

V.  
SB 419

FILED

2006 APR -4 P 4: 53

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 2006

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**ENROLLED**

SENATE BILL NO. 419

(By Senators HOVE AND HUNTER )

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PASSED MARCH 10, 2006

In Effect 90 days from Passage

FILED

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OFFICE WEST VIRGINIA  
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## Senate Bill No. 419

(BY SENATORS LOVE AND HUNTER)

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[Passed March 10, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-1 and §24-2-11 of said code, all relating to the authority of the Public Service Commission; providing that an innovative, alternative sewer service method provided by a public utility is subject to the jurisdiction of the Public Service Commission; 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; and providing that Infrastructure and Jobs Development Council-approved projects receiving a certificate of public convenience may not be compelled to reopen.

*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 §24-2-1 and §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  
2 to the contrary, a public service district may not borrow  
3 money, enter into contracts for the provision of engineer-  
4 ing, design or feasibility studies, issue or contract to issue  
5 revenue bonds or exercise any of the powers conferred by  
6 the provisions of section thirteen, twenty or twenty-four of  
7 this article without the prior consent and approval of the  
8 Public Service Commission: *Provided*, That approval of  
9 funding set forth in section eleven, article two, chapter  
10 twenty-four of this code or this section is not required if  
11 the funding is for a project which has received a certificate  
12 of public convenience and necessity after eighth day of  
13 July, two thousand five, from the commission and where  
14 the cost of the project changes but the change does not  
15 affect the rates established for the project.

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

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

28 (2) Completion of a construction project requiring  
29 engineering services. The district shall also forward an  
30 executed copy of the engineering contract to the commis-  
31 sion after receiving approval of the waiver.

32 (c) An engineering contract that meets one or more of the  
33 following criteria is exempt from the waiver or approval  
34 requirements:

35 (1) A contract with a public service district that is a  
36 Class A utility on the first day of April, two thousand  
37 three, or subsequently becomes a Class A utility as defined  
38 by commission rule;

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

42 (3) A contract where the payment of engineering fees are  
43 contingent upon the receipt of funding, and commission  
44 approval of the funding, to construct the project which is  
45 the subject of the contract; or

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

48 (d) Requests for approval or waivers of engineering  
49 contracts shall be deemed granted thirty days after the  
50 filing date unless the staff of the Public Service Commis-  
51 sion or a party files an objection to the request. If an  
52 objection is filed, the Public Service Commission shall  
53 issue its decision within one hundred twenty days of the  
54 filing date. In the event objection is received to a request  
55 for a waiver, the application shall be considered a request  
56 for waiver as well as a request for approval in the event of  
57 a waiver is not appropriate.

58 (e) Unless the properties to be constructed or acquired  
59 represent ordinary extensions or repairs of existing  
60 systems in the usual course of business, a public service  
61 district must first obtain a certificate of public conve-  
62 nience and necessity from the Public Service Commission  
63 in accordance with the provision of chapter twenty-four of  
64 this code when a public service district is seeking to  
65 acquire or construct public service property.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.****ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.****§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

1 (a) The jurisdiction of the commission shall extend to all  
2 public utilities in this state and shall include any utility  
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by air,  
5 railroad, street railroad, motor or otherwise, by express or  
6 otherwise, by land, water or air, whether wholly or partly  
7 by land, water or air; transportation of oil, gas or water by  
8 pipeline; transportation of coal and its derivatives and all  
9 mixtures and combinations thereof with other substances  
10 by pipeline; sleeping car or parlor car services; transmis-  
11 sion of messages by telephone, telegraph or radio; genera-  
12 tion and transmission of electrical energy by hydroelectric  
13 or other utilities for service to the public, whether directly  
14 or through a distributing utility; supplying water, gas or  
15 electricity, by municipalities or others; sewer systems  
16 servicing twenty-five or more persons or firms other than  
17 the owner of the sewer systems: *Provided*, That if a public  
18 utility intends to provide sewer service by an innovative,  
19 alternative method, as defined by the Federal Environ-  
20 mental Protection Agency, the innovative, alternative  
21 method is a public utility function and subject to the  
22 jurisdiction of the Public Service Commission regardless  
23 of the number of customers served by the innovative,  
24 alternative method; any public service district created  
25 under the provisions of article thirteen-a, chapter sixteen  
26 of this code; toll bridges, wharves, ferries; solid waste  
27 facilities; and any other public service: *Provided, however*,  
28 That natural gas producers who provide natural gas  
29 service to not more than twenty-five residential customers  
30 are exempt from the jurisdiction of the commission with  
31 regard to the provisions of such residential service:  
32 *Provided further*, That upon request of any of the custom-  
33 ers of such natural gas producers, the commission may,

34 upon good cause being shown, exercise such authority as  
35 the commission may deem appropriate over the operation,  
36 rates and charges of such producer and for such length of  
37 time as the commission may consider to be proper: *And*  
38 *provided further*, That the jurisdiction the commission  
39 may exercise over the rates and charges of municipally  
40 operated public utilities is limited to that authority  
41 granted the commission in section four-b of this article:  
42 *And provided further*, That the decision-making authority  
43 granted to the commission in sections four and four-a of  
44 this article shall, in respect to an application filed by a  
45 public service district, be delegated to a single hearing  
46 examiner appointed from the commission staff, which  
47 hearing examiner shall be authorized to carry out all  
48 decision-making duties assigned to the commission by said  
49 sections, and to issue orders having the full force and  
50 effect of orders of the commission.

51 (b) The commission may, upon application, waive its  
52 jurisdiction and allow a utility operating in an adjoining  
53 state to provide service in West Virginia when:

54 (1) An area of West Virginia cannot be practicably and  
55 economically served by a utility licensed to operate within  
56 the State of West Virginia;

57 (2) Said area can be provided with utility service by a  
58 utility which operates in a state adjoining West Virginia;

59 (3) The utility operating in the adjoining state is regu-  
60 lated by a regulatory agency or commission of the adjoin-  
61 ing state; and

62 (4) The number of customers to be served is not substan-  
63 tial. The rates the out-of-state utility charges West  
64 Virginia customers shall be the same as the rate the utility  
65 is duly authorized to charge in the adjoining jurisdiction.  
66 The commission, in the case of any such utility, may  
67 revoke its waiver of jurisdiction for good cause.

68 (c) Any other provisions of this chapter to the contrary  
69 notwithstanding:

70 (1) An owner or operator of an electric generating  
71 facility located or to be located in this state that has been  
72 designated as an exempt wholesale generator under  
73 applicable federal law, or will be so designated prior to  
74 commercial operation of the facility, and for which such  
75 facility the owner or operator holds a certificate of public  
76 convenience and necessity issued by the commission on or  
77 before the first day of July, two thousand three, shall be  
78 subject to subsections (e), (f), (g), (h), (i) and (j), section  
79 eleven-c of this article as if the certificate of public  
80 convenience and necessity for such facility were a siting  
81 certificate issued under said section and shall not other-  
82 wise be subject to the jurisdiction of the commission or to  
83 the provisions of this chapter with respect to such facility  
84 except for the making or constructing of a material  
85 modification thereof as provided in subdivision (5) of this  
86 subsection.

87 (2) Any person, corporation or other entity that intends  
88 to construct or construct and operate an electric generat-  
89 ing facility to be located in this state that has been desig-  
90 nated as an exempt wholesale generator under applicable  
91 federal law, or will be so designated prior to commercial  
92 operation of the facility, and for which facility the owner  
93 or operator does not hold a certificate of public conve-  
94 nience and necessity issued by the commission on or before  
95 the first day of July, two thousand three, shall, prior to  
96 commencement of construction of the facility, obtain a  
97 siting certificate from the commission pursuant to the  
98 provisions of section eleven-c of this article in lieu of a  
99 certificate of public convenience and necessity pursuant to  
100 the provisions of section eleven of this article. An owner  
101 or operator of an electric generating facility as is described  
102 in this subdivision for which a siting certificate has been  
103 issued by the commission shall be subject to subsections  
104 (e), (f), (g), (h), (i) and (j), section eleven-c of this article

105 and shall not otherwise be subject to the jurisdiction of the  
106 commission or to the provisions of this chapter with  
107 respect to such facility except for the making or construct-  
108 ing of a material modification thereof as provided in  
109 subdivision (5) of this subsection.

110 (3) An owner or operator of an electric generating  
111 facility located in this state that had not been designated  
112 as an exempt wholesale generator under applicable federal  
113 law prior to commercial operation of the facility, that  
114 generates electric energy solely for sale at retail outside  
115 this state or solely for sale at wholesale in accordance with  
116 any applicable federal law that preempts state law or  
117 solely for both such sales at retail and such sales at  
118 wholesale, and that had been constructed and had engaged  
119 in commercial operation on or before the first day of July,  
120 two thousand three, shall not be subject to the jurisdiction  
121 of the commission or to the provisions of this chapter with  
122 respect to such facility, regardless of whether such facility  
123 subsequent to its construction has been or will be desig-  
124 nated as an exempt wholesale generator under applicable  
125 federal law: *Provided*, That such owner or operator shall  
126 be subject to subdivision (5) of this subsection if a material  
127 modification of such facility is made or constructed.

128 (4) Any person, corporation or other entity that intends  
129 to construct or construct and operate an electric generat-  
130 ing facility to be located in this state that has not been or  
131 will not be designated as an exempt wholesale generator  
132 under applicable federal law prior to commercial opera-  
133 tion of the facility, that will generate electric energy solely  
134 for sale at retail outside this state or solely for sale at  
135 wholesale in accordance with any applicable federal law  
136 that preempts state law or solely for both such sales at  
137 retail and such sales at wholesale and that had not been  
138 constructed and had not been engaged in commercial  
139 operation on or before the first day of July, two thousand  
140 three, shall, prior to commencement of construction of the  
141 facility, obtain a siting certificate from the commission



142 pursuant to the provisions of section eleven-c of this  
143 article in lieu of a certificate of public convenience and  
144 necessity pursuant to the provisions of section eleven of  
145 this article. An owner or operator of an electric generating  
146 facility as is described in this subdivision for which a  
147 siting certificate has been issued by the commission shall  
148 be subject to subsections (e), (f), (g), (h), (i) and (j), section  
149 eleven-c of this article and shall not otherwise be subject  
150 to the jurisdiction of the commission or to the provisions  
151 of this chapter with respect to such facility except for the  
152 making or constructing of a material modification thereof  
153 as provided in subdivision (5) of this subsection.

154 (5) An owner or operator of an electric generating  
155 facility described in this subsection shall, before making  
156 or constructing a material modification of the facility that  
157 is not within the terms of any certificate of public conve-  
158 nience and necessity or siting certificate previously issued  
159 for the facility or an earlier material modification thereof,  
160 obtain a siting certificate for the modification from the  
161 commission pursuant to the provisions of section eleven-c  
162 of this article in lieu of a certificate of public convenience  
163 and necessity for the modification pursuant to the provi-  
164 sions of section eleven of this article and, except for the  
165 provisions of section eleven-c of this article, shall not  
166 otherwise be subject to the jurisdiction of the commission  
167 or to the provisions of this chapter with respect to such  
168 modification.

169 (6) The commission shall consider an application for a  
170 certificate of public convenience and necessity filed  
171 pursuant to section eleven of this article to construct an  
172 electric generating facility described in this subsection or  
173 to make or construct a material modification of such  
174 electric generating facility as an application for a siting  
175 certificate pursuant to section eleven-c of this article if the  
176 application for the certificate of public convenience and  
177 necessity was filed with the commission prior to the first

178 day of July, two thousand three, and if the commission has  
179 not issued a final order thereon as of that date.

180 (7) The limitations on the jurisdiction of the commission  
181 over, and on the applicability of the provisions of this  
182 chapter to, the owner or operator of an electric generating  
183 facility as imposed by, and described in this subsection,  
184 shall not be deemed to affect or limit the commission's  
185 jurisdiction over contracts or arrangements between the  
186 owner or operator of such facility and any affiliated public  
187 utility subject to the provisions of this chapter.

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

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

12 (b) Upon the filing of any application for such certifi-  
13 cate, and after hearing, the commission may, in its discre-  
14 tion, issue or refuse to issue, or issue in part and refuse in  
15 part, such certificate of convenience and necessity: *Pro-*  
16 *vided*, That the commission, after it gives proper notice  
17 and if no protest is received within thirty days after the  
18 notice is given, may waive formal hearing on the applica-  
19 tion. Notice shall be given by publication which shall  
20 state that a formal hearing may be waived in the absence  
21 of protest, made within thirty days, to the application.  
22 The notice shall be published as a Class I legal advertise-  
23 ment in compliance with the provisions of article three,

24 chapter fifty-nine of this code. The publication area shall  
25 be the proposed area of operation.

26 (c) Any public utility, person or corporation subject to  
27 the provisions of this section shall give the commission at  
28 least thirty days' notice of the filing of any such applica-  
29 tion for a certificate of public convenience and necessity  
30 under this section: *Provided*, That the commission may  
31 modify or waive the thirty-day notice requirement and  
32 shall waive the thirty-day notice requirement for projects  
33 approved by the infrastructure and jobs development  
34 council.

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

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

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

60 (g) If a decision is not rendered within the aforemen-  
61 tioned one hundred eighty days, two hundred seventy  
62 days, four hundred days or ninety days, the commission  
63 shall issue a certificate of convenience and necessity as  
64 applied for in the application.

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

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

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

79 (2) Natural gas produced by such person.

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

88 (k) Any public utility, person or corporation proposing  
89 any electric power project that requires a certificate under  
90 this 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.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

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

The within *is approved* ..... this the *4<sup>th</sup>* .....  
Day of *April* ....., 2006.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 31 2006

Time 10:30am