prohibiting such transfers without the consent of the commission; prescribing the duties and authority of the commission in such cases; and establishing certain rules with respect to rates or tariffs to be charged customers in such cases.

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

That section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-12. What acts may not be done without consent of commission; consent in advance or exemption of transactions; when sale, etc., of franchises, mergers, etc., void.**

1 (a) Unless the consent and approval of the public service  
2 commission of West Virginia is first obtained: (1) No  
3 public utility subject to the provisions of this chapter, ex-  
4 cept railroads other than street railroads, may enter into  
5 any contract with any other utility to operate any line or  
6 plant of any other utility subject thereto, nor which will  
7 enable such public utility to operate their lines or plants  
8 in connection with each other, but this shall not be  
9 construed to prevent physical connections between utilities  
10 supplying the same service or commodity, for temporary  
11 purposes only, upon condition, however, that prompt notice  
12 thereof be given to the commission for such action, if any,  
13 as it may deem necessary, and thereafter the commission may  
14 require such connection to be removed or discontinued; (2)  
15 no public utility subject to the provisions of this chapter,  
16 except railroads other than street railroads, may purchase,  
17 lease, or in any other manner acquire control, direct or  
18 indirect, over the franchises, licenses, permits, plants, equip-  
19 ment, business or other property of any other utility;  
20 (3) no public utility subject to the provisions of this  
21 chapter, except railroads other than street railroads, may  
22 assign, transfer, lease, sell or otherwise dispose of its  
23 franchises, licenses, permits, plants, equipment, business  
24 or other property or any part thereof; but this shall not  
25 be construed to prevent the sale, lease, assignment or trans-  
26 fer by any public utility of any tangible personal property

27 which is not necessary or useful, nor will become necessary  
 28 or useful in the future, in the performance of its duties to  
 29 the public; (4) no public utility subject to the provisions  
 30 of this chapter, except railroads other than street rail-  
 31 roads, may, by any means, direct or indirect merge or  
 32 consolidate its franchises, licenses, permits, plants, equip-  
 33 ment, business or other property with that of any other  
 34 public utility; (5) no public utility subject to the pro-  
 35 visions of this chapter, except railroads other than street  
 36 railroads, may purchase, acquire, take or receive any  
 37 stock, stock certificates, bonds, notes or other evidence  
 38 of indebtedness of any other public utility; (6) no public  
 39 utility subject to the provisions of this chapter, except  
 40 railroads other than street railroads, may, by any means,  
 41 direct or indirect, enter into any contract or arrangement  
 42 for management, construction, engineering, supply or  
 43 financial services or for the furnishing of any other  
 44 service, property or thing, with any affiliated corporation,  
 45 person or interest.

46 The commission may grant its consent in advance or  
 47 exempt from the requirements of this subsection all assign-  
 48 ments, transfers, leases, sales or other disposition of the whole  
 49 or any part of the franchises, licenses, permits, plants, equip-  
 50 ment, business or other property of any public utility, or  
 51 any merger or consolidation thereof and every contract,  
 52 purchase of stocks, arrangement or other transaction re-  
 53 ferred to in this section, upon proper showing that the terms  
 54 and conditions thereof are reasonable and that neither party  
 55 thereto is given an undue advantage over the other and do  
 56 not adversely affect the public in this state.

57 (b) In any case in which a utility applies for consent  
 58 and approval to realign or reorganize and whether or not  
 59 such realignment or reorganization will result, directly or in-  
 60 directly, in a limitation or loss of jurisdiction by the com-  
 61 mission over the utility, or any part thereof, the utility must  
 62 show that such realignment or reorganization will be in the  
 63 best interests of, and economically advantageous to, the con-  
 64 sumers of the utility.

65 (c) Whenever a public utility proposes to transfer an ac-

OK  
 EN.

66 tivity or function from one locality to another or to discontinue  
67 in a locality any such activity or function which is to be  
68 continued to be performed by such utility in another locality,  
69 such public utility shall give notice to the commission of its  
70 intention to effect such transfer or discontinuance: *Provided*,  
71 That this subsection shall not be construed to apply to the  
72 mere transfer of one or more employees to another locality if  
73 such transfer does not result in the discontinuance of an ac-  
74 tivity or function to be performed by other employees situate  
75 in such locality nor to the mere relocation of a physical fa-  
76 cility to a different locality if such transfer does not result  
77 in the discontinuance of employment of any person employed  
78 in the locality by the public utility. The commission shall  
79 fix a date and time for a public hearing into the desir-  
80 ability, necessity and propriety of and benefit to the pub-  
81 lic, if any, which would result from such proposed transfer  
82 or discontinuance. The commission shall cause to be published  
83 a notice of the date, time, place and general purpose of the  
84 hearing. Such hearing shall be held at least sixty days in  
85 advance of any such transfer or discontinuance, in whole  
86 or in part, and the notice thereof shall be by Class II legal  
87 advertisement, the publication area being each county, or part  
88 thereof to be effected by such transfer or discontinuance. The  
89 first of such advertisements shall not be published earlier than  
90 three weeks in advance of such hearing.

91 The commission shall not approve the transfer or discontin-  
92 uance unless the public utility clearly establishes and proves:  
93 (1) that there will be no decrease in the quality or availability  
94 in the service available to the customers of the utility in  
95 the locality from which the activity or function is proposed to  
96 be transferred or discontinued or, if there be any such decrease  
97 in the quality or availability of service, that such decrease  
98 is justified by a reduction of costs to the customers of the util-  
99 ity, and (2) that there will be a decrease in costs to the custo-  
100 mers of the utility served by the activity or function which is to  
101 be transferred or discontinued at least equal to the full cost  
102 to the utility of such transfer or discontinuance and all changes  
103 in operating costs, including, but not limited to, any indirect  
104 and/or intracompany or in-house costs of providing the same  
105 or similar service or services from another area or locality to

OK  
DIX  
EN

5 /

106 the locality from which the activity or function is to be trans-  
 107 ferred or discontinued.

108 If the commission approves the requested transfer or dis-  
 109 continuance of activity or function in or from a locality, in  
 110 whole or in part, it shall do so by order, and, in such order the  
 111 commission shall order a reduction in tariffs to customers of the  
 112 utility served by the activity or function transferred or dis-  
 113 continued and such other customers of the utility which the  
 114 commission deems it proper to include in order to avoid dis-  
 115 crimination, in an amount at least equal the amount of  
 116 savings or reduction in costs to be realized as a result of  
 117 the approved transfer or discontinuance. Thereafter the  
 118 commission shall carefully review all applications for rate  
 119 increases submitted by such utility so as to assure that any  
 120 and all projected savings or reductions in costs and the re-  
 121 sulting reduction in tariffs attendant to the transfer or dis-  
 122 continuance of any activity or function shall not be later  
 123 added to or avoided in any such future applications for rate  
 124 increases.

125 Unless the context in which used requires a different  
 126 meaning in this subsection, the term "locality" shall mean  
 127 an entire conterminous and contiguous area which is the  
 128 subject of or affected by the transfer or discontinuance by a  
 129 public utility of specific activities or functions which activities  
 130 or functions are to be provided, in whole or in part, to the  
 131 customers of such utility from another and wholly separate  
 132 area. The terms "activity or function" as used in this section  
 133 shall not include electric substations, electric or telephone  
 134 distribution and transmission lines, and pole, wires, towers and  
 135 like material or equipment forming an integral physical part  
 136 of such substations and lines.

137 (d) The commission shall prescribe such rules and regula-  
 138 tions as, in its opinion, are necessary for the reasonable  
 139 enforcement and administration of this section, including  
 140 the procedure to be followed, the notice to be given of any  
 141 hearing hereunder, if it deems a hearing necessary, and after  
 142 such hearing or in case no hearing is required, the commission  
 143 shall, if the public will be inconvenienced thereby, enter such or-  
 144 der as it may deem proper and as the circumstances may re-

OK  
 132  
 EX

145 quire, attaching thereto such conditions as it may deem proper,  
146 consent to the entering into or doing of the things herein pro-  
147 vided, without approving the terms and conditions thereof, and  
148 thereupon it shall be lawful to do the things provided for in  
149 such order.

150 Every assignment, transfer, lease, sale or other disposition of  
151 the whole or any part of the franchises, licenses, permits, plant,  
152 equipment, business or other property of any public utility, or  
153 any merger or consolidation thereof and every contract, pur-  
154 chase of stock, arrangement or other transaction referred to in  
155 this section made otherwise than as hereinbefore provided shall  
156 be void to the extent that the interests of the public in this  
157 state are adversely affected, but this shall not be construed to  
158 relieve any utility from any duty required by this section.

159 Whenever the commission grants its consent and approval  
160 under the provisions of this section the utility to which such  
161 consent and approval is granted may rely thereon and the  
162 transaction or contract to which the commission has granted  
163 its consent or approval shall not subsequently be abrogated  
164 by the commission.

**§24-2-12a. Transfer of operations from this state to another state;  
restrictions; authority and duty of commission.**

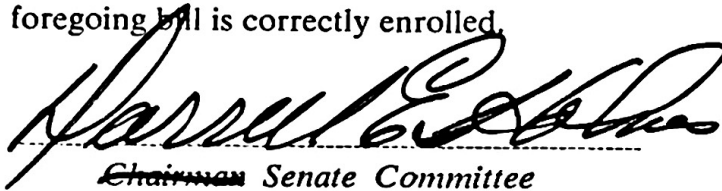
1 Unless the consent and approval of the public service com-  
2 mission is first obtained, no public utility in this state shall  
3 transfer or move any part of its operations in this state  
4 outside this state or move or transfer any of its operations,  
5 activities or functions from this state to any affiliated,  
6 related, parent or subsidiary company or utility or to any  
7 other company or entity, of whatsoever nature or kind,  
8 whether affiliated or related or otherwise, outside this state  
9 irrespective of whether such move or transfer will result,  
10 directly or indirectly, in a limitation, reduction or loss of juris-  
11 diction over the utility or over any such operation, activity  
12 or function: *Provided*, That the commission may combine pro-  
13 ceedings required in this section with any other proceeding  
14 required by law. The commission shall not approve any such  
15 move or transfer, in whole or in part, unless the public utility  
16 clearly establishes and proves (i) that the proposed move or

17 transfer is necessary to the orderly and economical operations  
18 of the utility and that the operation, activity or function  
19 proposed to be moved or transferred can be done at substan-  
20 tially less costs in the area outside this state to which the move  
21 or transfer is to be effected and (ii) that there will be no  
22 decrease in the quality or availability in the service available  
23 to the customers of the utility in this state.

24 If the commission approves the requested move or transfer  
25 from this state, in whole or in part, it shall do so by order,  
26 and, in such order the commission shall order a reduction in  
27 tariffs to customers of such utility in this state in an amount  
28 at least equal the purported amount of savings or reduction  
29 in costs to be realized as a result of the approved move or  
30 transfer. Thereafter the commission shall carefully review all  
31 applications for rate increases submitted by such utility so  
32 as to assure that any and all purported savings or reductions  
33 in costs and the resulting reduction in tariffs attendant to the  
34 approved move or transfer shall not be later added to or in-  
35 cluded in any such future applications for rate increases. The  
36 commission shall further require that it retain its full regulatory  
37 authority over the operation, activity or function to be moved  
38 or transferred to the same extent as if such move or transfer  
39 were not consummated or completed.



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

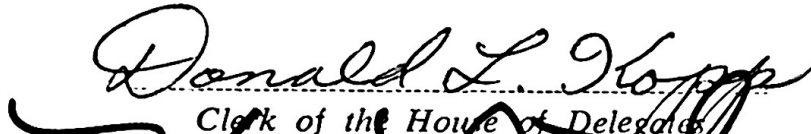
  
Chairman Senate Committee

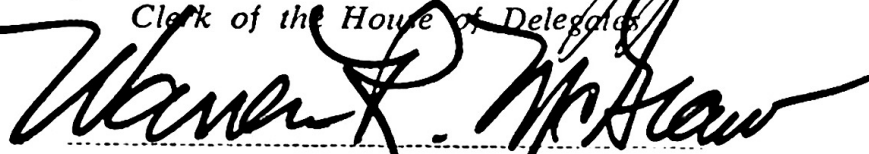
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is disapproved this the 29  
day of March, 1983.

  
Governor



RECEIVED

83 MAR 30 P 4: 56

OFFICE  
SECY. OF STATE