WEST VIRGINIA CODE CHAPTER 16 ARTICLE 13B

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§16-13B-1. Short title.

This article shall be known and may be cited as the "West Virginia Community Improvement Act."

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§16-13B-2. Definitions.

For purposes of this article:

(a) "Assessment certificate" means a certificate issued by a board pursuant to section fifteen of this article to evidence an assessment levied against property abutting a wastewater or water project, or on which a flood relief project is completed or protects.

(b) "Assessment district" means a community improvement assessment district created by a governing body pursuant to section seven of this article.

(c) "Assessment fee" means the fee paid by a person or governmental agency owning property located within an assessment district, based on the assessment levied against the property pursuant to section ten of this article, to pay for the cost of a project abutting, constructed upon or protecting such property.

(d) "Board" means the community improvement board of each assessment district provided under section eight of this article.

(e) "Code" means the Code of West Virginia, 1931, as amended.

(f) "Cost" means, as applied to each wastewater, water or flood relief project financed, in whole or in part, with the proceeds from assessment certificates, all costs and expenses incurred by a county or municipality, and the respective assessment districts created under this article, that are reasonable and necessary for the planning, development, construction and carrying out of all works and undertakings necessary or incident to the completion of a project, including, without limitation, the cost and expense of all labor, work, supervision, inspection, equipment leased and materials furnished and used in completing the project, any interest charged on funds borrowed to finance the construction of a project, advertising expenses, and any engineering, legal, surveying, accounting or other professional fees incurred in connection with or otherwise relating to a project.

(g) "Flood relief project" means a project involving one or more of the following activities: (1) The moving, removing, renovating, relocation or demolition of, or any other actions taken to provide protection from flooding to, one or more buildings, structures and other permanent improvements located on property owned by any person, which the governing body of the county or municipality in which the project is completed, or any other governmental agency, has determined is within an area threatened by flooding; or (2) the acquisition of property which is located outside of an area threatened by flooding to serve as a site on which one or more buildings, structures and other permanent improvements which are located within an area that is threatened by flooding may be relocated, or on which new buildings, structures and other permanent improvements may be constructed, and the construction of such new buildings, structures and improvements if relocating existing buildings, structures and improvements is not feasible; or (3) the construction of levies or stream channel improvements to provide flood protection to specifically identified lots or parcels of land

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located within an area which a governing body or other governmental agency has determined is threatened by flooding, all so as to protect the health and safety of persons residing or engaged in business on such threatened property and to eliminate or minimize the risk of damage caused by flooding to such buildings, structures and permanent improvements.

(h) "Governing body" means, in the case of a county, the county commission, and in the case of a municipality, the mayor and council together, the council, the board of directors or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality.

(i) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed improvement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, urban renewal authorities or regional governmental authorities established pursuant to this code and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct, maintain or operate wastewater facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(j) "Municipality" means a municipality as defined in section two, article one, chapter eight of this code.

(k) "Person" means an individual, firm, partnership, corporation, voluntary association or any other type of entity.

(l) "Project" means a flood relief project, wastewater project, water project or any combination thereof.

(m) "Public way" means any street, alley, right-of-way, easement or other interest in real estate, or any portion or combination thereof, along or across which a wastewater or water project is constructed.

(n) "Public service commission" means the Public Service Commission established under article one, chapter twenty-four of this code.

(o) "Recorder" means the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records.

(p) "Utility" means a public utility as defined in article one, chapter twenty-four of this code.

(q) "Wastewater project" means the planning, acquisition, construction, improvement or extension of new or existing sewer lines, pumps and related equipment and facilities, and

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any land, public ways or other interests in real estate, whether located within or outside of an assessment district, necessary or incident to the transportation of sewage, industrial wastes or other wastes, wastewater, and the residue thereof, from property located within an assessment district to a wastewater facility located within or outside of an assessment district.

(r) "Wastewater facility" means all facilities used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof, facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor.

(s) "Water project" means the planning, acquisition, construction, improvement or extension of water lines, pumps and related equipment and facilities, and any land, public ways or other interests in real estate, whether located within or outside of an assessment district, necessary or incident to the transportation and distribution of water from a water facility located within or outside of an assessment district to property located within an assessment district, all for the purpose of providing potable, sanitary water suitable for human consumption and use.

(t) "Water facility" means all facilities, land and equipment used for or in connection with the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

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§16-13B-3. Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.

(a) Every county and municipality is hereby empowered and authorized, in addition to any other rights, powers and authority conferred upon it elsewhere in this code, to:

(1) Create, modify and expand assessment districts in the manner hereinafter set forth in such county or municipality, and to develop, construct, extend or improve, or assist in the development, construction, extension or improvement of, a project located in such county or municipality;

(2) Acquire, by purchase, lease, right of eminent domain, gift or otherwise, such lands, public ways and other interests in real estate, or any other property, as may be necessary or incident to the completion of a project, and to convey such real estate and other property to an assessment district;

(3) Appoint the members of the community improvement board for each assessment district created by it hereunder;

(4) Enter into agreements with any person or governmental agency necessary or incident to the development, planning, construction or improvement of a project, or for the operation, maintenance or disposition of a project or for any other services required by a project;

(5) Expend funds to acquire, or construct part of a project on, property located outside of an assessment district but within the boundaries of such county or municipality, as the case may be, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(6) Enter into agreements with one or more counties or municipalities to plan, develop, construct or improve a project jointly;

(7) Merge two or more assessment districts into one assessment district: Provided, That all such districts are located within the boundaries of the county or municipality, as the case may be; and

(8) Take any and all other actions consistent with the purpose of this article and not in violation of the Constitution of this state, as may be necessary or incident to the construction and completion of a project.

(b) Unless agreed to by a municipality, the power and authority hereby conferred on a county shall not extend into territory within the boundaries of any municipality: Provided, That notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on counties may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

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§16-13B-4. Determination of need and feasibility of creating an assessment district.

(a) The governing body of any county or municipality, on its own motion or upon the receipt of a petition signed by at least twenty-five percent of the total number of persons owning property located within the boundaries of an area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, and which requests that the area be constituted as an assessment district in accordance with this article, may authorize and cause at any time, or from time to time, a study to be prepared to determine the necessity and economic feasibility of creating an assessment district for such area and of developing, constructing, extending or improving a project within such proposed assessment district. All such studies shall be prepared or reviewed under the supervision of a professional engineer or such other person or governmental agency charged by the governing body to prepare or review the study. The study shall describe the boundaries of the proposed assessment district and the nature of the project proposed therefore; list the names and address of all owner of property located within the proposed assessment district; set forth the necessity and economic feasibility of the project and the findings in support of such determinations; and also include plans, drawings and specifications with respect to the project, an estimate of the cost of the project and the amount of the assessments required to be levied against each lot or parcel of land located within the assessment district to pay for the cost of the project. The estimate shall specify the interest rate used in the calculation of the assessments and such other data as may be necessary for owners of property within the proposed assessment district to estimate the proportionate part of the cost of the project that may be assessed against their property.

(b) In the case of an assessment district created, in whole or in part, to construct a wastewater or water project, the study shall also identify the utility or governmental agency operating the wastewater or water facility, as the case may be, which would serve the assessment district upon completion of the project, and confirm that such wastewater or water facility has the capacity to serve the proposed project.

(c) In the case of an assessment district created, in whole or in part, to construct a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, the study shall also set forth the minimum number of property owners who must elect to have the cost of the proposed project assessed against their property for the project to be economically feasible, and an estimate of the assessments which may be levied against the property owned by such persons if only the minimum number of property owners elect to have the project completed.

(d) After reviewing the study prepared pursuant to this section and considering alternative methods of financing the proposed project, the governing body may by order or ordinance determine the necessity and economic feasibility of creating an assessment district and developing, constructing, improving or extending a project therein. If the governing body determines that the creation of an assessment district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of this article and shall cause the study to be filed with the clerk of the county

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commission or the recorder of the municipality, as the case may be, and with the executive secretary of the Public Service Commission, and made available for inspection by interested persons before the hearing.

(e) In determining the necessity and economic feasibility of an assessment district and the construction of a project, the governing body may rely, in whole or in part, on studies or reports prepared by or for any other governmental agency.

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§16-13B-5. Notice to property owners before creation of assessment district and construction of project; form of notice; affidavit of publication.

(a) Before the adoption or enactment of an order or ordinance creating an assessment district, the governing body shall cause notice to be given to the owners of property abutting a proposed wastewater or water project, or to the owners of property to be protected by a proposed flood relief project, that such ordinance or order will be considered for adoption or enactment, as the case may be, at a public meeting of the governing body at a date, time and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption, enactment or rejection of the order or ordinance. At or after the meeting the governing body may amend, revise or otherwise modify the plans, drawings and specifications for the assessment district and project as it may deem appropriate after taking into account any comments received at such meeting.

(b) The notice required in this section shall be published at least thirty days prior to the date of the meeting as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or municipality in which the proposed assessment district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN ..... (here describe the boundaries of the proposed assessment district) IN THE ..... (county or municipality) OF ..... (name of county or municipality):

A proposal has been made to the ..... (county commission, city council or other governing body) of the ..... (county or municipality) of ..... (name of county or municipality) to establish a community improvement assessment district under chapter sixteen, article thirteen-b of the Code of West Virginia to permanently improve ..... (here describe the portion of the public ways both within and outside of the proposed assessment district to be improved, in the case of wastewater or water project, or the lots or parcels of land which may be protected, in the case of a flood relief project) in ..... (name of county or municipality) by ..... (here provide general description of the project) as the ..... (county commission, city council or other governing body) may deem proper, and to assess the total cost (or, if the assessments are only necessary to pay for part of the total cost, the approximate percentage of the total cost) of such improvement on ..... (in the case of a wastewater or water project, the property abutting said portion of the public ways within the proposed assessment district, or, in the case of a flood relief project, the lots or parcels of land on which the project may be constructed or may protect).

The proposal to create an assessment district and to make such improvements, and the plans, drawings, specifications and estimates therefor, will be considered by the ..... (county commission, city council or other governing body) at a public meeting to be held on the ..... day of ....., ..., at .....m. at ..... Any owner of property who may be affected by the creation of the above-described assessment district, and any

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person whose property is not located within said assessment district but wishes his property to be included, will be given an opportunity to protest or be heard at said meeting or any adjournment thereof:

..... (name of clerk or recorder)

..... (official position)."

(c) An affidavit of publication of the notice made by the newspaper publisher, or a person authorized to do so on behalf of such publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of said notice upon all persons owning any interest in any property located within the proposed assessment district shall conclusively be deemed to have been given upon the completion of such newspaper publication.

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§16-13B-6. Petition of property owners for creation of assessment district.

(a) After the meeting described in section five of this article, and before the governing body may adopt or enact an order or ordinance creating an assessment district, the governing body shall receive, within ninety days after the meeting, a petition in writing of (1) persons owning, in the case of a wastewater or water project, or both, not less than sixty percent of the frontage of the lots abutting on both sides of that portion of the public way located within the proposed assessment district on which the wastewater or water project or any part thereof may be constructed; (2) in the case of a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, such percentage of property owners as the governing body shall have previously determined is necessary for such project to be economically feasible; or (3) in the case of a flood relief project as defined in subparagraph (3), subsection (g), section two of this article, persons owning not less than sixty percent of the lots which may receive flood relief protection from such a project, in each case requesting the creation of the assessment district and the completion of the project according to the plans, drawings and specifications submitted at the meeting, and agreeing to have their property assessed with the total cost of the project (or, if the governing body has previously determined that the assessments are only necessary to pay for part of the total cost, agreeing to have their property assessed with that part of the cost). The governing body may prescribe the form of the petition as it may deem appropriate, and the petition shall be held at all times in the office of the county clerk or the recorder, as the case may be, and shall be open to the public for inspection and execution during the normal business hours of such office.

(b) Upon receipt of the petition required under subdivision (2), subsection (a) of this section, and before the governing body may adopt or enact an order or ordinance creating an assessment district, the governing body shall establish, solely in the case of a proposed flood relief project as defied in subparagraph (1) or (2), subsection (g), section two of this article, a period which may not be less than thirty days or more than sixty days, during which any owner of property to be affected thereby may elect not to have the project undertaken with respect to his property, in which event the project shall not be undertaken on such property and such property shall not be subject to any assessments thereafter levied or any lien created pursuant to this article. Such election shall be submitted in writing to the governing body prior to the expiration of the election period so established.

(c) The governing body shall provide notice of the election period required in subsection (b) of this section to those persons whose property may be affected by such flood relief projects and shall set forth in the notice the property owner's election rights with respect thereto and an estimate of the assessments which may be levied against each lot or parcel of land so affected, based on the number of persons who signed the petition described in subsection (a) of this section, and shall also set forth the minimum number of persons who must elect to have the project completed to make the project economically feasible and the assessments which may be levied if not more than the minimum number of persons so elect. The notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication

shall be the assessment district. After the expiration of the election period, if the number of property owners not opting out of the flood relief project is less than the minimum number of property owners necessary for the project to be economically feasible, the governing body may, by ordinance or order, terminate any further actions concerning the proposed flood relief project and assessment district.

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§16-13B-7. Receipt of petition of property owners; ordinance or order authorizing creation of assessment district and construction of project.

Upon receipt of the petition required under section six of this article and, solely in the case of a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, not earlier than the expiration of the election period required under section six of this article, the governing body, by ordinance or order, may create a community improvement assessment district and shall set forth in such ordinance or order, as the case may be, the boundaries of the assessment district and authorize the completion of the project therein in accordance with the study described in section four of this article.

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§16-13B-8. Assessment district to be a public corporation and political subdivision; powers thereof; community improvement boards.

(a) From and after the date of the adoption or enactment of the order or ordinance creating an assessment district, it shall thereafter be a public corporation and political subdivision of this state, but without any power to levy or collect ad valorem taxes. Each assessment district is hereby empowered and authorized, in addition to any other rights, powers and authorities conferred upon it in this article or elsewhere in this code, to:

(1) Acquire, own and hold, in its corporate name, by purchase, lease, right of eminent domain, gift or otherwise, such property, both real and personal, public ways and other interests in real estate, or any other property, whether tangible or intangible, as may be necessary or incident to the construction and completion of a project;

(2) Construct and complete one or more projects, and assess the cost of all or any portion of a project on abutting property located in the assessment district, in the case of a wastewater or water project, or on the property protected by a flood relief project;

(3) Sue or be sued;

(4) Establish a bank account or accounts in its name;

(5) Enter into agreements or other transactions with any person or governmental agency necessary or incident to the development, planning, construction or improvement of a project, or for the operation, maintenance or disposition of a project or for any other services required by a project;

(6) Provide grants to any person owning property abutting a wastewater or water project, or on which a flood relief project is undertaken, in consideration of the completion by such person of a portion of the work necessary or incident to the completion of the project;

(7) Expend funds to acquire, or construct part of a project on property located outside of an assessment district, and for any work undertaken thereon, as may be necessary or incident to the completion of a project;

(8) Enter into agreements with one or more counties, municipalities or assessment districts to plan, develop, construct or improve a project jointly;

(9) Accept appropriations, gifts, grants, bequests and devises, and use or dispose of the same to carry out its corporate purpose;

(10) Make and execute contracts, releases, assignments, compromises, and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(11) Have a seal and alter the same;

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(12) Issue assessment certificates to carry out and effectuate the purpose of this article;

(13) Borrow money to carry out and effectuate the purpose of this article and to issue its notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate powers;

(14) Obtain options to acquire real property, or any interest therein, by purchase, lease or otherwise, which is found by the board to be suitable as a site, or part of a site, for the construction of a project; and

(15) Take any and all other actions consistent with the purpose of this article and not in violation of the Constitution of this state, as may be necessary or incident to the construction and completion of a project.

(b) The powers of each assessment district shall be vested in and exercised by a community improvement board which shall be composed of five members, four of whom shall be appointed by the governing body of the county or municipality in which the assessment district is located, and one of whom shall be the sheriff of the county or the treasurer of the municipality (or such other person serving in an equivalent capacity if there is no treasurer), as the case may be, in which the assessment district is located. At least one member of the board shall be a professional engineer and at least three members of the board shall be residents of the assessment district. No more than three members of the board may be from the same political party.

(c) The provisions of this subsection apply to the four members appointed by the governing body. They shall be appointed for overlapping terms of four years each and until their respective successors have been appointed and have qualified, except for the original appointments. For the purpose of original appointments, one member shall be appointed for a term of four years and until his or her successor has been appointed and qualified; one member shall be appointed for a term of three years and until his or her successor has been appointed and qualified; one member shall be appointed for a term of two years and until his or her successor has been appointed and qualified; and one member shall be appointed for a term of one year and until his or her successor has been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state. Vacancies shall be filled by appointment by the governing body of the county or municipality creating the assessment district for the unexpired term of the member whose office shall be vacant and such appointment shall be made within thirty days of the occurrence of such vacancy. Any such member may be removed by the governing body which appointed such member in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall not be entitled to any compensation for their services.

(d) The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after January 1, of each year by selecting one of its members to

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serve as chairman, one to serve as treasurer and one to serve as secretary. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records, and the treasurer shall maintain records of all financial matters relating to the assessment district, which shall also be available for inspection as other public records. Duplicate records shall be filed with the clerk or recorder, as the case may be, of the county or municipality which created the assessment district and shall include the minutes of all board meetings. The secretary and treasurer shall perform such other duties pertaining to the affairs of the assessment district as shall be prescribed by the board.

(e) The members of the board, and the chairman, secretary and treasurer thereof, shall make available to the governing body responsible for appointing the board, at all times, all of its books and records pertaining to the assessment district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

(f) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(g) Staff, office facilities and costs of operation of the board shall be provided by the county or municipality which created the assessment district.

(h) The chairman shall preside at all meetings of the board and may vote as any other members of the board, but if he should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organizational meeting.

(i) The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. The members of the board shall not be personally liable or responsible for any obligations of the assessment district or the board but are answerable only for willful misconduct in the performance of their duties.

(j) The official name of an assessment district created under the provisions of this article may contain the name of the county or municipality, as the case may be, in which it is located.

(k) Notwithstanding any provision in this code to the contrary, the power and authority hereby conferred on assessment districts may extend within the territory of a public service district created under section two, article thirteen-a of this chapter.

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§16-13B-9. Provisions for construction of a project.

(a) After the creation of an assessment district and the appointment of the board thereof, the board shall provide by resolution for the construction of the project, and shall also provide in the same or subsequent resolutions for the supervision of such work by a professional engineer, governmental agency or any other person designated by the board. The board may provide for the construction of the project by one of the two following methods, or any combination thereof:

(1) If there exists another governmental agency with the experience, knowledge and authority to construct the project, the board may elect to enter into a contract with such agency for the construction of all or part of the project or for any other service necessary or incident to the construction of the project, in which case such governmental agency shall be responsible for entering into contracts, subject to the board's approval, with such other persons as may be necessary or incident to the construction of the project; or

(2) The board may elect to enter into one or more contracts with such contractors and other persons as may be necessary or incident to the construction of the project, in which case it shall provide notice to the public and appropriate contractor associations of the general nature of the project, and shall designate in such notice the place where detailed plans, drawings and specifications of the project may be reviewed, and call for sealed proposals for construction of the project by a date not earlier than ten days after the last of such publications. Such notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the assessment district. All contracts for work on any project, the expense of which will exceed $500, shall be let to the lowest responsible bidder therefor, and the board may impose such conditions as it may deem necessary upon the bidders with regard to bond and surety, guaranteeing the good faith and responsibility of such bidders, and the faithful performance of such work according to contract, or for any other purpose. The board may reject any and all bids, and if it rejects all bids notices shall be published as originally required before any other bids may be received. The board may let portions of the work necessary to complete a project under different contracts.

(b) The resolution described in subsection (a) of this section shall also provide for payment of the cost of the project. The board shall provide in such resolution for the payment by (1) persons owning property abutting a wastewater or water project, in the case of such a project; (2) persons owning property on which a flood relief project, as defined in subparagraph (1) or (2), subsection (g), section two of this article, is constructed, in the case of such a project; or (3) persons owning property protected by a flood relief project, as defined in subparagraph (3), subsection (g), section two of this article, in the case of such a project, of the cost of the work in equal installments payable over a period of not less than five years nor more than ten years from the date of assessment, with interest payable from the date of assessment at such rate or rates as the board may determine are necessary or appropriate, and shall fix the number of installments in which the amounts assessed shall be payable: Provided, That upon failure of the owner of the property assessed to pay any

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installment as and when due, and if such default continues for sixty days after receipt of written notice of the default, then at the option of the holder of the assessment certificates applicable to such property, the entire balance due may be declared immediately due and payable and the holder of the certificates may forthwith proceed to enforce the collection thereof in accordance with this article. Delivery of notice of default shall be deemed complete upon the delivery of such notice by certified mail, return receipt requested, directed to the address of the property owner in default as shown on the face of the assessment certificate, or such other address provided in writing to the holder of the certificate subsequent to the issuance thereof.

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§16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.

(a) After the execution of an agreement or agreements for the construction of a project with another governmental agency or the acceptance by the board of a bid by one or more contractors as contemplated by section nine of this article, but prior to the commencement of construction, the board shall cause the engineer, governmental agency or person charged by the board with the supervision of the project, to prepare a report describing each lot or parcel of land abutting the project in the case of a wastewater or water project, or each lot or parcel on which a flood relief project shall be undertaken or shall protect in the case of such a project; and setting forth the total cost of the project based on the contract with the governmental agency, or the accepted bid or bids, and all other costs incurred prior to the commencement of construction, and the respective amounts chargeable upon each lot or parcel of land which may be assessed and the proper amount to be assessed against the respective lots or parcels of land in accordance with sections eleven and twelve of this article, with a description of the lots and parcels of land as to ownership, frontage and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of property to be assessed that on or after a date specified in the notice an assessment may be levied against the property: Provided, That construction of a project shall not commence until the assessment district has laid all assessments on the property to be benefitted by the project and has issued all assessment certificates necessary to evidence the assessments in accordance with section fifteen of this article. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment, and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project, and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership, frontage and location. The notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication is the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to lay the assessments as corrected and verified.

(b) Upon completion of a project, or the completion of that portion of a project that provides water, wastewater or flood protection benefits to the property subject to the assessments, the board shall cause the engineer or committee charged by the board with the supervision of the project, to prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, (1) follow the

same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or correction of such proposed reassessment as required for the original assessment, and (2) issue such additional assessment certificates as may be necessary to evidence the amount by which the assessment applicable to each lot or parcel of land has increased. If an assessment is decreased, the board shall, by resolution and written notice to the sheriff of the county in which the assessment district is located, cause the next installment or installments of assessment fees then due and payable by each affected property owner to be reduced pro rata, and shall provide written notice to such property owners of the amount of such decrease by the deposit of such notice in the United States mail, postage prepaid. In such cases the board shall also transmit to the sheriff an amount of funds equal to the difference between the cost of the project upon which the assessments were originally laid and the cost of the project as completed, and the sheriff shall disburse such funds to the holders of the assessment certificates issued in connection with the project on a pro rata basis.

(c) Prior to the construction of a project, the board shall obtain all permits and licenses required by law for the construction and operation of the project: Provided, That the board is not required to obtain a certificate of public convenience from the Public Service Commission under article two, chapter twenty-four of this code: Provided, however, That prior to the construction of each project, the board shall apply to the Public Service Commission for authorization enabling the construction and shall submit with said application any certificate required by the division of public health, any certification or permit required by the Division of Environmental Protection, the contract for utility service, if a utility will be involved, a copy of the utility's applicable, existing rate tariff, a copy of the order or ordinance creating the board and a certificate of a qualified professional engineer that the utility providing service has the capacity to provide or treat, as the case may be. The Public Service Commission shall render its final decision on any application filed under the provisions of this section within (i) ninety days in the case of a project serving twenty-five or fewer residential customers, or (ii) one hundred twenty days in the case projects serving commercial customers or more than twenty-five residential customers, following the submission of such application and all information herein required.

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§16-13B-11. Construction of projects; assessments; corner lots, etc.

(a) Each board is hereby empowered and authorized to order and cause to be constructed, within its respective assessment district, any project for the benefit of said assessment district or any part thereof. Upon the completion of a project or any part thereof, (1) the property located within the assessment district abutting on a wastewater or water project or abutting upon that portion of a public way within the assessment district in which such wastewater or water project shall be constructed, or (2) the property protected by the flood relief project, may be charged by the assessment district in which the project is located with all or any part of the cost thereof, including the cost of such wastewater or water project across public ways. No lot or parcel of land abutting any portion of a project which is located outside of an assessment district shall be subject to any assessment unless and until the owner of such lot or parcel receives any services provided by the project, in which event such lot or parcel may be subject to assessment under section twenty of this article.

(b) Assessments made with respect to wastewater or water projects shall be subject to the restrictions set forth in this subsection and subsection (c) of this section. In case of a corner lot, or acreage which has not been divided into lots, frontage which may be assessed shall be measured along the longest dimension thereof abutting on each public way in which a wastewater or water project is constructed, but if the project is constructed on two or more sides then such corner lot, or acreage which has not been divided into lots, shall be charged only with the side on which the project is first completed unless such lot or acreage is two hundred feet or more in depth measured from such first side, in which event the corner lot, or acreage which has not been divided into lots, shall be charged only with the footage in excess of two hundred feet. Any lot, or any acreage which has not been divided into lots, having a depth of two hundred feet or more and abutting on two or more public ways, one on the front and one in the rear of said lot, or said acreage which has not been divided into lots, shall be assessed on both of said public ways, if a project is constructed on both such public ways. Where a corner lot, or any acreage which has not been divided into lots, has been assessed on both ends, it shall not be assessed on the side, and where it has been assessed on the side, it shall not be assessed on either end.

(c) In case of corner lots, or any acreage which has not been divided into lots, where the cost of a wastewater or water project along one dimension is not assessed against the owner thereof, and in the case of lots, or acreage, less than two hundred feet deep abutting at each end on a public way in which a project is completed, the cost of the project along the dimension or end not assessed against the property owner shall in every case be apportioned and assessed against the other property abutting on the public way within the assessment district being improved, in the manner of apportionment of the cost of improvements in intersections.

WV Legislature

§16-13B-12. Apportionment and assessment of cost.

(a) The cost of a wastewater or water project, including the cost of all improvements at and within intersections and the cost attributable to any portion of the project located outside an assessment district, shall be apportioned to, and assessed against and borne by the properties abutting upon all public ways located within the assessment district, in or upon which the improvements involved in the project shall have been made. Each lot or parcel of land located within the assessment district so abutting shall be assessed, subject to the provisions of section eleven of this article respecting assessment for improvements of corner lots, acreage not divided into lots and lots or acreage improved on more than one side or end, with that portion of the cost of the entire project, located both within and outside the assessment district, which is represented by the proportion which the abutting frontage in feet of such lot or parcel of land bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the public ways so improved within the assessment district: Provided, That if the character of the improvements shall be substantially different upon different public ways or portions thereof, the cost may be equitably apportioned to the respective public ways, or portions thereof, in proportion to the character and cost of the respective improvements thereon and the part of the cost so apportioned to each respective public way, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: Provided, however, That property shall be assessed only to the extent it is benefited and if there is any property abutting on the portion of the public way located within the assessment district, so improved which the board in the resolution authorizing the project has determined will not be specially benefited by the improvements, or will not be specially benefited to the full extent of the cost of the project, or for other reasons which would not be liable to assessment for any of, or for some part of, the cost of the project, then the cost of such project abutting such part of said public way, or so much thereof as is so determined to be nonassessable, shall be apportioned among, assessed against and borne by the remaining property abutting upon the public ways located within the assessment district, improved in proportion, subject to the aforesaid provisions of section eleven of this article, to the frontage of such remaining abutting property as hereinabove provided: Provided further, That if there be property abutting the public way located in the assessment district, so improved, which is owned by the United States of America, and, for that reason, not legally subject to assessment, then the county or municipality shall pay the proportionate part of the cost of the improvement which otherwise would be assessable against such federally owned property.

(b) Solely in the case of a flood relief project as defined in subparagraph (1) or (2), subsection (g), section two of this article, that portion of the cost of the project incurred in the preparation of the studies and reports required under this article prior to the construction of the project and all other costs relating to the development and planning of the project and which are incurred prior to the commencement of construction of the project and not in the actual construction of the project on or protecting one lot or parcel of land, shall be apportioned equally to each lot or parcel of land benefited and protected by the

project, and all construction costs and any development costs incurred solely in completing a flood relief project benefiting and protecting a specific lot or parcel of land, shall be apportioned solely to such parcel or lot.

(c) Solely in the case of a flood relief project as defined in subparagraph (3), subsection (g), section two of this article, the cost of the project shall be apportioned pro rata to each lot or parcel of land benefited and protected by the project on which a house, building or other structure is situate, based on the ratio which the total square footage of protected space in such house, building or other structure bears to the total square footage of space in all houses, buildings and other structures located on property benefited and protected by the project.

(d) In apportioning the cost of any project to any lot or parcel of land in any circumstances not expressly covered in this article, the cost shall be apportioned equitably, as determined by the board, in keeping with the concepts and principles expressed in this article and the special benefit to the property in question from the improvements made.

WV Legislature

§16-13B-13. Assessment against property of public, charitable, eleemosynary, educational or religious institutions; duty of those in charge to cause assessments to be paid.

When any of the lots or parcels of land within an assessment district abutting the portion of the public way improved by a wastewater or water project consist of property owned or controlled by this state, any municipality, county, Board of Education or other public body, or consist of property owned by, or used for, a church, or a religious, charitable, educational or eleemosynary institution, for purposes not subject to taxation, such property shall nevertheless be assessed with its proper proportion of the cost of said improvement, and it shall be the duty of those persons having charge of the fiscal affairs of such owner or the management of any such property or institution to make proper arrangements for the payment of, and cause to be paid, such assessments as and when due and payable.

WV Legislature

§16-13B-14. Method of paying for cost of project; how assessments may be evidenced.

The board shall determine and provide in the resolution laying the assessments, adopted in accordance with section ten of this article, the method of financing the cost of a project, for the cost of which assessments are levied as in this article provided, and such method may include the receipt of gifts, grants from any governmental agency or appropriations from the county or municipality in which the assessment district is located, or borrowing funds from any person or governmental agency, or any combination thereof: Provided, That any funds borrowed by an assessment district, including any interest accruing thereon, shall be repaid solely from the proceeds of the assessment certificates issued pursuant to section fifteen of this article and from the assessments evidenced thereby.

WV Legislature

§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.

(a) All assessments levied under this article shall be evidenced by assessment certificates issued by the assessment district in accordance with this section. The board may issue assessment certificates to any person or governmental agency financing the cost of a project, and may also issue assessment certificates in the name of the assessment district, on behalf of itself or as agent for any other person or governmental agency. The board shall issue the assessment certificates as soon as practicable after it has determined the method of financing the cost of the project and laid the assessments against the property, as provided in section ten of this article. The assessment certificates shall evidence on their face the assessments applicable to the property for which each such certificate has been issued and each installment of principal and interest payable, and a copy of each assessment certificate shall be provided to the owner of the property against which the assessment evidenced by the assessment certificate has been laid. Each assessment certificate shall be issued in registered form and shall show on the face thereof the name and address of the owner of the property to which the assessment certificate applies, the name and address of the person serving as the registrar for such certificate in accordance with subsection (c) of this section, and the name and address of the person to whom the certificate is issued. Assessment certificates shall be signed by the chairman and secretary of the board of the assessment district issuing the certificates, shall refer to the resolution laying the assessments and shall show the amount and date of the assessment and describe the property against which the assessment is laid, describing the same as to ownership, amount, frontage (solely in case of a wastewater and water project) and briefly as to location, and the mailing address of the owner thereof. Assessment certificates shall also show the dates on which principal and interest payments are due, shall set forth that the payment of all such installments shall be made to the sheriff of the county in which the assessment district is located, as provided in section seventeen of this article, and shall contain a provision that in the event there is default in the payment of any one of such installments and such default continues for a period of sixty days after written notice of such default, then all unpaid installments shall become due and payable at the election of the certificate holder and the holder may proceed to collect all of the unpaid balances of installments, with interest until paid.

(b) Each assessment certificate issued under this article shall be enforceable by the holder thereof, and shall be assignable by endorsement and delivery of the certificate and upon delivery to the registrar of the assessment certificates of a written notice of such assignment executed by the assignor and assignee, each of whose signatures shall be duly notarized.

(c) Prior to the issuance of any assessment certificates, the board shall, by resolution, designate a financial institution located in this state as the registrar for such certificates, who shall maintain a complete and accurate record of the names and addresses of the persons or governmental agencies to whom the assessment certificates are issued. Within ten days of the issuance of an assessment certificate or any revised assessment certificates

in lieu thereof, the board of the assessment district issuing the same shall provide to such registrar a list of the names and addresses of the person or governmental agency to whom the certificates were issued, which shall be certified by the secretary of the board. The record of certificate holders maintained by the registrar shall be open to inspection by the sheriff of the county in which the assessment district is located and may be relied upon by the sheriff for purposes of disbursing assessment fees in accordance with section seventeen of this article or in otherwise determining the lawful holders of the assessment certificates.

WV Legislature

§16-13B-16. No liability of state, county, municipality and assessment district.

Neither the state nor any county or municipality shall be liable on notes or other evidences of indebtedness of an assessment district or for the payment of any assessment fees evidenced by any assessment certificate, and such notes or other evidences of indebtedness and assessment certificates shall not be a debt of the state or any county or municipality, and such notes or other evidences of indebtedness and assessment certificates shall contain on the face thereof a statement to such effect. No assessment district shall be liable for the payment of any assessment fees evidenced by any assessment certificates issued pursuant to this article and assessment certificates shall contain on the face thereof a statement to such effect.

WV Legislature

§16-13B-17. Payment of assessment fees; releases.

(a) Payments of assessment fees or any installment thereof shall be made to the sheriff of the county in which the assessment district is located, who shall hold and disburse all such fees as agent for the assessment district in accordance with this section. The sheriff shall promptly deposit all assessment fees upon receipt thereof in a segregated account established by the sheriff for such purpose and shall maintain a record of the assessment fees so received. Within thirty days of receipt of assessment fees from any person or governmental agency, the sheriff shall disburse the assessment fees to the holder of the assessment certificate pursuant to which such assessment fees were paid, and within sixty days after the receipt of all assessment fees due for the calendar year in question, but in no event later than October 1, of such year, prepare and deliver to the board of each assessment district located in the county, a statement setting forth the aggregate amount of assessment fees received for such district and the name of any property owner who failed to pay the assessment fees due and payable for the period in question.

(b) On or before April 30 of each year in which assessments are owed with respect to any lot or parcel of property within an assessment district located in a county, the sheriff of the county shall send a notice to the person owning such lot or parcel setting forth the assessment fee due for such period and that such assessment fee shall be due and payable on or before June 1 of such year. In preparing and mailing such notices, the sheriff may rely on the information contained in the records maintained by the registrar of each assessment district, as provided in section fifteen of this article.

(c) If payment in full is made to the holder of a certificate, the holder shall deliver the certificate to the assessment district marked "paid" to evidence the payments made of principal and interest, and the assessment district shall thereupon deliver the certificate to the payor. On presentation to the board for cancellation of all certificates for the full assessment made against a specific lot or parcel of property assessed, the chairman of the board shall on request execute and deliver a release of the lien of such assessment.

WV Legislature

§16-13B-18. Liens; recording notice of liens; suit for enforcement; priority.

The property abutting the portion of the public way located within the assessment district, so improved, in the case of a wastewater or water project, or the property improved or protected by a flood relief project, against which properties an assessment has been laid as herein provided, shall be subject to a lien, from the date of the resolution laying the assessment, for the payment of that portion of the cost of the project assessed against said property. A notice of the liens of said assessments referring to the assessing resolution, and setting forth a list of the property assessed, described respectively as to amounts of assessment and ownership, frontage (solely in case of a wastewater or water project) and location of the property, shall be certified, by the chairman and secretary of the board, to the clerk of the county commission of the county wherein the project is located. The county clerk shall record the notice of such lien in the appropriate trust deed book or other appropriate county lien book and index the same in the name of each owner of property assessed. From the date of an assessment, the holder of the assessment certificate shall have such lien and shall be entitled to enforce the same in its, his or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of such assessments and against the property to which the assessment certificate applies, as to any assessment not paid as and when due. Such assessments shall be and constitute liens in the hands of the holders of said certificates upon the respective lots and parcels of land assessed and shall have priority over all other liens except those for land taxes due the state, county and municipality and except any liens for preexisting special assessments provided under this code. If any assessment is revised in accordance with section ten or twenty of this article, the lien created by this section shall extend to the assessment so revised and shall have the same priority as the priority of the lien created upon the laying of the original assessment. Such assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. The holders of any such assessment certificates may enforce the lien thereof in any proper suit, and when default in the payment, as and when due, of any assessment, principal or interest, or installment thereof, shall occur and such default shall have continued for more than sixty days after the receipt by the property owner of written notice of such default from the sheriff of the county in which the assessment district which issued the certificates is located, the holders of any such certificates may declare the whole unpaid balance due and payable and by proper civil action enforce the lien thereof, upon process issued and served according to law upon the owner or owners of the lots or parcels of land subject to said lien at the time such suit may be brought as shown by the records of the clerk of the county commission of the county in which said lots or parcels of land are located. The notice required under this section shall be complete when such notice is mailed by certified mail, return receipt requested, directed to the address shown on the records maintained by the registrar under section fifteen of this article.

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§16-13B-19. Reassessment for void, irregular or omitted assessments.

In the case of the construction of any permanent improvements where an assessment has heretofore been laid or may hereafter be laid for the cost thereof, which said assessment is or shall be void or voidable by reason of errors, irregularities or defects in the proceedings under which such improvements were made, or in case such assessment shall have been made against the wrong person or property, or shall have been omitted to be made in a case where the same was proper, it shall be the duty of the board within five years after the completion of such improvements, or after any court shall have declared such assessment invalid, to cause notice to be given to any person or persons against whom the cost of said improvements might properly be or have been assessed, of its intention to lay such assessment and fixing a date, time and place at which the owner or owners may appeal and show case against the same. Said notice shall be served in the manner provided in this article for the giving of notices in assessment proceedings, or in any other manner provided by law. At the time and place specified in the notice aforesaid or at any time thereafter, the board shall proceed to lay and levy an assessment or assessments for the cost of such improvements as would have been lawful under proper proceedings at the time said improvements were completed, unless the owner or owners so notified shall show good cause against the same. The reassessment or reassessments so laid shall be a lien upon the property liable therefor in the manner hereinabove provided from the date of the original assessment, with interest therefrom, and proper assessment certificate may be issued, recordation had, and the payment thereof and the lien thereof may be enforced in the same manner and upon the same terms as would have been proper at the time of the completion of the said improvements had the assessments therefor been then properly laid and levied.

WV Legislature

§16-13B-20. How additional territory may be added to assessment district.

(a) A governing body may, with respect to any assessment district created by it, modify, expand or extend the boundaries of the assessment district to develop, construct, improve or extend any project, or to enable persons residing or engaged in business on property located outside the assessment district to obtain the services provided by a wastewater or water facility, (1) by satisfying the same requirements provided in this article for the creation of the assessment district, or (2) upon the unanimous written agreement of persons owning all of the property to be added to the assessment district that such property be added to the district and assessed in accordance with subsection (b) of this section: Provided, That no property may be added to an assessment district for connection to a wastewater or water project unless it abuts the assessment district.

(b) Any property added to an assessment district shall be assessed for and bear a proportionate share of the cost of the project then remaining unpaid, consistent with the concepts and principles set forth in sections eleven and twelve of this article and the assessment so laid shall be a lien upon the property in the same manner hereinabove provided from the date such assessment is laid. Contemporaneously with the resolution laying the assessment against such property, all other property located in the assessment district shall be reassessed to reflect the addition of such property to the assessment district. In all such cases, the assessment district shall be the holder of the assessment certificates issued to evidence the assessments laid upon the added property, and all assessment fees received by the sheriff from such assessment certificates shall be applied, pro rata, to reduce the final installment of principal and interest due from the owners of all other property located in the assessment district as it existed prior to the addition of property to the district.

(c) If any property is connected to a wastewater or water project after the cost of the project has been paid in full and the transfer of the project to a utility or governmental agency pursuant to section twenty-one of this article, the owner of such property shall pay to the utility or governmental agency the same rates and charges paid by other customers of the utility or governmental agency for the services provided by the wastewater or water facility operated and maintained by it.

WV Legislature

§16-13B-21. Operation and maintenance of wastewater and water projects; rates and charges therefor.

(a) Prior to the construction of a wastewater or water project, the assessment district in which the project shall be located shall enter into one or more agreements with a utility or governmental agency operating a wastewater or water facility within the service area covered by the assessment district for the operation and maintenance of the project and for the provision of wastewater or water services, as the case may be, and such utility or governmental agency shall thereupon be authorized and empowered to charge and collect from each person connected to the project such rates and charges customarily paid by customers of such utility or governmental agency for similar wastewater or water services. All such agreements shall have terms of duration equal to or greater than the period necessary for the cost of the project to be paid in full, and may otherwise contain such terms and conditions as may be mutually agreed to by the parties, and shall be presented as part of the application to the Public Service Commission required by section ten (c) hereof.

(b) Immediately upon the final payment of all assessment fees due under all assessment certificates issued in connection with a wastewater or water project constructed within an assessment district, the assessment district shall transfer and convey all of its right, title and interest in and to such project to the utility or governmental agency providing wastewater or water services, as the case may be.

WV Legislature

§16-13B-22. Liberal construction.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose hereof.

WV Legislature