

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

Committee Substitute For
HOUSE BILL No. 959

(By Mr. Speaker, Mr. White)



PASSED March 13, 1965

In Effect from Passage



FILED IN THE OFFICE OF
JOS. E. BENDITT
SECRETARY OF STATE
THIS DATE 3-18-65

6567#

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COMMITTEE SUBSTITUTE
FOR
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[Passed March 13, 1965; in effect from passage.]

AN ACT to amend and reenact sections two, three, nine and twenty-three, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to county public service districts for water and sewerage service.

Be it enacted by the Legislature of West Virginia:

That sections two, three, nine and twenty-three, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article 13-a. Public Service Districts for Water and Sewage
Services.**

Section 2. Creation of Districts by County Court.—

2 The county court of any county may on its own motion
3 by order duly adopted propose the creation of such public
4 service district within such county, setting forth in such
5 order a description sufficient to identify the territory to
6 be embraced therein and the name of such proposed dis-
7 trict, or any one hundred legal voters resident within
8 and owning real property within the limits of such pro-
9 posed public service district within one or more counties
10 may petition for the creation thereof, which petition
11 shall contain a description sufficient to identify the ter-
12 ritory to be embraced therein and the name of such
13 proposed district. Any territory may be included regard-
14 less of whether or not such territory includes one or
15 more cities, incorporated towns or other municipal cor-
16 porations which own and operate any public service
17 properties and regardless of whether or not it includes
18 one or more cities, incorporated towns or other municipal
19 corporation being served by privately-owned public serv-

20 ice properties: *Provided, however,* That no territory
 21 shall be included within more than one public service
 22 district organized under this article and the boundaries
 23 shall conform to or follow magisterial district lines ex-
 24 cept where less than a whole of any magisterial district
 25 is to be included, in which latter case that part of any
 26 such boundary shall conform to other natural boundary
 27 lines, or the lines of a fixed survey: *And provided fur-*
 28 *ther,* That no city, incorporated town or other municipal
 29 corporation shall be included within the boundaries of
 30 such proposed district except upon the adoption of a
 31 resolution of the governing body of such city, incorpo-
 32 rated town or other municipal corporation consenting
 33 thereto.

34 Such petition shall be filed in the office of the clerk
 35 of the county court of the county in which the territory
 36 to constitute the proposed district is situated, and if such
 37 territory is situated in more than one county then such
 38 petition shall be filed in the office of the clerk of the
 39 county court of the county in which the major portion
 40 of such territory extends, and a copy thereof (omitting

41 signatures) shall be filed with each of the clerks of the
42 county courts of the other county or counties into which
43 the territory extends. It shall be the duty of the clerk
44 of the county court receiving such petition to present
45 same to the county court of such county at the first reg-
46 ular meeting after such filing or at a special meeting
47 called for the consideration thereof.

48 When the county clerk of any county enters an order
49 on its own motion proposing the creation of a public
50 service district, as aforesaid, or when a petition for such
51 creation is presented, as aforesaid, the county court shall
52 at the same session fix a date of hearing in such county
53 on the creation of the proposed public service district,
54 which date so fixed shall be not more than forty days
55 nor less than twenty days from the date of such action.
56 If the territory proposed to be included is situated in
57 more than one county, the county court, when fixing a
58 date of hearing, shall provide for notifying the county
59 court and clerk thereof of each of the other counties
60 into which the territory extends of the date so fixed.
61 The clerk of the county court of each county in which

62 any territory in the proposed public service district is
63 located shall cause notice of such hearing and the time
64 and place thereof, and setting forth a description of all
65 of the territory proposed to be included therein to be
66 given by publication at least once in a newspaper of gen-
67 eral circulation published in such county at least ten
68 days prior to such hearing. In all cases where proceed-
69 ings for the creation of such public service districts are
70 initiated by petition as aforesaid the person filing the
71 petition shall advance or satisfactorily indemnify the
72 payment of the costs and expenses of publishing the
73 hearing notice, and otherwise the costs and expenses of
74 such notice shall be paid in the first instance by the
75 county court out of contingent funds or any other funds
76 available or made available for that purpose.

77 All persons residing in or owning or having any in-
78 terest in property in such proposed public service district
79 shall have an opportunity to be heard for and against
80 its creation. At such hearing the county court before
81 which the hearing is conducted shall consider and deter-
82 mine the feasibility of the creation of the proposed dis-

83 trict. When it shall have been thus determined that the
84 construction or acquisition by purchase or otherwise, and
85 maintenance, operation, improvement, and extension of
86 public service properties by such public service district
87 will be conducive to the preservation of public health,
88 comfort and convenience of such area, then such county
89 court shall by order create such public service district,
90 and such order shall be conclusive and final in that re-
91 gard. If the court shall, after due consideration, deter-
92 mine that the proposed district will not be conducive
93 to the preservation of public health, comfort or conveni-
94 ence of such area, or that the creation of the proposed
95 district as set forth and described in the petition or order
96 is not feasible, it may refuse to enter an order creating
97 the same, or it may enter an order amending the descrip-
98 tion of the proposed district, and create said district as
99 amended. The clerk of the county court of each county
100 into which any part of such district extends shall retain
101 in his office an authentic copy of the order creating the
102 same: *Provided, however,* That if at such hearing written
103 protest is filed by thirty per cent or more of the qualified

104 voters registered and residing within said district, then
105 the county court shall not take any further action in
106 creating such district unless the creation of such district
107 shall be approved by a majority vote of the qualified
108 registered voters voting at a referendum to be called by
109 the county court for such purpose. Such referendum
110 shall be called and held in the manner provided in the
111 general election laws of the state of West Virginia ap-
112 plicable thereto and the funds therefor shall be supplied
113 from any county funds available for such purpose, or
114 from funds supplied from the persons who petitioned
115 for the creation of such district. If a majority of the
116 qualified registered electors participating in said election
117 shall vote against the creation of said district, then such
118 district shall not be created. If, however, a majority of
119 the qualified registered voters participating in such refer-
120 endum vote in favor of the creation of such district, then
121 the county court shall duly enter its order creating such
122 district.

123 After the creation of such district the county court may,
124 if in its discretion it deems it necessary, feasible and

125 proper, enlarge the said district to include additional
126 areas, reduce the area of said district, where facilities,
127 equipment, service or materials have not been extended,
128 or establish or consolidate two or more such districts:
129 *Provided*, That where the county court determines on its
130 own motion by order entered of record, or there is a peti-
131 tion, to enlarge the district or reduce the area of the
132 district, all of the applicable provisions of this article
133 providing for hearing, notice of hearing and protest shall
134 apply with like effect as if a district were being created.
135 The districts may not enter into any agreement, contract
136 or covenant that infringes upon, impairs, abridges or
137 usurps the duties, rights or powers of the county court, as
138 set forth in this article, or conflicts with any provision of
139 this article.

Sec. 3. Powers of Districts; Creation of Governing

2 **Boards.**—From and after the date of the adoption of the
3 order creating any such public service district, it shall
4 thereafter be a public corporation and political subdivi-
5 sion of the state with power of perpetual succession, but
6 without any power to levy or collect ad valorem taxes.

7 Each such district shall have power to acquire, own and
8 hold property, both real and personal, in its corporate
9 name, and shall have power to sue, may be sued, may
10 adopt an official seal, and may enter into contracts neces-
11 sary or incidental to its purposes, including contracts
12 with any city, incorporated town or other municipal
13 corporation located within or without its boundaries for
14 furnishing wholesale supply of water for the distribution
15 system of such city, town or other municipal corporation,
16 and contract for the operation, maintenance, servicing,
17 repair and extension of any properties owned by it, or
18 for the operation and improvement or extension by such
19 district of all or any part of the existing municipally
20 owned public service properties of any city, incorporated
21 town or other municipal corporation included within such
22 district: *Provided*, That no such contract shall extend
23 over a period of forty years, but provisions may be in-
24 cluded therein for a renewal or successive renewals
25 thereof, and shall conform to and comply with the rights
26 of the holders of any outstanding bonds issued by such
27 municipalities for such public service properties.

28 The powers of each such public service district shall
29 be vested in and exercised by a public service board
30 consisting of not less than three members, who shall be
31 appointed in the following manner:

32 Each city, incorporated town, or other municipal cor-
33 poration having a population in excess of three thousand,
34 but not exceeding eighteen thousand, shall be entitled
35 to appoint one member of such board, and each such
36 city, incorporated town, or other municipal corporation
37 having a population in excess of eighteen thousand shall
38 be entitled to appoint one additional member of such
39 board for each additional eighteen thousand population.

40 The members of said board representing such cities, in-
41 corporated towns or other municipal corporations shall
42 be residents thereof and shall be appointed by a resolu-
43 tion of the governing bodies thereof, and upon the filing
44 of a certified copy or copies of such resolution or resolu-
45 tions in the office of the clerk of the county court which
46 entered the order creating such district, such persons so
47 appointed shall thereby become members of said board
48 without any further act or proceedings. If the number

49 of members of said board so appointed by the governing
 50 bodies of cities, incorporated towns or other municipal
 51 corporations included in the district shall equal or exceed
 52 three, then no further members shall be appointed to
 53 such board and such members shall be and constitute the
 54 board of said district.

55 If no city, incorporated town or other municipal corpo-
 56 ration having a population in excess of three thousand
 57 is included within the district, then the county court
 58 which entered the order creating the district shall appoint
 59 three members of said board, who shall be persons re-
 60 siding within the district, which said three members
 61 shall become members of and constitute the board of said
 62 district without any further act or proceedings.

63 If the number of members of said board appointed by
 64 the governing bodies of cities, incorporated towns or
 65 other municipal corporations included within the district
 66 shall be less than three, then the county court which
 67 entered the order creating the district shall appoint such
 68 additional member or members of said board, who shall
 69 be persons residing within the district, as shall be neces-

70 sary to make the number of members of said board equal
71 three, and said additional member or members shall
72 thereupon become members of such board; and the mem-
73 ber or members appointed by the governing bodies of the
74 cities, incorporated towns or other municipal corpora-
75 tions included within the district and the additional mem-
76 ber or members appointed by such county court as afore-
77 said, shall be and constitute the board of said district.
78 It shall be proper for one person to serve as a member
79 of the board in one or more public districts.

80 The population of any city, incorporated town or other
81 municipal corporation, for the purpose of determining
82 the number of members of such board, if any, to be ap-
83 pointed by the governing body or bodies thereof, shall
84 be conclusively deemed to be the population stated for
85 such city, incorporated town or other municipal corpo-
86 ration in the official federal census for the year one thou-
87 sand nine hundred sixty.

88 The respective terms of office of the members of the
89 first board shall be fixed by the county court and shall
90 be as equally divided as may be, that is approximately

91 one third of the members for a term of two years, a like
 92 number for a term of four, and the term of the remaining
 93 member or members for six years, from the first day of
 94 the month during which such appointments are made.
 95 The first members of the board appointed as aforesaid
 96 shall meet at the office of the clerk of the county court
 97 which entered the order creating the district as soon as
 98 practicable after such appointments and shall qualify by
 99 taking an oath of office: *Provided, however,* That any
 100 member or members of the board may be removed from
 101 their respective office by a majority vote of the registered
 102 voters in such district. Such a vote shall be conducted
 103 by the county court in the same manner as a county
 104 general election, at a time and place to be specified by
 105 the county court, after submission to the court of a duly
 106 verified petition bearing the signatures of thirty per cent
 107 of the persons residing in the district over the age of
 108 twenty-one years.

109 Any vacancy shall be filled for the unexpired term,
 110 and otherwise successor members of the board shall be
 111 appointed for terms of six years, and the terms of office

112 shall continue until successors have been appointed and
113 qualified. All successor members shall be appointed in
114 the same manner as the member succeeded was ap-
115 pointed.

116 The board shall organize promptly following the first
117 appointments, and annually thereafter at its first meeting
118 after January one of each year, by selecting one of its
119 members to serve as chairman and by appointing a secre-
120 tary and a treasurer who need not be members of such
121 board. The secretary shall keep a record of all proceed-
122 ings of the board which shall be available for inspection
123 as other public records. The treasurer shall be the lawful
124 custodian of all funds of the public service district and
125 shall pay same out on orders authorized or approved by
126 the board. The secretary and treasurer shall perform
127 such other duties appertaining to the affairs of the district
128 and shall receive such salaries as shall be prescribed by
129 the board. The treasurer shall furnish bond in an
130 amount to be fixed by the board for the use and
131 benefit of the district. The members of the board, and
132 the chairman, secretary and treasurer thereof, shall make

133 available to the county court, at all times, all of its books
 134 and records pertaining to the district's operation, finances
 135 and affairs, for inspection and audit.

Sec. 9. Service Rates and Charges.—The board shall
 2 have the power to make, enact and enforce all needful
 3 rules and regulations in connection with the acquisi-
 4 tion, construction, improvement, extension, management,
 5 maintenance, operation, care, protection and the use of
 6 any public service properties owned or controlled by
 7 the district, and it shall be the duty of such board to
 8 establish rates and charges for the services and facili-
 9 ties it furnishes, which shall be sufficient at all times,
 10 notwithstanding the provisions of any other law or laws,
 11 to pay the cost of maintenance, operation and deprecia-
 12 tion of such public service properties and principal of
 13 and interest on all bonds issued and other obligations
 14 incurred under the provisions of this article and all
 15 reserve or other payments provided for in the proceed-
 16 ings which authorized the issuance of any bonds here-
 17 under. The schedule of such rates and charges may be
 18 based upon either (a) the consumption of water on prem-

19 ises connected with such facilities, taking into consider-
20 ation domestic, commercial, industrial and public use
21 of water; or (b) the number and kind of fixtures con-
22 nected with such facilities located on the various prem-
23 ises; or (c) the number of persons served by such facili-
24 ties; or (d) any combination thereof; or (e) may be
25 determined on any other basis or classification which
26 the board may determine to be fair and reasonable,
27 taking into consideration the location of the premises
28 served and the nature and extent of the services and
29 facilities furnished. Where both water and sewer serv-
30 ices are furnished to any premises the schedule of
31 charges may be billed as a single amount for the aggre-
32 gate thereof. Whenever any rates, rentals or charges for
33 services or facilities furnished shall remain unpaid for
34 a period of thirty days after the same shall become due
35 and payable the property and the owner thereof, as
36 well as the user of the services and facilities shall be
37 delinquent until such time as all such rates and charges
38 are fully paid. The board shall be obligated under reas-
39 onable rules and regulations, to shut off and discontinue

40 both water and sewer services to all delinquent users of
41 either water facilities or sewer facilities, or both, and
42 shall not restore either water facilities or sewer facilities
43 to any delinquent user of either water facilities or sewer
44 facilities until all delinquent charges for both water
45 facilities and sewer facilities, including reasonable in-
46 terest and penalty charges, have been paid in full.

47 In the event that any city, incorporated town or other
48 municipal corporation included within the district shall
49 own and operate separately either water facilities or
50 sewer facilities, and the district shall own and operate
51 within such city, incorporated town or other municipal
52 corporation the other kind of facilities, either water or
53 sewer facilities, as the case may be, then the district and
54 such city, incorporated town or other municipal corpo-
55 ration shall have power to covenant and contract with
56 each other to shut off and discontinue, the supplying of
57 the kind of facilities furnished by the district or such
58 city, incorporated town or other municipal corporation,
59 as the case may be, for the non-payment of fees and
60 charges for the other kind of facilities furnished by the

61 district or city, incorporated town or other municipal
62 corporation, as the case may be.

Any district furnishing sewer facilities within the district shall also have power to require all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow and such houses, dwelling^s and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state.

79 Whenever any district has made available sewer faci-
80 ties to any owner, tenant or occupant of any house, dwel-
81 ling or building located near such sewer facility, and

82 the engineer for the district has certified that such sewer
 83 facilities are available to and are adequate to serve such
 84 owner, tenant, or occupant, and sewage^s will flow by
 85 gravity from such house, dwelling or building into such
 86 sewer facilities, the district shall have the immediate right
 87 and duty to charge, and such owner, tenant or occupant
 88 shall have the duty to pay from and after the date of re-
 89 ceiving notice that such facilities are available, the rates
 90 and charges for services established under this article.

91 All delinquent fees, rates and charges of the district
 92 for either water facilities or sewer facilities shall be
 93 liens on the premises served of equal dignity, rank and
 94 priority with the lien on such premises of state, county,
 95 school and municipal taxes. When such fees, rates and
 96 charges have been delinquent for thirty days, the dis-
 97 trict shall have power to forthwith foreclose the lien
 98 on the premises served in the same manner now pro-
 99 vided in the laws of the state of West Virginia for the
 100 foreclosure of mortgages on real property.

101 Anything in this section to the contrary notwithstand-
 102 ing, any establishment, as defined in chapter twenty,

103 article five-a, section two, now or hereafter operating its
104 own sewage disposal system, pursuant to a permit issued
105 by the department of natural resources, as prescribed by
106 chapter twenty, article five-a, section seven of this code,
107 shall be exempt from the provisions of this section.

Sec. 23. Validation of Acts and Proceedings of Public

2 **Service Boards.**—All acts and proceedings taken by any
3 public service board the members of which were ap-
4 pointed, prior to the date this section takes effect, by
5 any county court of this state having territorial jurisdic-
6 tion thereof, are hereby validated, ratified, approved and
7 confirmed, as to defects and irregularities which may
8 otherwise exist on account of their appointment and
9 qualification: *Provided, however,* That nothing herein
10 contained shall be construed to excuse a criminal act.

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


Chairman Senate Committee


Chairman House Committee

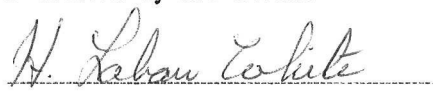
Originated in the House.

Takes effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 19
day of March, 1965.


Governor

