

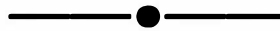
HB 2863
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2863**

(By Delegates Manchin, Perdue, Schadler, White, Caputo, Morgan,
M. Poling, Webster, Boggs and Fragale)



Passed April 10, 2009

In Effect from Passage

ENROLLED

FILED

COMMITTEE SUBSTITUTE

2009 APR 30 PM 4:48

FOR

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

H. B. 2863

**(BY DELEGATES MANCHIN, PERDUE, SCHADLER,
WHITE, CAPUTO, MORGAN, M. POLING,
WEBSTER, BOGGS AND FRAGALE)**

[Passed April 10, 2009; in effect from passage.]

AN ACT to amend and reenact §5G-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §22C-1-5 of said code; to amend and reenact §24-2-11 of said code; to amend and reenact §31-15A-3 and §31-15A-6 of said code, all relating to construction of state utility projects; putting limitations on engineering design and construction inspection fees for state and state subdivision sponsored utility construction; requiring all Water Development Authority sponsored utility projects to get authorization prior to removal of proposed customers of a project; requiring the governmental agency administering the utility project to perform an annual maintenance audit of the utility; altering the number of customers or proposed customers protesting requiring a formal hearing; reducing time periods for the Public Service Commission to review and approve certain applications by public utilities for certificate of public convenience and necessity; and providing for additional members of the West Virginia Infrastructure and Jobs Development Council.

Be it enacted by the Legislature of West Virginia:

That §5G-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22C-1-5 of said code be amended and reenacted; that §24-2-11 of said code be amended and reenacted; and that §31-15A-3 and §31-15A-6 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5G. PROCUREMENT OF
ARCHITECT-ENGINEERS SERVICES BY STATE AND
ITS SUBDIVISIONS.**

**ARTICLE 1. PROCUREMENT OF
ARCHITECT-ENGINEER
SERVICES.**

**§5G-1-3. Contracts for architectural and engineering services;
selection process where total project costs are
estimated to cost \$250,000 or more.**

1 In the procurement of architectural and engineering
2 services for projects estimated to cost \$250,000 or more, the
3 director of purchasing shall encourage firms engaged in the
4 lawful practice of the profession to submit an expression of
5 interest, which shall include a statement of qualifications and
6 performance data, and may include anticipated concepts and
7 proposed methods of approach to the project. All jobs shall
8 be announced by public notice published as a Class II legal
9 advertisement in compliance with the provisions of article
10 three, chapter fifty-nine of this code. A committee of three to
11 five representatives of the agency initiating the request shall
12 evaluate the statements of qualifications and performance
13 data and other material submitted by interested firms and
14 select three firms which, in their opinion, are best qualified
15 to perform the desired service: *Provided*, That on projects
16 funded wholly or in part by school building authority

17 moneys, in accordance with sections fifteen and sixteen,
18 article nine-d, chapter eighteen of this code, two of said three
19 firms shall have had offices within this state for a period of
20 at least one year prior to submitting an expression of interest
21 regarding a project funded by school building authority
22 moneys. Interviews with each firm selected shall be
23 conducted and the committee shall conduct discussions
24 regarding anticipated concepts and proposed methods of
25 approach to the assignment. The committee shall then rank,
26 in order of preference, no less than three professional firms
27 deemed to be the most highly qualified to provide the
28 services required, and shall commence scope of service and
29 price negotiations with the highest qualified professional firm
30 for architectural or engineering services or both. Should the
31 agency be unable to negotiate a satisfactory contract with the
32 professional firm considered to be the most qualified, at a fee
33 determined to be fair and reasonable, price negotiations with
34 the firm of second choice shall commence. Failing accord
35 with the second most qualified professional firm, the
36 committee shall undertake price negotiations with the third
37 most qualified professional firm. Should the agency be
38 unable to negotiate a satisfactory contract with any of the
39 selected professional firms, it shall select additional
40 professional firms in order of their competence and
41 qualifications and it shall continue negotiations in accordance
42 with this section until an agreement is reached: *Provided,*
43 *however,* That county boards of education may either elect to
44 start the selection process over in the original order of
45 preference or it may select additional professional firms in
46 order of their competence and qualifications and it shall
47 continue negotiations in accordance with this section until an
48 agreement is reached: *and Provided further,* That for any
49 water or wastewater construction project the engineering
50 design and construction inspection costs may not exceed the
51 amount calculated pursuant to the compensation curves for
52 consulting engineering services based upon project

53 construction costs published by the American Society of
54 Civil Engineers manual of practice, unless granted a variance
55 by the Infrastructure and Jobs Development Council
56 established pursuant to article fifteen-a, chapter thirty-one of
57 this code.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

**§22C-1-5. Authority may construct, finance, maintain, etc.,
water development projects; loans to
governmental agencies are subject to terms of
loan agreements.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this article,
3 the water development authority may initiate, acquire,
4 construct, maintain, repair and operate water development
5 projects or cause the same to be operated pursuant to a lease,
6 sublease or agreement with any person or governmental
7 agency; may make loans and grants to governmental agencies
8 for the acquisition or construction of water development
9 projects by governmental agencies, which loans may include
10 amounts to refinance debt issued for existing water
11 development projects of the governmental agency when the
12 refinancing is in conjunction with the financing for a new
13 water development project regardless of the source of the
14 financing for the new project: *Provided*, That the amount of
15 the refinancing may not exceed 50% of the aggregate amount
16 of the refinancing of an existing project and the financing of
17 a new project; and may issue water development revenue
18 bonds of this state, payable solely from revenues, to pay the
19 cost of projects, or finance projects, in whole or in part, by

20 loans to governmental agencies. A water development
21 project may not be undertaken unless it has been determined
22 by the authority to be consistent with any applicable
23 comprehensive plan of water management approved by the
24 Secretary of the Department of Environmental Protection or
25 in the process of preparation by the secretary and to be
26 consistent with the standards set by the state environmental
27 quality board, for the waters of the state affected thereby.
28 Any resolution of the authority providing for acquiring or
29 constructing projects or for making a loan or grant for
30 projects shall include a finding by the authority that the
31 determinations have been made. A loan agreement shall be
32 entered into between the authority and each governmental
33 agency to which a loan is made for the acquisition or
34 construction of a water development project, which loan
35 agreement shall include, without limitation, the following
36 provisions:

37 (1) The cost of the project, the amount of the loan, the
38 terms of repayment of the loan and the security therefor,
39 which may include, in addition to the pledge of all revenues
40 from the project after a reasonable allowance for operation
41 and maintenance expenses, a deed of trust or other
42 appropriate security instrument creating a lien on the project;

43 (2) The specific purposes for which the proceeds of the
44 loan shall be expended including the refinancing of existing
45 water development project debt as provided above, the
46 procedures as to the disbursement of loan proceeds and the
47 duties and obligations imposed upon the governmental
48 agency in regard to the construction or acquisition of the
49 project, including engineering fees and other administrative
50 costs relating to development of the project;

51 (3) The agreement of the governmental agency to impose,
52 collect, and, if required to repay the obligations of the

53 governmental agency under the loan agreement, increase
54 service charges from persons using the project, which service
55 charges shall be pledged for the repayment of the loan
56 together with all interest, fees and charges thereon and all
57 other financial obligations of the governmental agency under
58 the loan agreement;

59 (4) The agreement of the governmental agency to
60 comply with all applicable laws, rules and regulations issued
61 by the authority or other state, federal and local bodies in
62 regard to the construction, operation, maintenance and use of
63 the project;

64 (5) The number of proposed customers and their physical
65 locations within the project, and providing as a condition of
66 the agreement, that no proposed customers listed in the
67 project application agreement may be removed from
68 inclusion in the project without prior authorization of the
69 board; and

70 (6) The agreement of the governmental agency to
71 perform an annual maintenance audit which maintenance
72 audit shall be submitted to the board and the Public Service
73 Commission of West Virginia.

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) A public utility, person or corporation may not begin
2 the construction of any plant, equipment, property or facility
3 for furnishing to the public any of the services enumerated in

4 section one, article two of this chapter, nor apply for, nor
5 obtain any franchise, license or permit from any municipality
6 or other governmental agency, except ordinary extensions of
7 existing systems in the usual course of business, unless and
8 until it shall obtain from the Public Service Commission a
9 certificate of public convenience and necessity authorizing
10 such construction franchise, license or permit.

11 (b) Upon the filing of any application for the 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, the
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if no substantial
16 protest is received within thirty days after the notice is given,
17 may waive formal hearing on the application. Notice shall be
18 given by publication which shall state that a formal hearing
19 may be waived in the absence of substantial protest, made
20 within thirty days, to the application. The notice shall be
21 published as a Class I legal advertisement in compliance with
22 the provisions of article three, chapter fifty-nine of this code.
23 The publication area shall 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 the 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-
30 day notice requirement for projects approved by the
31 Infrastructure 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
34 section eleven-a of this article within two hundred seventy
35 days of the filing of the application and within ninety days
36 after final submission of any such application for decision

37 following a hearing: *Provided*, That if the application is for
38 authority to construct a water and sewer project and the
39 projected total cost is less than \$10 million, the Commission
40 shall render its final decision within two hundred twenty-five
41 days of the filing of the application.

42 (e) The commission shall render its final decision on any
43 application filed under the provisions of this section that has
44 received the approval of the Infrastructure and Jobs
45 Development Council pursuant to article fifteen-a, chapter
46 thirty-one of this code within one hundred eighty days after
47 filing of the application: *Provided*, That if a substantial
48 protest is received within thirty days after the notice is
49 provided pursuant to subsection (b) of this section, the
50 commission shall render its final decision within two hundred
51 seventy days or two hundred twenty-five days of the filing of
52 the application, whichever is applicable as determined in
53 subsection (d).

54 (f) If the projected total cost of a project which is the
55 subject of an application filed pursuant to this section or
56 section eleven-a of this article is greater than \$50 million, the
57 commission shall render its final decision on any such
58 application filed under the provisions of this section or
59 section eleven-a of this article within four hundred days of
60 the filing of the application and within ninety days after final
61 submission of any such application for decision after a
62 hearing.

63 (g) If a decision is not rendered within the, time-frames
64 established in this section, the commission shall issue a
65 certificate of convenience and necessity as applied for in the
66 application.

67 (h) The commission shall prescribe rules as it may deem
68 proper for the enforcement of the provisions of this section;
69 and, in establishing that public convenience and necessity do
70 exist, the burden of proof shall be upon the applicant.

71 (i) Pursuant to the requirements of this section, the
72 commission may issue a certificate of public convenience and
73 necessity to any intrastate pipeline, interstate pipeline or local
74 distribution company for the transportation in intrastate
75 commerce of natural gas used by any person for one or more
76 uses, as defined by rule, by the commission in the case of:

77 (1) Natural gas sold by a producer, pipeline or other seller
78 to the person; or

79 (2) Natural gas produced by the person.

80 (j) A public utility, including a public service district,
81 which has received a certificate of public convenience and
82 necessity after July 8, 2005, from the commission and has
83 been approved by the Infrastructure and Jobs Development
84 Council, is not required to, and cannot be compelled to,
85 reopen the proceeding if the cost of the project changes but
86 the change does not affect the rates established for the
87 project.

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

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council.

1 (a) The West Virginia infrastructure and Jobs
2 Development Council is continued. The council is a
3 governmental instrumentality of the state. The exercise by
4 the council of the powers conferred by this article and the
5 carrying out of its purpose and duties shall be considered and
6 held to be, and are determined to be, essential governmental
7 functions and for a public purpose.

8 (b) The council shall consist of thirteen members,
9 including:

10 (1) The Governor or designee;

11 (2) The Executive Director of the Housing Development
12 Fund or his or her designee;

13 (3) The director of the Division of Environmental
14 Protection or his or her designee;

15 (4) The director of the Economic Development Authority
16 or his or her designee;

17 (5) The Director of the Water Development Authority or
18 his or her designee;

19 (6) The Director of the Division of Health or his or her
20 designee;

21 (7) The chairman of the Public Service Commission or
22 his or her designee; and

23 (8) Six members representing the general public:
24 *Provided*, That there shall be at least one member
25 representing the general public from each congressional
26 district. No more than one member representing the general
27 public may be a resident of the same county.

28 (c) The Governor shall appoint the public members of the
29 Council who shall serve three-year staggered terms.

30 (d) The Commissioner of the Division of Highways, the
31 Executive Director of the state rail authority, two members of
32 the West Virginia Senate, two members of the West Virginia
33 House of Delegates, the Chancellor of the Higher Education
34 Policy commission and the Chancellor of the West Virginia
35 Council for Community and Technical College Education
36 serve as advisory members of the council. The advisory
37 members shall be *ex officio*, nonvoting members of the
38 Council.

39 (e) The Governor shall appoint the legislative members
40 of the council: *Provided* That no more than three of the
41 legislative members may be of the same political party.

42 (f) The Governor shall appoint the representatives of the
43 governing boards from a list of three names submitted by
44 each governing board.

45 (g) The Governor or designee shall serve as chairman and
46 the council shall annually appoint a vice chairperson and
47 shall appoint a secretary, who need not be a member of the
48 Council and who shall keep records of its proceedings.
49 Seven members of the Council shall constitute a quorum and
50 the affirmative vote of at least the majority of those members
51 present shall be necessary for any action taken by vote of the
52 Council. A vacancy in the membership of the council does
53 not impair the rights of a quorum by such vote to exercise all
54 the rights and perform all the duties of the council.

55 (h) A member of the Council who serves by virtue of his
56 or her office does not receive compensation or
57 reimbursement of expenses for serving as a member. The
58 public members are reimbursed for actual expenses incurred
59 in the service of the Council in a manner consistent with
60 guidelines of the travel management office of the Department
61 of Administration.

62 (i) The Council meets at least monthly to review projects
63 and infrastructure projects requesting funding assistance and
64 otherwise to conduct its business and may meet more
65 frequently if necessary. Notwithstanding any other provision
66 of this article to the contrary, the Economic Development
67 Authority is not subject to council review with regard to any
68 action taken pursuant to the authority established in article
69 fifteen, chapter thirty-one of this code. The Governor's civil
70 contingent fund is not subject to council review with regard
71 to projects or infrastructure projects funded through the
72 Governor's Civil Contingent Fund.

73 (j) The Water Development Authority shall provide
74 office space for the council and each governmental agency
75 represented on the council shall provide staff support for the
76 council in the manner determined appropriate by the council.

77 (k) The Council shall invite to each meeting one or more
78 representatives of the United States Department of
79 Agriculture, Rural Economic Community Development, the
80 United States Economic Development Agency and the United
81 States Army Corps of Engineers or any successors thereto.
82 The council shall invite other appropriate parties as is
83 necessary to effectuate the purposes of this article.

**§31-15A-6. Powers, duties and responsibilities of the council
generally; comprehensive assessment.**

1 (a) In addition to the powers set forth elsewhere in this
2 article, the council is granted, has and may exercise all
3 powers necessary or appropriate to carry out and effectuate
4 the purposes and intent of this article. The council shall have
5 the power and capacity to:

6 (1) Provide consultation services to project sponsors in
7 connection with the planning, acquisition, improvement,
8 construction or development of any infrastructure project or
9 project;

10 (2) Periodically prepare a list of infrastructure projects or
11 projects which cannot meet the established funding
12 guidelines of the various state infrastructure agencies, other
13 than the Housing Development Fund, but which are
14 consistent with the mandates of this article and recommend
15 to the Water Development Authority that it make a grant or
16 loan to the project sponsors from the infrastructure fund to
17 finance the cost of one or more such projects or infrastructure
18 projects;

19 (3) Do all other acts necessary and proper to carry out the
20 powers expressly granted to the authority in this article; and

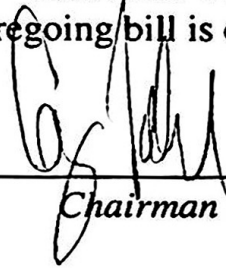
21 (4) Make and execute contracts, commitments and
22 obligations and other instruments necessary or convenient for
23 the exercise of its powers.

24 (b) The council shall develop a comprehensive statewide
25 inventory of water supply systems and sewage treatment
26 systems and an assessment of current and future needs. The
27 assessment shall identify the areas of the state which do not
28 have adequate public water or sewage systems and offer
29 recommendations for the construction of new facilities or the
30 extension or expansion of existing facilities to meet the
31 identified needs. The council shall include in the assessment

32 an identification of the obstacles, issues and problems which
33 prevent or inhibit development of adequate infrastructure
34 throughout the state, including financial, governmental,
35 physical, or geographical factors and make recommendation
36 as the council considers appropriate regarding the obstacles,
37 issues or problems identified. This comprehensive inventory
38 and assessment shall be updated at least once in every
39 three-year period after the initial assessment and inventory is
40 completed in 1996.

41 (c) The council shall study the viability of the
42 consolidation of public service districts throughout the state.
43 The council shall report their findings and conclusions on or
44 before January 16, 1995 to the Governor, Speaker of the
45 House of Delegates and President of the Senate.

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

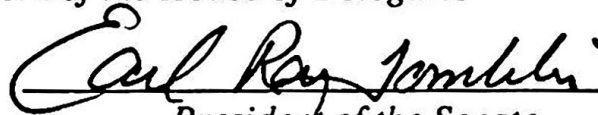
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 29 2009

Time 11:35 *Am*