

5863

2013-2014 Regular Sessions

I N S E N A T E

June 18, 2013

Introduced by Sen. YOUNG -- (at request of the Legislative Commission on Rural Resources) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public service law, in relation to the issuance of stocks, bonds and other forms of indebtedness for the purpose of expanding broadband services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 101 of the public service law, as amended by chap-
2 ter 443 of the laws of 2000, is amended to read as follows:
3 S 101. Authority to issue stock, bonds and other forms of indebt-
4 edness. A telegraph or telephone corporation may, when authorized by
5 the commission, issue stock, bonds, notes or other evidences of indebt-
6 edness payable at periods of more than twelve months after the date
7 thereof, or a receiver of such a corporation, if duly authorized by law,
8 may issue receiver's certificates, when necessary for the acquisition of
9 property, the construction, completion, extension or improvement of its
10 facilities or the improvement or maintenance of its service within the
11 state, or for the discharge or lawful refunding of its obligations, or
12 reimbursement of moneys actually expended from the income from any
13 source, within five years next prior to the filing of the application
14 therefor, or for any of such purposes, provided, however, that no
15 authority shall be granted authorizing such issue for reimbursement of
16 moneys expended from income for betterments or replacements unless the
17 applicant shall have kept its accounts and vouchers of such expenditures
18 in such manner as to enable the commission to ascertain the amount of
19 moneys so expended and the purposes for which such expenditures were
20 made. Stock may be issued to stockholders as a stock dividend provided
21 that there shall have been secured from the commission authority for
22 such issuance and for a transfer of surplus to capital in an amount
23 equal to the par or stated value of the stock so authorized and that the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 applicant has certified in the application for authority that a sum
2 equal to the amount to be so transferred was expended for the purposes
3 enumerated in this section. Stock may be issued to an employee or direc-
4 tor of a telegraph or telephone corporation under a stock option plan
5 pursuant to which such corporation grants options to its employees or
6 directors to purchase shares of stock, such options to be exercisable
7 for a stated period of time to purchase shares of stock at the market
8 value of the stock at the time of issuance of the option, provided that
9 there shall have been secured from the commission authority for such
10 issuance and that the applicant has certified in the application for
11 authority that the proceeds from the exercise of the stock options are
12 needed for one of the purposes enumerated in this section. The issue of
13 stocks, bonds or other evidences of indebtedness, within the meaning of
14 this section, shall include the sale by any such corporation of any such
15 securities previously issued in compliance with the provisions of this
16 section and subsequently reacquired by such corporation, provided,
17 however, for good cause shown the commission may exempt from the
18 restriction hereof stocks, bonds or other evidences of indebtedness. The
19 application for authority shall state the amount of any such issue and
20 the purposes to which it or its proceeds are to be applied and shall
21 certify that the money, property or labor procured or to be procured or
22 paid for by such issue or its proceeds, INCLUDING PROCEEDS FROM FEDERAL
23 LOANS FOR THE EXPANSION FOR BROADBAND SERVICES, has been or is reason-
24 ably required for the purposes specified in the application for authori-
25 ty, and that such purposes are in no part reasonably chargeable to oper-
26 ating expenses or to income except in the case of bonds, notes or other
27 evidences of indebtedness as may be specifically identified in the
28 application for authority. For the purpose of enabling the commission to
29 determine whether it should authorize such issuance, the commission
30 shall have the power to make such inquiry or investigation, hold such
31 hearings and examine such witnesses, books, papers, documents or
32 contracts as it may determine of importance in enabling it to reach a
33 determination, PROVIDED THAT ANY DETERMINATION FROM AN INQUIRY, INVESTI-
34 GATION OR EXAMINATION OF PROCEEDS OF FEDERAL LOANS FOR THE EXPANSION OF
35 BROADBAND SERVICES SHALL BE PERFORMED WITHIN SIXTY CALENDAR DAYS OF
36 RECEIPT OF SUCH TELEPHONE AND TELEGRAPH PROVIDER'S APPLICATION FOR
37 AUTHORITY, OR SUCH APPLICATION SHALL BE DEEMED APPROVED. No such corpo-
38 ration shall, without the consent of the commission, apply any such
39 issue or its proceeds to any purpose not specified in the application
40 for authority, EXCEPT WHEN THERE HAS NOT BEEN A DETERMINATION WITHIN
41 SIXTY CALENDAR DAYS FROM THE COMMISSION WITH RESPECT TO PROCEEDS OF
42 FEDERAL LOANS FOR THE EXPANSION OF BROADBAND SERVICES. Such telegraph
43 corporation or telephone corporation may issue notes for proper corpo-
44 rate purposes and not in violation of any provision of this chapter or
45 of any other act, payable at periods of not more than twelve months
46 without the consent of the commission; but no such note shall, in whole
47 or in part, directly or indirectly, be refunded by any issue of stock or
48 bonds, or by any evidences of indebtedness running for more than twelve
49 months, without the consent of the commission. No telegraph corporation
50 or telephone corporation shall be required, however, to apply to the
51 commission for authority to issue stocks, bonds, notes or other evidence
52 of indebtedness except for the acquisition of property, the
53 construction, completion, extension or improvement of its facilities, or
54 the improvement or maintenance of its service within the state, or the
55 discharge or refunding of obligations, or reimbursement of moneys actu-
56 ally expended for such purposes. The commission shall have power to

1 require every such corporation to file with the commission after the
2 issuance of stocks, bonds, notes or other evidences of indebtedness
3 issued with or without the approval of the commission as provided in
4 this section, a notice of such transaction in such form as the commis-
5 sion may prescribe. The commission shall have no power to authorize the
6 capitalization of any franchise or right to be a corporation, nor to
7 authorize the capitalization of any franchise or the right to own, oper-
8 ate or enjoy any franchise whatsoever in excess of the amount (exclusive
9 of any tax or annual charge) actually paid to the state or any political
10 subdivision thereof, as the consideration of the grant of such franchise
11 or right, nor to authorize the issuance of any stocks or other securi-
12 ties for any purposes other than those enumerated in this section. Nor
13 shall the corporate stock of the corporation formed by the merger or
14 consolidation of two or more other corporations exceed the sum of the
15 capital stock of the corporations so consolidated, at the par value
16 thereof, or such sum and any additional sum actually paid in cash; nor
17 shall any contract for consolidation or lease be capitalized in the
18 stock of any corporation whatever; nor shall any corporation hereafter
19 issue any bonds against or as a lien upon any contract for consolidation
20 or merger. Notwithstanding the foregoing provisions of this section, any
21 application for approval under this section shall be deemed granted by
22 the commission forty-five days after such application is filed for
23 approval, unless the commission, or its designee, determines and informs
24 the applicant in writing within such forty-five day period that the
25 public interest requires the commission's review and its written order.
26 S 2. This act shall take effect immediately.