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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3280

(By Delegates Staton, Browning, Pino, Varner,
Ennis, Yost and DeLong)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 3280

(BY DELEGATES STATON, BROWNING, PINO, VARNER,
ENNIS, YOST AND DELONG)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-11 of said code, all relating to modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; removing the necessity for public service districts to prefile with the public service commission; providing for a waiver of thirty day notice requirement for projects approved by the Infrastructure and Jobs Development Council; providing that the public service commission render a final decision on infrastructure and jobs development council approved applications; providing that infrastructure and jobs development council approved projects receiving a certificate of public convenience may not be compelled to reopen; and allowing electric power projects to apply for and receive certain licenses and permits.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, a public service district may not borrow money,
3 enter into contracts for the provision of engineering, design or
4 feasibility studies, issue or contract to issue revenue bonds or
5 exercise any of the powers conferred by the provisions of
6 section thirteen, twenty or twenty-four of this article, without
7 the prior consent and approval of the Public Service Commis-
8 sion.

9 (b) The Public Service Commission may waive the provi-
10 sion of prior consent and approval for entering into contracts for
11 engineering, design or feasibility studies pursuant to this section
12 for good cause shown which is evidenced by the public service
13 district filing a request for waiver of this section stated in a
14 letter directed to the commission with a brief description of the
15 project, a verified statement by the board members that the
16 public service district has complied with chapter five-g of this
17 code, and further explanation of ability to evaluate their own
18 engineering contract, including, but not limited to:

19 (1) Experience with the same engineering firm; or

20 (2) completion of a construction project requiring engineer-
21 ing services. The district shall also forward an executed copy of
22 the engineering contract to the commission after receiving
23 approval of the waiver.

24 (c) An engineering contract that meets one or more of the
25 following criteria is exempt from the waiver or approval
26 requirements:

27 (1) A contract with a public service district that is a Class
28 A utility on the first day of April, two thousand three, or
29 subsequently becomes a Class A utility as defined by commis-
30 sion rule;

31 (2) A contract with a public service district that does not
32 require borrowing and that can be paid out of existing rates;

33 (3) A contract where the payment of engineering fees are
34 contingent upon the receipt of funding, and commission
35 approval of the funding, to construct the project which is the
36 subject of the contract; or

37 (4) A contract that does not exceed fifteen thousand dollars.

38 (d) Requests for approval or waivers of engineering
39 contracts shall be deemed granted thirty days after the filing
40 date unless the staff of the Public Service Commission or a
41 party files an objection to the request. If an objection is filed,
42 the Public Service Commission shall issue its decision within
43 one hundred twenty days of the filing date. In the event
44 objection is received to a request for a waiver, the application
45 shall be considered a request for waiver as well as a request for
46 approval in the event a waiver is not appropriate.

47 (e) Unless the properties to be constructed or acquired
48 represent ordinary extensions or repairs of existing systems in
49 the usual course of business, a public service district must first
50 obtain a certificate of public convenience and necessity from
51 the Public Service Commission in accordance with the provi-
52 sions of chapter twenty-four of this code, when a public service
53 district is seeking to acquire or construct public service prop-
54 erty.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 (a) No public utility, person or corporation shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor obtain
5 any franchise, license or permit from any municipality or other
6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit.

11 (b) Upon the filing of any application for such certificate,
12 and after hearing, the commission may, in its discretion, issue
13 or refuse to issue, or issue in part and refuse in part, such
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if no protest is
16 received within thirty days after the notice is given, may waive
17 formal hearing on the application. Notice shall be given by
18 publication which shall state that a formal hearing may be
19 waived in the absence of protest, made within thirty days, to the
20 application. The notice shall be published as a Class I legal
21 advertisement in compliance with the provisions of article
22 three, chapter fifty-nine of this code. The publication area shall
23 be the proposed area of operation.

24 (c) Any public utility, person or corporation subject to the
25 provisions of this section shall give the commission at least
26 thirty days' notice of the filing of any such application for a
27 certificate of public convenience and necessity under this
28 section: *Provided*, That the commission may modify or waive

29 the thirty-day notice requirement and shall waive the thirty day
30 notice requirement for projects approved by the infrastructure
31 and jobs development council.

32 (d) The commission shall render its final decision on any
33 application filed under the provisions of this section or section
34 eleven-a of this article within two hundred seventy days of the
35 filing of the application and within ninety days after final
36 submission of any such application for decision following a
37 hearing:

38 (e) The commission shall render its final decision on any
39 application filed under the provisions of this section that has
40 received the approval of the Infrastructure and Jobs Develop-
41 ment Council pursuant to article fifteen-A of chapter thirty-one
42 of this code, within one hundred-eighty days after filing of the
43 application: *Provided*, That if a protest is received within thirty
44 days after the notice is provided pursuant to subsection (b), the
45 commission shall render its final decision within two hundred
46 seventy days of the filing of the application.

47 (f) If the projected total cost of a project which is the
48 subject of an application filed pursuant to this section or section
49 eleven-a of this article is greater than fifty million dollars, the
50 commission shall render its final decision on any such applica-
51 tion filed under the provisions of this section or section eleven-
52 a of this article within four hundred days of the filing of the
53 application and within ninety days after final submission of any
54 such application for decision after a hearing.

55 (g) If a decision is not rendered within the aforementioned
56 one hundred eighty-days, two hundred seventy days, four
57 hundred days or ninety days, the commission shall issue a
58 certificate of convenience and necessity as applied for in the
59 application.

60 (h) The commission shall prescribe such rules as it may
61 deem proper for the enforcement of the provisions of this
62 section; and, in establishing that public convenience and
63 necessity do exist, the burden of proof shall be upon the
64 applicant.

65 (i) Pursuant to the requirements of this section the commis-
66 sion may issue a certificate of public convenience and necessity
67 to any intrastate pipeline, interstate pipeline, or local distribu-
68 tion company for the transportation in intrastate commerce of
69 natural gas used by any person for one or more uses, as defined,
70 by rule, by the commission in the case of

71 (1) Natural gas sold by a producer, pipeline or other seller
72 to such person; or

73 (2) Natural gas produced by such person.

74 (j) A public utility which has received a certificate of public
75 convenience and necessity from the commission and has been
76 approved by the infrastructure and jobs development council,
77 is not required to, and cannot be compelled to, reopen the
78 proceeding if the cost of the project changes but the change
79 does not effect the rates established for the project.

80 (k) Any public utility, person or corporation proposing any
81 electric power project that requires a certificate under this
82 section is not required to obtain such certificate before applying
83 for or obtaining any franchise, license or permit from any
84 municipality or other governmental agency.

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

Chandy White
Chairman Senate Committee

D. Luke Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Holmes
Clerk of the Senate

Bryce M. Boy
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 4th
day of May, 2005

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:05 AM