

SB 578 5

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WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 578

(By Senators Fanning and Phymale)

PASSED March 11, 2004

In Effect 90 days From Passage

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Senate Bill No. 578

(BY SENATORS FANNING AND PLYMALE)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11d, relating to increasing the power of the Public Service Commission with respect to the takeover or transfer or takeover of troubled utilities; authorizing the revocation of certificates of public convenience and necessity for the effective abandonment or inability or unwillingness of gas and electric utilities to adequately serve its customers; establishing criteria which would need to be met to support a contemplated revocation of certificate authority; authorizing the Public Service Commission to concurrently require another public utility to acquire and serve the customers, facilities and service territory of a revoked utility; listing additional criteria to be considered prior to revoking authority or approving acquisition of territory; providing for the determination of an acquisition price for the revoked utility's facilities and territory, either by agreement or by eminent domain; requiring reasonable notice and hearing to affected utility and customers before revoking certificate; and

establishing deadline by which Public Service Commission may initiate proceeding to revoke authority pursuant to said section.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-11d, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11d. Revocation of certificate of public convenience and necessity; acquisition of facilities by capable public utility.

1 (a) In addition to the powers conferred by section seven,
2 article two of this chapter, upon a finding by the Public
3 Service Commission that a public utility which holds a
4 certificate of public convenience and necessity to provide
5 natural gas or electric service is unable or unwilling to
6 adequately serve its customers or has been actually or
7 effectively abandoned by its owner or owners, or that its
8 management is grossly and willfully inefficient, irresponsi-
9 ble or unresponsive to the needs of its customers, or is not
10 capable of providing economical and efficient utility
11 service, the commission may, after reasonable notice and
12 opportunity for hearing has been afforded to the affected
13 utility and its customers, revoke the certificate of public
14 convenience and necessity held by the public utility. In
15 the case of such revocation, the commission shall concur-
16 rently order a capable public utility to acquire the facili-
17 ties of the revoked public utility and to provide service to
18 the customers of the revoked public utility. The commis-
19 sion shall also allow a capable public utility that acquires
20 the facilities of a revoked public utility to recover all
21 reasonable costs related to such acquisition of facilities
22 and upgrading of service to customers of the revoked
23 public utility, including, but not limited to, additional
24 capital, environmental, operating and maintenance costs.

25 (b) In making a determination to revoke a certificate of
26 public convenience and necessity, pursuant to subsection
27 (a) of this section, the commission shall consider: (1) The
28 financial, managerial and technical ability of the public
29 utility considered for revocation; (2) the financial, mana-
30 gerial and technical ability of the capable public utility; (3)
31 the expenditures that may be necessary to make improve-
32 ments to the facilities of the public utility considered for
33 revocation to assure compliance with all applicable
34 statutory and regulatory standards concerning adequacy,
35 efficiency, safety and reasonableness of service; and (4)
36 any other matters which may be relevant.

37 (c) The price of the acquisition of the facilities of the
38 revoked public utility shall be determined by an agreement
39 between the revoked public utility and the acquiring
40 capable public utility, subject to a determination by the
41 commission that the price is reasonable. If the revoked
42 public utility and the acquiring capable public utility are
43 unable to agree on an acquisition price or the commission
44 disapproves the acquisition price on which the utilities
45 have agreed, the commission shall issue an order directing
46 the acquiring capable public utility to acquire the revoked
47 public utility by following the procedure prescribed for
48 exercising the power of eminent domain pursuant to
49 article two, chapter fifty-four of this code. The fact that
50 the acquisition price has not been agreed to or finally
51 determined shall not delay the effect of any order issued
52 by the commission pursuant to subsection (a) of this
53 section.

54 (d) As used in this section, the following words and
55 phrases shall have the following meanings:

56 (1) "Capable public utility" means a public utility which
57 provides electric or natural gas service and has at least
58 twenty-five thousand customers which provides the same
59 type of utility service as the revoked public utility and has
60 the financial, managerial and technical ability to comply
61 with all applicable statutory and regulatory standards

62 concerning adequacy, efficiency, safety and reasonableness
63 of service on a long-term basis;

64 (2) "Revoked public utility" means a public utility with
65 less than twenty-five thousand customers which has had
66 its certificate of public convenience and necessity revoked
67 by the commission pursuant to subsection (a) of this
68 section.

69 (e) Any action of the Public Service Commission to
70 revoke the certificate of public convenience and necessity
71 of an electric or natural gas public utility pursuant to the
72 provisions of this section must be initiated on or before the
73 first day of March, two thousand eight.

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

Chandy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Elders
.....
Clerk of the Senate

Bugs M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is appended* this the *5th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:35 am