WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

---

ENROLLED
Com. Sub. for
HOUSE BILL No. 1461

(By 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-
mission of West Virginia is first obtained: (a) No public
utility subject to the provisions of this chapter, except rail-
roads other than street railroads, may enter into any con-
tract with any other utility to operate any line or plant of
any other utility subject thereto, nor which will enable such
public utility to operate their lines or plants in connection
with each other, but this shall not be construed to prevent
physical connections between utilities supplying the same
service or commodity, for temporary purposes only, upon
condition, however, that prompt notice thereof be given to
the commission for such action, if any, as it may deem
necessary, and thereafter the commission may require such
connection to be removed or discontinued; (b) no public
utility subject to the provisions of this chapter, except rail-
roads other than street railroads, may purchase, lease, or
in any other manner acquire control, direct or indirect, over
the franchises, licenses, permits, plants, equipment, business
or other property of any other utility; (c) no public utility
subject to the provisions of this chapter, except railroads
other than street railroads, may assign, transfer, lease, sell,
or otherwise dispose of its franchises, licenses, permits, plants,
equipment, business or other property or any part thereof;
but this shall not be construed to prevent the sale, lease,
assignment or transfer by any public utility of any tangible
personal property which is not necessary or useful, nor will
become necessary or useful in the future, in the performance
of its duties to the public; (d) no public utility subject to the
provisions of this chapter, except railroads other than street
railroads, may, by any means, direct or indirect, merge or con-
solidate its franchises, licenses, permits, plants, equipment,
business or other property with that of any other public
utility; (e) no public utility subject to the provisions of this
chapter, except railroads other than street railroads, may
purchase, acquire, take or receive any stock, stock certificates,
bonds, notes or other evidence of indebtedness of any other
public utility; (f) no public utility subject to the provisions
of this chapter, except railroads other than street railroads,
may, by any means, direct or indirect, enter into any contract
or arrangement for management, construction, engineering,
supply or financial services or for the furnishing of any other
service, property or thing, with any affiliated corporation, person or interest; (g) no person or corporation, whether or not organized under the laws of this state, may acquire either directly or indirectly a majority of the common stock of any public utility organized and doing business in this state.

The commission may grant its consent in advance or exempt from the requirements of this section all assignments, transfers, leases, sales or other disposition of the whole or any part of the franchises, licenses, permits, plants, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stocks, arrangement, transfer or acquisition of control, or other transaction referred to in this section, upon proper showing that the terms and conditions thereof are reasonable and that neither party thereto is given an undue advantage over the other, and do not adversely affect the public in this state.

The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be conveined thereby, enter such order as it may deem proper and as the circumstances may require, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein provided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, purchase of stock, arrangement, transfer or acquisition of control or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this
§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.

The power of public utilities to issue stocks and stock certificates or other evidence of interest or ownership is a special privilege, the right of supervision, regulation, restriction and control of which is vested in the state, and such power shall be exercised as provided by law under such rules and regulations as the commission may prescribe.

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

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

To enable the commission to determine whether it will issue such order, the commission may hold a hearing and may make such additional inquiry or investigation, examine such witnesses, books, papers, documents and contracts and re-
quire the filing of such data as it deems of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates or other evidence of interest or ownership in the amount applied for, or in a lesser amount, or refuse such permission, or grant it subject to such conditions as it deems reasonable and necessary. All stock and every stock certificate or other evidence of interest or ownership of a public utility issued without an order of the commission authorizing the issue thereof or not conforming in its provisions to any of the provisions which it is required by 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

Donald Arello
Chairman House Committee

Originating in the House.

Takes effect from passage.

Jason C. McKeel
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Walter H. McBride
President of the Senate

Jim H. Slaw Jr.
Speaker House of Delegates

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

John Dwyer
Governor