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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975

— ● —

ENROLLED

HOUSE BILL No. 1029

(By Mr. Speaker, Mr. McManus and Mr. Coltrane)

— ● —

PASSED February 26, 1975

In Effect ninety days from Passage



1029

ENROLLED

H. B. 1029

(By MR. SPEAKER, MR. McMANUS, and MR. COLOMBO)

[Passed February 26, 1975; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting a territory to be included within the boundaries of one or more public service districts.

Be it enacted by the Legislature of West Virginia:

That section two, 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 13A. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICES.

§16-13A-2. Creation of districts by county commission; enlarging or reducing district; consolidation; agreements, etc., infringing upon powers of county commission.

1 The county commission of any county may on its own
2 motion by order duly adopted propose the creation of such
3 public service district within such county, setting forth in
4 such order a description sufficient to identify the territory
5 to be embraced therein and the name of such proposed
6 district, or any one hundred legal voters resident within and
7 owning real property within the limits of such proposed public
8 service district within one or more counties may petition
9 for the creation thereof, which petition shall contain a
10 description sufficient to identify the territory to be em-

11 braced therein and the name of such proposed district. Any
12 territory may be included regardless of whether or not
13 such territory includes one or more cities, incorporated towns
14 or other municipal corporations which own and operate
15 any public service properties and regardless of whether
16 or not it includes one or more cities, incorporated towns or
17 other municipal corporations being served by privately owned
18 public service properties: *Provided*, That the boundaries of
19 any public service district organized under this article shall
20 conform to or follow magisterial district lines except where
21 less than a whole of any magisterial district is to be included,
22 in which latter case that part of any such boundary shall con-
23 form to other natural boundary lines, or the lines of a fixed
24 survey: *Provided, however*, That the same territory shall not
25 be included within the boundaries of more than one public
26 service district except where such territory or part thereof
27 is included within the boundaries of a separate public service
28 district organized to supply water or sewerage services not
29 being furnished within such territory or part thereof: *Provided*
30 *further*, That no city, incorporated town or other municipal
31 corporation shall be included within the boundaries of such
32 proposed district except upon the adoption of a resolution
33 of the governing body of such city, incorporated town or other
34 municipal corporation consenting thereto.

35 Such petition shall be filed in the office of the clerk of
36 the county commission of the county in which the territory
37 to constitute the proposed district is situated, and if such
38 territory is situated in more than one county then such
39 petition shall be filed in the office of the clerk of the county
40 commission of the county in which the major portion of such
41 territory extends, and a copy thereof (omitting signatures) shall
42 be filed with each of the clerks of the county commission
43 of the other county or counties into which the territory extends.
44 It shall be the duty of the clerk of the county commission
45 receiving such petition to present same to the county com-
46 mission of such county at the first regular meeting after such
47 filing or at a special meeting called for the consideration
48 thereof.

49 When the county clerk of any county enters an order on
50 its own motion proposing the creation of a public service

51 district, as aforesaid, or when a petition for such creation
52 is presented, as foresaid, the county commission shall at
53 the same session fix a date of hearing in such county on the
54 creation of the proposed public service district, which date
55 so fixed shall be not more than forty days nor less than
56 twenty days from the date of such action. If the territory
57 proposed to be included is situated in more than one county,
58 the county commission, when fixing a date of hearing, shall
59 provide for notifying the county court and clerk thereof of
60 each of the other counties into which the territory extends
61 of the date so fixed. The clerk of the county commission of
62 each county in which any territory in the proposed public
63 service district is located shall cause notice of such hearing
64 and the time and place thereof, and setting forth a description
65 of all of the territory proposed to be included therein to be
66 given by publication as a Class I legal advertisement in com-
67 pliance with the provisions of article three, chapter fifty-nine
68 of this code, and the publication area for such publication shall
69 be each county in which any territory in the proposed public
70 service district is located. The publication shall be at least
71 ten days prior to such hearing. In all cases where proceedings
72 for the creation of such public service districts are initiated by
73 petition as aforesaid the person filing the petition shall
74 advance or satisfactorily indemnify the payment of the cost
75 and expenses of publishing the hearing notice, and otherwise
76 the costs and expenses of such notice shall be paid in the
77 first instance by the county commission out of contingent
78 funds or any other funds available or made available for
79 that purpose. In addition to the notice required herein to
80 be published, there shall also be posted in at least five
81 conspicuous places in the proposed public service district,
82 a notice containing the same information as is contained in
83 the published notice. The posted notices shall be posted
84 not less than ten days before said hearing.

85 All persons residing in or owning or having any interest
86 in property in such proposed public service district shall
87 have an opportunity to be heard for and against its creation.
88 At such hearing the county commission before which the
89 hearing is conducted shall consider and determine the feasibility
90 of the creation of the proposed district. When it shall have

91 been thus determined that the construction or acquisition by
92 purchase or otherwise, and maintenance, operation, improve-
93 ment, and extension of public service properties by such public
94 service district will be conducive to the preservation of
95 public health, comfort and convenience of such area, then
96 such county commission shall by order create such public
97 service district, and such order shall be conclusive and final in
98 that regard. If the court shall, after due consideration, deter-
99 mine that the proposed district will not be conducive to the pre-
100 servation of public health, comfort or convenience of such area,
101 or that the creation of the proposed district as set forth and
102 described in the petition or order is not feasible, it may refuse
103 to enter an order creating the same, or it may enter an order
104 amending the description of the proposed district, and create
105 said district as amended. The clerk of the county commission
106 of each county into which any part of such district extends
107 shall retain in his office an authentic copy of the order creating
108 the same: *Provided*, That if at such hearing written protest is
109 filed by thirty percent or more of the qualified voters register-
110 ed and residing within said district, then the county commission
111 shall not take any further action in creating such district un-
112 less the creation of such district shall be approved by a major-
113 ity vote of the qualified registered voters voting at a referendum
114 to be called by the county commission for such purpose. Such
115 referendum shall be called and held in the manner provided
116 in the general election laws of the state of West Virginia ap-
117 plicable thereto and the funds therefor shall be supplied from
118 any county funds available for such purpose, or from funds
119 supplied from the persons who petitioned for the creation of
120 such district. If a majority of the qualified registered electors
121 participating in said election shall vote against the creation of
122 said district, then such district shall not be created. If, how-
123 ever, a majority of the qualified registered voters participating
124 in such referendum vote in favor of the creation of such dis-
125 trict, then the county commission shall duly enter its order
126 creating such district.

127 After the creation of such district the county commission
128 may, if in its discretion it deems it necessary, feasible and
129 proper, enlarge the said district to include additional areas, re-
130 duce the area of said district, where facilities, equipment, ser-

131 vice or materials have not been extended, or establish or con-
132 solidate two or more such districts: *Provided*, That where the
133 county commission determines on its own motion by order
134 entered of record, or there is a petition, to enlarge the district
135 or reduce the area of the district, all of the applicable provi-
136 sions of this article providing for hearing, notice of hearing and
137 protest shall apply with like effect as if a district were being
138 created. The districts may not enter into any agreement, con-
139 tract or covenant that infringes upon, impairs, abridges or
140 usurps the duties, rights or powers of the county commission,
141 as set forth in this article, or conflicts with any provision of
142 this article.

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

James L. Davis
Chairman Senate Committee

Rowland H. Christensen
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

James Long
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. F. Brotherton
President of the Senate

Lewis H. McManus
Speaker House of Delegates

The within approved this the 5th
March
day of _____, 1975.

Arthur A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/28/75

Time 5:45 p.m.