

SB 615 S

FILED

2007 APR -3 PM 4: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 615

(BY SENATORS KESSLER, EDGELL AND HUNTER)

[Passed March 8, 2007; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-19-2, relating to authorizing a municipality that owns and operates an electric power system to enter into certain contracts with other parties to purchase electric power and energy from certain projects.

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 §8-19-2, to read as follows:

**ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND
ELECTRIC POWER SYSTEMS.**

**PART II. LIMITATIONS ON SALE OR LEASE OF
CERTAIN MUNICIPAL WATERWORKS.**

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

1 (a) For the purposes of this section:

2 (1) "Contract" means an agreement entered into by a
3 municipality with any other party for the purchase of
4 electric output, capacity or energy from a project as
5 defined herein.

6 (2) "Any other party" means any other legal entity,
7 including, but not limited to, another municipality,
8 political subdivision, public authority, agency or
9 instrumentality of any state or the United States, a
10 partnership, a limited partnership, a limited liability
11 company, a corporation, an electric cooperative or an
12 investor-owned utility existing under the laws of any
13 state; and

14 (3) "Project" or "projects" means systems or facilities
15 owned by another party and used for the generation,
16 transmission, transformation or supply of electric
17 power, or any interest in them, whether an undivided
18 interest as a tenant in common or otherwise, or any
19 right to the output, capacity or services thereof.

20 (b) In addition to the general authority to purchase
21 electricity on a wholesale basis for resale to its
22 customers, any municipality that owns and operates an
23 electric power system under the provisions of this
24 article may enter into a contract with any other party
25 for the purchase of electricity from one or more projects
26 located in the United States that provide that the
27 contracting municipality is obligated to make payments
28 required by the contract whether or not a project is
29 completed, operable or operating and notwithstanding
30 the suspension, interruption, interference, reduction or
31 curtailment of the output of a project or the power and
32 energy contracted for and that the payments shall not
33 be subject to any reduction, whether by offset or
34 otherwise, and shall not be conditioned upon
35 performance or nonperformance by any other party.

36 The contract may provide that, in the event of a default
37 by the municipality or any other party to the contract in
38 the performance of each entities' obligations under the
39 contract, any nondefaulting municipality or any other
40 party to the contract shall on a pro rata basis succeed to
41 the rights and interests of, and assume the obligations
42 of, the defaulting party.

43 (c) Notwithstanding any other provisions of law,
44 ordinance or charter provision to the contrary, a
45 contract under subsection (b) of this section may extend
46 for more than fifty years or fifty years from the date a
47 project is estimated to be placed into normal continuous
48 operation and the execution and effectiveness of the
49 contract is not subject to any authorizations or
50 approvals by the state or any agency, commission,
51 instrumentality or political subdivision thereof except
52 as otherwise specifically required by law.

53 (d) A contract under subsection (b) of this section may
54 provide that payments by the municipality are made
55 solely from and may be secured by a pledge of and lien
56 upon revenues derived by the municipality from
57 ownership and operation and that payments shall
58 constitute an operating expense of the electric power
59 system. No obligation under the contract shall
60 constitute a legal or equitable pledge, charge, lien or
61 encumbrance upon any property of the municipality or
62 upon any of its income, receipts or revenues, except the
63 revenues of the municipality's electric power system.
64 Neither the faith and credit nor the taxing power of the
65 municipality shall be pledged for the payment of any
66 obligation under the contract.

67 (e) A municipality contracting under the provisions of
68 subsection (b) of this section is obligated to fix, charge
69 and collect rents, rates, fees and charges for electric
70 power and energy and other services it sells, furnishes
71 or supplies through its electric power system in an
72 amount sufficient to provide revenues adequate to meet
73 its obligations under the contract and to pay any and all
74 other amounts payable from or constituting a charge
75 and lien upon the revenues, including the amounts

76 necessary to pay the principal and interest on any
77 municipal bonds issued related to its electric power
78 system: *Provided*, That any change in the rates and
79 charges of the municipality to the customers of the
80 electric power system under the provisions of this
81 section are subject to the provisions and requirements
82 of section four-b, article two, chapter twenty-four of
83 this code and the obligations of the municipality under
84 the contract are costs of providing electric service
85 within the meaning of that section.

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 *3rd* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 2:00 pm