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
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-ENGINEER 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.

In the procurement of architectural and engineering services for projects estimated to cost $250,000 or more, the director of purchasing shall encourage firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, That on projects funded wholly or in part by school building authority
moneys, in accordance with sections fifteen and sixteen, article nine-d, chapter eighteen of this code, two of said three firms shall have had offices within this state for a period of at least one year prior to submitting an expression of interest regarding a project funded by school building authority moneys. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached: *Provided, however*, that county boards of education may either elect to start the selection process over in the original order of preference or it may select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached: *and Provided further*, that for any water or wastewater construction project the engineering design and construction inspection costs may not exceed the amount calculated pursuant to the compensation curves for consulting engineering services based upon project
construction costs published by the American Society of Civil Engineers manual of practice, unless granted a variance by the Infrastructure and Jobs Development Council established pursuant to article fifteen-a, chapter thirty-one of 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.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: Provided, That the amount of the refinancing may not exceed 50% of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by
loans to governmental agencies. A water development project may not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the Secretary of the Department of Environmental Protection or in the process of preparation by the secretary and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the following provisions:

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

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

(3) The agreement of the governmental agency to impose, 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
section one, article two of this chapter, nor apply for, nor
obtain any franchise, license or permit from any municipality
or other governmental agency, except ordinary extensions of
existing systems in the usual course of business, unless and
until it shall obtain from the Public Service Commission a
certificate of public convenience and necessity authorizing
such construction franchise, license or permit.

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

(c) Any public utility, person or corporation subject to the
provisions of this section shall give the commission at least
thirty days' notice of the filing of any the application for a
certificate of public convenience and necessity under this
section: Provided, That the commission may modify or waive
the thirty-day notice requirement and shall waive the thirty-
day notice requirement for projects approved by the
Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any
application filed under the provisions of this section or
section eleven-a of this article within two hundred seventy
days of the filing of the application and within ninety days
after final submission of any such application for decision
following a hearing: Provided, That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the Commission shall render its final decision within two hundred twenty-five days of the filing of the application.

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

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

(g) If a decision is not rendered within the, time-frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.
(h) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

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

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

(2) Natural gas produced by the person.

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

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit 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.

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

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

1. The Governor or designee;
2. The Executive Director of the Housing Development Fund or his or her designee;
3. The director of the Division of Environmental Protection or his or her designee;
4. The director of the Economic Development Authority or his or her designee;
5. The Director of the Water Development Authority or his or her designee;
6. The Director of the Division of Health or his or her designee;
7. The chairman of the Public Service Commission or his or her designee; and
(8) Six members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

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

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

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

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

(g) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the Council and who shall keep records of its proceedings. Seven members of the Council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the Council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.
(h) A member of the Council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the Council in a manner consistent with guidelines of the travel management office of the Department of Administration.

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

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

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

§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
(a) In addition to the powers set forth elsewhere in this article, the council is granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

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

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

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

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

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment
an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three-year period after the initial assessment and inventory is completed in 1996.

(c) The council shall study the viability of the consolidation of public service districts throughout the state. The council shall report their findings and conclusions on or before January 16, 1995 to the Governor, Speaker of the 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