WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED

HOUSE BILL No. 1606

(By Mr. )

Passed March 8, 1980

In Effect Ninety Days From Passage
ENROLLED

H. B. 1661
(By Mr. Tucker)

(Originating in the House Committee on the Judiciary)

[Passed March 8, 1980; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, eight, nine and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting public service districts to provide natural gas services for industrial, private, public or other uses; authorizing governing boards of public service districts to acquire privately or publicly owned public service properties; prohibiting governing boards from constructing, acquiring or establishing water, sewer or gas facilities within municipal corporations which own or operate such facilities, and exceptions thereto; prohibiting the establishment, construction or acquisition of a water, sewer or gas facility by a municipal corporation if such facility presently exists; requiring public service commission approval prior to any public service district acquiring any waterworks or gas system; prohibiting condemnation proceedings by public service districts in acquiring privately owned waterworks or gas systems; granting authority to governing boards to promulgate rules and regulations in connection with public service properties owned or controlled by public service districts; providing a basis for a schedule of rates and charges; requiring the board to discontinue services to delinquent users of facilities; granting authority to districts to foreclose on liens against real property created due to delinquent
fees; and granting districts the authority to accept loans and
temporary advances from federal agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWER-
AGE AND GAS SERVICES.


Any territory constituting the whole or any part of one or
more counties in the state so situated that the construction or
acquisition by purchase or otherwise and the maintenance,
operation, improvement and extension of, properties supplying
water or sewerage services, or gas distribution services or all
of these within such territory, will be conducive to the pre-
servation of the public health, comfort and convenience of
such area, may be constituted a public service district under
and in the manner provided by this article. The words “public
service properties,” when used in this article, shall mean
and include any facility used or to be used for or in connection
with (1) the diversion, development, pumping, impounding,
treatment, storage, distribution or furnishing of water to or for
the public for industrial, public, private or other uses (herein
sometimes referred to as “water facilities,” (2) the collection,
treatment, purification or disposal of liquid or solid wastes,
sewage or industrial wastes (herein sometimes referred to as
“sewer facilities” or “land fills”) or (3) the distribution or the
furnishing of natural gas for the public, for industrial, public,
private or other uses (herein sometimes referred to as “gas
utilities or gas system”).

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

The county commission of any county may on its own
motion by order duly adopted propose the creation of such
public service district within such county, setting forth in
such order a description sufficient to identify the territory to
be embraced therein and the name of such proposed district,
or any one hundred legal voters resident within and owning
real property within the limits of such proposed public service
district within one or more counties may petition for the
creation thereof, which petition shall contain a description
sufficient to identify the territory to be embraced therein and
the name of such proposed district. Any territory may be in-
cluded regardless of whether or not such territory includes one
or more cities, incorporated towns or other municipal corpora-
tions which own and operate any public service properties and
regardless of whether or not it includes one or more cities,
incorporated towns or other municipal corporations being
served by privately owned public service properties: Provided,
That the boundaries of any public service district organized
under this article shall conform to or follow magisterial dis-
trict lines except where less than a whole of any magisterial
district is to be included, in which latter case that part of any
such boundary shall conform to other natural boundary lines,
or the lines of a fixed survey: Provided, however, That the
same territory shall not be included within the boundaries of
more than one public service district except where such terri-
tory or part thereof is included within the boundaries of a
separate public service district organized to supply water,
sewerage services or gas facilities not being furnished within
such territory or part thereof: Provided further, That no city,
in incorporated town or other municipal corporation shall be in-
cluded within the boundaries of such proposed district except
upon the adoption of a resolution of the governing body of such
city, incorporated town or other municipal corporation con-
senting thereto.

Such petition shall be filed in the office of the clerk of the
county commission of the county in which the territory to con-
stitute the proposed district is situated, and if such territory
is situated in more than one county then such petition shall
be filed in the office of the clerk of the county commission of
the county in which the major portion of such territory ex-
tends, and a copy thereof (omitting signatures) shall be filed
with each of the clerks of the county commission of the other
county or counties into which the territory extends. It shall be
the duty of the clerk of the county commission receiving such petition to present same to the county commission of such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county clerk of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I 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 each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before said hearing.
All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. When it shall have been thus determined that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement, and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, then such county commission shall by order create such public service district, and such order shall be conclusive and final in that regard. If the commission shall, after due consideration, determine that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area, or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the same, or it may enter an order amending the description of the proposed district, and create said district as amended. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating the same: Provided, That if at such hearing written protest is filed by thirty percent or more of the qualified voters registered and residing within said district, then the county commission shall not take any further action in creating such district unless the creation of such district shall be approved by a majority vote of the qualified registered voters voting at a referendum to be called by the county commission for such purpose. Such referendum shall be called and held in the manner provided in the general election laws of the state of West Virginia applicable thereto and the funds therefor shall be supplied from any county funds available for such purpose, or from funds supplied from the persons who petitioned for the creation of such district. If a majority of the qualified registered electors participating in said election shall vote against the creation of said district, then such district shall not be created. If, however, a majority of the qualified registered voters participating in such referendum vote in favor of the creation of such district,
then the county commission shall duly enter its order creating such district.

After the creation of such district the county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the said district to include additional areas, reduce the area of said district, where facilities, equipment, service or materials have not been extended, or establish or consolidate two or more such districts: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition, to enlarge the district or reduce the area of the district, all of the applicable provisions of this article providing for hearing, notice of hearing and protest shall apply with like effect as if a district were being created. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board is hereby authorized to acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation, included within the district, and shall have power to purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board shall have power and authority to construct any public service properties within or outside the district necessary or incidental to its purposes, and each such district is hereby empowered and authorized to acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town, or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other
municipal corporation included within the district shall own and operate either water facilities, sewer facilities, or gas facilities, or all of these, then the district shall not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations, or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the consent of such cities, incorporated towns or other municipal corporations, and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding, and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district shall have constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation shall not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district shall have the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board shall not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such exist-
ing plant or system, nor shall any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service to delinquent users; requiring connections with sewer facilities; lien for delinquent fees; certain sewer disposal systems exempted.

The board shall have the power to make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and it shall be the duty of such board to establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued and other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorize the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises the schedule of charges may be billed as a single amount for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty
days after the same shall become due and payable the prop-
erty and the owner thereof, as well as the user of the services
and facilities shall be delinquent until such time as all such
rates and charges are fully paid. The board shall be obligated
under reasonable rules and regulations, to shut off and dis-
continue water, sewer and gas services to all delinquent users
of either water facilities, sewer facilities, or gas facilities or all
of these, and shall not restore either water facilities, sewer
facilities, or gas facilities to any delinquent user of either water
facilities, sewer facilities, or gas facilities, until all delinquent
charges for water facilities, sewer facilities, and gas facilities,
including reasonable interest and penalty charges, have been
paid in full.

In the event that any city, incorporated town or other munic-
ipal corporation included within the district shall own and
operate separately either water facilities, sewer facilities, or gas
facilities, and the district shall own and operate within such
city, incorporated town or other municipal corporation the
other kind of facilities, either water, sewer or gas facilities,
as the case may be, then the district and such city, incorporated
town or other municipal corporation shall have power to cove-
nant and contract with each other to shut off and discontinue
the supplying of the kind of facilities furnished by the district
or such city, incorporated town or other municipal corpora-
tion, as the case may be, for the nonpayment of fees and charg-
es for the other kind of facilities furnished by the district or
city, incorporated town or other municipal corporation, as the
case may be.

Any district furnishing sewer facilities within the district
shall also have power to require all owners, tenants or occu-
pants 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 cause the
use of all other means for the collection, treatment and dis-
posal of sewage and waste matters from such houses, dwell-
ings and buildings where there is such gravity flow and such
houses, dwellings and buildings can be adequately served by the
sewer facilities of the district, and it is hereby found, determin-
ed 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.

Whenever any district has made available sewer facilities
to any owner, tenant or occupant of any house, dwelling or
building located near such sewer facility, and the engineer for
the district has certified that such sewer facilities are available
to and are adequate to serve such owner, tenant, or occupant,
and sewage will flow by gravity from such house, dwelling or
building into such sewer facilities, the district shall have the
immediate right and duty to charge, and such owner, tenant or
occupant shall have the duty to pay from and after the date
of receiving notice that such facilities are available, the rates
and charges for services established under this article.

All delinquent fees, rates and charges of the district for
either water facilities, sewer facilities or gas facilities shall be
liens on the premises served of equal dignity, rank and priority
with the lien on such premises of state, county, school and
municipal taxes. When such fees, rates and charges have been
delinquent for thirty days, the district shall have power to
forthwith foreclose the lien on the premises served in the same
manner now provided in the laws of the state of West Virginia
for the foreclosure of mortgages on real property.

Anything in this section to the contrary notwithstanding,
any establishment, as defined in chapter twenty, article five-a,
section two, now or hereafter operating its own sewage disposal
system, pursuant to a permit issued by the department of
natural resources, as prescribed by chapter twenty, article
five-a, section seven of this code, shall be exempt from the
provisions of this section.

§16-13A-24. Acceptance of loans or temporary advances from, and
contracts and agreements with, federal agencies or
private parties.

Any public service district created pursuant to the provisions
of this article is authorized and empowered to accept loans or
grants or temporary advances for the purpose of paying part or
all of the cost of construction or acquisition of water systems, sewage systems, or gas facilities, or all of these, and the other purposes herein authorized, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the House.

 Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26

day of March, 1980.

Governor
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