

1970: 1461

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1461

(By MR. Delegate Albright)

— ● —

Passed March 9, 1984

In Effect From Passage



ENROLLED  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 1461**

(By DELEGATE ALBRIGHT)

[Passed March 9, 1984; in effect 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 by adding thereto a new section, designated section twelve-a, relating to the powers and duties of the public service commission generally; prohibiting certain acts by public utilities without prior consent of such commission; the power and duty of the commission to review the transfer of control of a public utility; and requiring prior approval of the issuance of stock by a public utility; and providing certain exceptions thereto.

*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 be further amended by adding thereto a new section, designated section twelve-a, 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 of exemption of transactions; when sale, etc., of franchises, mergers, etc., void.**

1 Unless the consent and approval of the public service com-

2 mission of West Virginia is first obtained: (a) No public  
3 utility subject to the provisions of this chapter, except rail-  
4 roads other than street railroads, may enter into any con-  
5 tract with any other utility to operate any line or plant of  
6 any other utility subject thereto, nor which will enable such  
7 public utility to operate their lines or plants in connection  
8 with each other, but this shall not be construed to prevent  
9 physical connections between utilities supplying the same  
10 service or commodity, for temporary purposes only, upon  
11 condition, however, that prompt notice thereof be given to  
12 the commission for such action, if any, as it may deem  
13 necessary, and thereafter the commission may require such  
14 connection to be removed or discontinued; (b) no public  
15 utility subject to the provisions of this chapter, except rail-  
16 roads other than street railroads, may purchase, lease, or  
17 in any other manner acquire control, direct or indirect, over  
18 the franchises, licenses, permits, plants, equipment, business  
19 or other property of any other utility; (c) no public utility  
20 subject to the provisions of this chapter, except railroads  
21 other than street railroads, may assign, transfer, lease, sell,  
22 or otherwise dispose of its franchises, licenses, permits, plants,  
23 equipment, business or other property or any part thereof;  
24 but this shall not be construed to prevent the sale, lease,  
25 assignment or transfer by any public utility of any tangible  
26 personal property which is not necessary or useful, nor will  
27 become necessary or useful in the future, in the performance  
28 of its duties to the public; (d) no public utility subject to the  
29 provisions of this chapter, except railroads other than street  
30 railroads, may, by any means, direct or indirect, merge or con-  
31 solidate its franchises, licenses, permits, plants, equipment,  
32 business or other property with that of any other public  
33 utility; (e) no public utility subject to the provisions of this  
34 chapter, except railroads other than street railroads, may  
35 purchase, acquire, take or receive any stock, stock certificates,  
36 bonds, notes or other evidence of indebtedness of any other  
37 public utility; (f) no public utility subject to the provisions  
38 of this chapter, except railroads other than street railroads,  
39 may, by any means, direct or indirect, enter into any contract  
40 or arrangement for management, construction, engineering,  
41 supply or financial services or for the furnishing of any other

42 service, property or thing, with any affiliated corporation,  
43 person or interest; (g) no person or corporation, whether or  
44 not organized under the laws of this state, may acquire either  
45 directly or indirectly a majority of the common stock of  
46 any public utility organized and doing business in this state.

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

59 The commission shall prescribe such rules and regulations  
60 as, in its opinion, are necessary for the reasonable enforce-  
61 ment and administration of this section, including the pro-  
62 cedure to be followed, the notice to be given of any hearing  
63 hereunder, if it deems a hearing necessary, and after such  
64 hearing or in case no hearing is required, the commission  
65 shall, if the public will be inconvenienced thereby, enter such  
66 order as it may deem proper and as the circumstances may  
67 require, attaching thereto such conditions as it may deem  
68 proper, consent to the entering into or doing of the things  
69 herein provided, without approving the terms and conditions  
70 thereof, and thereupon it shall be lawful to do the things  
71 provided for in such order.

72 Every assignment, transfer, lease, sale or other disposition  
73 of the whole or any part of the franchises, licenses, permits,  
74 plant, equipment, business or other property of any public  
75 utility, or any merger or consolidation thereof and every  
76 contract, purchase of stock, arrangement, transfer or ac-  
77 quisition of control or other transaction referred to in this  
78 section made otherwise than as hereinbefore provided shall  
79 be void to the extent that the interests of the public in this

80 state are adversely affected, but this shall not be construed  
81 to relieve any utility from any duty required by this section.

**§24-2-12a. Issuance of stock; requirement of applying to commission for orders authorizing issuance; hearing and investigation on application; order; when issuance is void.**

1 The power of public utilities to issue stocks and stock certi-  
2 ficates or other evidence of interest or ownership is a special  
3 privilege, the right of supervision, regulation, restriction and  
4 control of which is vested in the state, and such power shall  
5 be exercised as provided by law under such rules and regula-  
6 tions as the commission may prescribe.

7 No public utility may issue stocks and stock certificates, or  
8 other evidence of interest or ownership unless, in addition to  
9 the other requirements of law, it shall first have secured from  
10 the commission an order authorizing the issue, stating the  
11 amount thereof and the purposes to which the issue or the  
12 proceeds thereof are to be applied, and that, in the opinion  
13 of the commission, the issue is reasonably required for the  
14 purposes specified in the order: *Provided*, That the issuance  
15 of stocks and stock certificates or other evidence of interest  
16 or ownership by a corporation which devotes one or more of  
17 its divisions to the provision of a public service shall be  
18 exempted from the requirements hereof when the gross reve-  
19 nues generated by all such divisions represent less than  
20 twenty-five percent of the gross revenues generated by the  
21 corporation.

22 Preferred stock which has no voting rights for the election  
23 of directors or which has such voting rights only upon the  
24 failure of the corporation to meet its obligation to pay divi-  
25 dends on such stock and, in either case, which preferred stock  
26 is not capable of conversion into common equity shall not  
27 be subject to the provision of this section.

28 To enable the commission to determine whether it will  
29 issue such order, the commission may hold a hearing and may  
30 make such additional inquiry or investigation, examine such  
31 witnesses, books, papers, documents and contracts and re-

32 quire the filing of such data as it deems of assistance. The  
33 commission may by its order grant permission for the issue  
34 of such stocks or stock certificates or other evidence of inter-  
35 est or ownership in the amount applied for, or in a lesser  
36 amount, or refuse such permission, or grant it subject to such  
37 conditions as it deems reasonable and necessary. All stock  
38 and every stock certificate or other evidence of interest or  
39 ownership of a public utility issued without an order of the  
40 commission authorizing the issue thereof or not conforming in  
41 its provisions to any of the provisions which it is required by  
42 the order of authorization to contain is void.

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

*James L. Davis*  
-----  
Chairman Senate Committee

*Ronald Anello*  
-----  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Judd C. Mullen*  
-----  
Clerk of the Senate

*Donald L. Stoff*  
-----  
Clerk of the House of Delegates

*Walter R. McBrat*  
-----  
President of the Senate

*Walter M. See, Jr.*  
-----  
Speaker House of Delegates

The within *is approved* this the *30*  
day of *March*, 1984.

*John D. Steel*  
-----  
Governor

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