

4395

2013-2014 Regular Sessions

I N S E N A T E

March 26, 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 Infrastructure and Capital Investment

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

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

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1 equal to the par or stated value of the stock so authorized and that the
2 applicant has certified in the application for authority that a sum
3 equal to the amount to be so transferred was expended for the purposes
4 enumerated in this section. Stock may be issued to an employee or direc-
5 tor of a telegraph or telephone corporation under a stock option plan
6 pursuant to which such corporation grants options to its employees or
7 directors to purchase shares of stock, such options to be exercisable
8 for a stated period of time to purchase shares of stock at the market
9 value of the stock at the time of issuance of the option, provided that
10 there shall have been secured from the commission authority for such
11 issuance and that the applicant has certified in the application for
12 authority that the proceeds from the exercise of the stock options are
13 needed for one of the purposes enumerated in this section. The issue of
14 stocks, bonds or other evidences of indebtedness, within the meaning of
15 this section, shall include the sale by any such corporation of any such
16 securities previously issued in compliance with the provisions of this
17 section and subsequently reacquired by such corporation, provided,
18 however, for good cause shown the commission may exempt from the
19 restriction hereof stocks, bonds or other evidences of indebtedness. The
20 application for authority shall state the amount of any such issue and
21 the purposes to which it or its proceeds are to be applied and shall
22 certify that the money, property or labor procured or to be procured or
23 paid for by such issue or its proceeds has been or is reasonably
24 required for the purposes specified in the application for authority, OR
25 ARE THE PROCEEDS FROM A FEDERAL GRANT OR LOAN FOR THE EXPANSION OF
26 BROADBAND SERVICES, and that such purposes are in no part reasonably
27 chargeable to operating expenses or to income except in the case of
28 bonds, notes or other evidences of indebtedness as may be specifically
29 identified in the application for authority. For the purpose of enabling
30 the commission to determine whether it should authorize such issuance,
31 the commission shall have the power to make such inquiry or investi-
32 gation, hold such hearings and examine such witnesses, books, papers,
33 documents or contracts as it may determine of importance in enabling it
34 to reach a determination. [No] EXCEPT IN INSTANCES WHERE A TELEGRAPH OR
35 TELEPHONE CORPORATION IS ENGAGED IN SECURING A FEDERAL LOAN OR GRANT FOR
36 THE EXPANSION OF BROADBAND SERVICES, NO such corporation shall, without
37 the consent of the commission, apply any such issue or its proceeds to
38 any purpose not specified in the application for authority. Such tele-
39 graph corporation or telephone corporation may issue notes for proper
40 corporate purposes and not in violation of any provision of this chapter
41 or of any other act, payable at periods of not more than twelve months
42 without the consent of the commission; but no such note shall, in whole
43 or in part, directly or indirectly, be refunded by any issue of stock or
44 bonds, or by any evidences of indebtedness running for more than twelve
45 months, without the consent of the commission. No telegraph corporation
46 or telephone corporation shall be required, however, to apply to the
47 commission for authority to issue stocks, bonds, notes or other evidence
48 of indebtedness except for the acquisition of property, the
49 construction, completion, extension or improvement of its facilities, or
50 the improvement or maintenance of its service within the state, or the
51 discharge or refunding of obligations, or reimbursement of moneys actu-
52 ally expended for such purposes. The commission shall have power to
53 require every such corporation to file with the commission after the
54 issuance of stocks, bonds, notes or other evidences of indebtedness
55 issued with or without the approval of the commission as provided in
56 this section, a notice of such transaction in such form as the commis-

1 sion may prescribe. The commission shall have no power to authorize the
2 capitalization of any franchise or right to be a corporation, nor to
3 authorize the capitalization of any franchise or the right to own, oper-
4 ate or enjoy any franchise whatsoever in excess of the amount (exclusive
5 of any tax or annual charge) actually paid to the state or any political
6 subdivision thereof, as the consideration of the grant of such franchise
7 or right, nor to authorize the issuance of any stocks or other securi-
8 ties for any purposes other than those enumerated in this section. Nor
9 shall the corporate stock of the corporation formed by the merger or
10 consolidation of two or more other corporations exceed the sum of the
11 capital stock of the corporations so consolidated, at the par value
12 thereof, or such sum and any additional sum actually paid in cash; nor
13 shall any contract for consolidation or lease be capitalized in the
14 stock of any corporation whatever; nor shall any corporation hereafter
15 issue any bonds against or as a lien upon any contract for consolidation
16 or merger. Notwithstanding the foregoing provisions of this section, any
17 application for approval under this section shall be deemed granted by
18 the commission forty-five days after such application is filed for
19 approval, unless the commission, or its designee, determines and informs
20 the applicant in writing within such forty-five day period that the
21 public interest requires the commission's review and its written order.
22 S 2. This act shall take effect immediately.