

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-80

Time 5:00 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

— ● —

# ENROLLED

HOUSE BILL No. 1661

(By Mr. Tucker)

— ● —

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 thirteen-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, SEWERAGE AND GAS SERVICES.**

**§16-13A-1. General purpose of districts.**

1 Any territory constituting the whole or any part of one or  
2 more counties in the state so situated that the construction or  
3 acquisition by purchase or otherwise and the maintenance,  
4 operation, improvement and extension of, properties supplying  
5 water or sewerage services, or gas distribution services or all  
6 of these within such territory, will be conducive to the pre-  
7 servation of the public health, comfort and convenience of  
8 such area, may be constituted a public service district under  
9 and in the manner provided by this article. The words "public  
10 service properties," when used in this article, shall mean  
11 and include any facility used or to be used for or in connection  
12 with (1) the diversion, development, pumping, impounding,  
13 treatment, storage, distribution or furnishing of water to or for  
14 the public for industrial, public, private or other uses (herein  
15 sometimes referred to as "water facilities," (2) the collection,  
16 treatment, purification or disposal of liquid or solid wastes,  
17 sewage or industrial wastes (herein sometimes referred to as  
18 "sewer facilities" or "land fills") or (3) the distribution or the  
19 furnishing of natural gas for the public, for industrial, public,  
20 private or other uses (herein sometimes referred to as "gas  
21 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.**

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 to  
5 be embraced therein and the name of such proposed district,  
6 or any one hundred legal voters resident within and owning  
7 real property within the limits of such proposed public service  
8 district within one or more counties may petition for the  
9 creation thereof, which petition shall contain a description  
10 sufficient to identify the territory to be embraced therein and  
11 the name of such proposed district. Any territory may be in-  
12 cluded regardless of whether or not such territory includes one  
13 or more cities, incorporated towns or other municipal corpora-  
14 tions which own and operate any public service properties and  
15 regardless of whether or not it includes one or more cities,  
16 incorporated towns or other municipal corporations being  
17 served by privately owned public service properties: *Provided*,  
18 That the boundaries of any public service district organized  
19 under this article shall conform to or follow magisterial dis-  
20 trict lines except where less than a whole of any magisterial  
21 district is to be included, in which latter case that part of any  
22 such boundary shall conform to other natural boundary lines,  
23 or the lines of a fixed survey: *Provided, however*, That the  
24 same territory shall not be included within the boundaries of  
25 more than one public service district except where such terri-  
26 tory or part thereof is included within the boundaries of a  
27 separate public service district organized to supply water,  
28 sewerage services or gas facilities not being furnished within  
29 such territory or part thereof: *Provided further*, That no city,  
30 incorporated town or other municipal corporation shall be in-  
31 cluded within the boundaries of such proposed district except  
32 upon the adoption of a resolution of the governing body of such  
33 city, incorporated town or other municipal corporation con-  
34 senting thereto.

35 Such petition shall be filed in the office of the clerk of the  
36 county commission of the county in which the territory to con-  
37 stitute the proposed district is situated, and if such territory  
38 is situated in more than one county then such petition shall  
39 be filed in the office of the clerk of the county commission of  
40 the county in which the major portion of such territory ex-  
41 tends, and a copy thereof (omitting signatures) shall be filed  
42 with each of the clerks of the county commission of the other  
43 county or counties into which the territory extends. It shall be

44 the duty of the clerk of the county commission receiving such  
45 petition to present same to the county commission of such  
46 county at the first regular meeting after such filing or at a  
47 special meeting called for the consideration thereof.

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

83 All persons residing in or owning or having any interest  
84 in property in such proposed public service district shall have  
85 an opportunity to be heard for and against its creation. At  
86 such hearing the county commission before which the hearing  
87 is conducted shall consider and determine the feasibility of the  
88 creation of the proposed district. When it shall have been thus  
89 determined that the construction or acquisition by purchase or  
90 otherwise, and maintenance, operation, improvement, and  
91 extension of public service properties by such public service  
92 district will be conducive to the preservation of public health,  
93 comfort and convenience of such area, then such county com-  
94 mission shall by order create such public service district, and  
95 such order shall be conclusive and final in that regard. If the  
96 commission shall, after due consideration, determine that the  
97 proposed district will not be conducive to the preservation of  
98 public health, comfort or convenience of such area, or that the  
99 creation of the proposed district as set forth and described in  
100 the petition or order is not feasible, it may refuse to enter an  
101 order creating the same, or it may enter an order amending the  
102 description of the proposed district, and create said district as  
103 amended. The clerk of the county commission of each county  
104 into which any part of such district extends shall retain in his  
105 office an authentic copy of the order creating the same:  
106 *Provided*, That if at such hearing written protest is filed by  
107 thirty percent or more of the qualified voters registered and  
108 residing within said district, then the county commission shall  
109 not take any further action in creating such district unless the  
110 creation of such district shall be approved by a majority vote  
111 of the qualified registered voters voting at a referendum to be  
112 called by the county commission for such purpose. Such refer-  
113 endum shall be called and held in the manner provided in the  
114 general election laws of the state of West Virginia applicable  
115 thereto and the funds therefor shall be supplied from any  
116 county funds available for such purpose, or from funds sup-  
117 plied from the persons who petitioned for the creation of such  
118 district. If a majority of the qualified registered electors par-  
119 ticipating in said election shall vote against the creation of  
120 said district, then such district shall not be created. If, however,  
121 a majority of the qualified registered voters participating in  
122 such referendum vote in favor of the creation of such district,

123 then the county commission shall duly enter its order creating  
124 such district.

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

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

1 The board is hereby authorized to acquire any publicly  
2 or privately owned public service properties located within the  
3 boundaries of the district regardless of whether or not all  
4 or any part of such properties are located within the corporate  
5 limits of any city, incorporated town or other municipal cor-  
6 poration, included within the district, and shall have power to  
7 purchase and acquire all rights and franchises and any and all  
8 property within or outside the district necessary or incidental  
9 to the purpose of the district.

10 The board shall have power and authority to construct any  
11 public service properties within or outside the district necessary  
12 or incidental to its purposes, and each such district is hereby  
13 empowered and authorized to acquire, construct, maintain and  
14 operate any such public service properties within the corporate  
15 limits of any city, incorporated town, or other municipal cor-  
16 poration included within the district or in any unincorporated  
17 territory within ten miles of the territorial boundaries of the  
18 district: *Provided*, That if any incorporated city, town or other

19 municipal corporation included within the district shall own  
20 and operate either water facilities, sewer facilities, or gas  
21 facilities, or all of these, then the district shall not acquire,  
22 construct, establish, improve or extend any public service prop-  
23 erties of the same kind within such city, incorporated towns  
24 or other municipal corporations, or the adjacent unincorporat-  
25 ed territory served by such cities, incorporated towns or other  
26 municipal corporations, except upon the consent of such cities,  
27 incorporated towns or other municipal corporations, and in  
28 conformity and compliance with the rights of the holders of  
29 any revenue bonds or obligations theretofore issued by such  
30 cities, incorporated towns or other municipal corporations then  
31 outstanding, and in accordance with the ordinance, resolution  
32 or other proceedings which authorize the issuance of such  
33 revenue bonds or obligations.

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

42 For the purpose of acquiring any public service properties  
43 or lands, rights or easements deemed necessary or incidental  
44 for the purposes of the district, each such district shall have  
45 the right of eminent domain to the same extent and to be  
46 exercised in the same manner as now or hereafter provided by  
47 law for such right of eminent domain by cities, incorporated  
48 towns and other municipal corporations: *Provided*, That such  
49 board shall not acquire all or any substantial part of a  
50 privately owned waterworks system unless and until au-  
51 thorized so to do by the public service commission of West  
52 Virginia, and that this section shall not be construed to autho-  
53 rize any district to acquire through condemnation proceedings  
54 either in whole or substantial part an existing privately owned  
55 waterworks plant or system or gas facilities located in or fur-  
56 nishing water or gas service within such district or extensions  
57 made or to be made by it in territory contiguous to such exist-

58 ing plant or system, nor shall any such board construct or  
59 extend its public service properties to supply its services into  
60 areas served by or in competition with existing waterworks or  
61 gas facilities or extensions made or to be made in territory  
62 contiguous to such existing plant or system by the owner  
63 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.**

1 The board shall have the power to make, enact and enforce  
2 all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management,  
3 maintenance, operation, care, protection and the use of any  
4 public service properties owned or controlled by the district,  
5 and it shall be the duty of such board to establish rates and  
6 charges for the services and facilities it furnishes, which shall  
7 be sufficient at all times, notwithstanding the provisions of any  
8 other law or laws, to pay the cost of maintenance, operation  
9 and depreciation of such public service properties and principal  
10 of and interest on all bonds issued and other obligations incurred under the provisions of this article and all reserve or  
11 other payments provided for in the proceedings which authorize the issuance of any bonds hereunder. The schedule of such  
12 rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities,  
13 taking into consideration domestic, commercial, industrial and  
14 public use of water and gas; or (b) the number and kind of  
15 fixtures connected with such facilities located on the various  
16 premises; or (c) the number of persons served by such facilities;  
17 or (d) any combination thereof; or (e) may be determined on  
18 any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the  
19 location of the premises served and the nature and extent of  
20 the services and facilities furnished. Where water, sewer and  
21 gas services are all furnished to any premises the schedule of  
22 charges may be billed as a single amount for the aggregate  
23 thereof. Whenever any rates, rentals or charges for services or  
24 facilities furnished shall remain unpaid for a period of thirty

30 days after the same shall become due and payable the prop-  
31 erty and the owner thereof, as well as the user of the services  
32 and facilities shall be delinquent until such time as all such  
33 rates and charges are fully paid. The board shall be obligated  
34 under reasonable rules and regulations, to shut off and dis-  
35 continue water, sewer and gas services to all delinquent users  
36 of either water facilities, sewer facilities, or gas facilities or all  
37 of these, and shall not restore either water facilities, sewer  
38 facilities, or gas facilities to any delinquent user of either water  
39 facilities, sewer facilities, or gas facilities, until all delinquent  
40 charges for water facilities, sewer facilities, and gas facilities,  
41 including reasonable interest and penalty charges, have been  
42 paid in full.

43 In the event that any city, incorporated town or other munic-  
44 ipal corporation included within the district shall own and  
45 operate separately either water facilities, sewer facilities, or gas  
46 facilities, and the district shall own and operate within such  
47 city, incorporated town or other municipal corporation the  
48 other kind of facilities, either water, sewer or gas facilities,  
49 as the case may be, then the district and such city, incorporated  
50 town or other municipal corporation shall have power to cove-  
51 nant and contract with each other to shut off and discontinue  
52 the supplying of the kind of facilities furnished by the district  
53 or such city, incorporated town or other municipal corpora-  
54 tion, as the case may be, for the nonpayment of fees and charg-  
55 es for the other kind of facilities furnished by the district or  
56 city, incorporated town or other municipal corporation, as the  
57 case may be.

58 Any district furnishing sewer facilities within the district  
59 shall also have power to require all owners, tenants or occu-  
60 pants of any houses, dwellings and buildings located near any  
61 such sewer facilities, where sewage will flow by gravity from  
62 such houses, dwellings or buildings into such sewer facilities, to  
63 connect with and use such sewer facilities, and to cause the  
64 use of all other means for the collection, treatment and dis-  
65 posal of sewage and waste matters from such houses, dwell-  
66 ings and buildings where there is such gravity flow and such  
67 houses, dwellings and buildings can be adequately served by the  
68 sewer facilities of the district, and it is hereby found, determin-

69 ed and declared that the mandatory use of such sewer facilities  
70 provided for in this paragraph is necessary and essential for the  
71 health and welfare of the inhabitants and residents of such  
72 districts and of the state.

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

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

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

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

1 Any public service district created pursuant to the provisions  
2 of this article is authorized and empowered to accept loans or  
3 grants or temporary advances for the purpose of paying part or

4 all of the cost of construction or acquisition of water systems,  
5 sewage systems, or gas facilities, or all of these, and the other  
6 purposes herein authorized, from the United States of Ameri-  
7 ca or any federal or public agency or department of the United  
8 States or any private agency, corporation or individual, which  
9 temporary advances may be repaid out of the proceeds of the  
10 bonds authorized to be issued under the provisions of this  
11 article and to enter into the necessary contracts and agreements  
12 to carry out the purposes hereof with the United States of  
13 America or any federal or public agency or department of the  
14 United States, or with any private agency, corporation or indi-  
15 vidual.

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

*James L. Davis*  
Chairman Senate Committee

*Lawrence C. Chastain Jr*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*Todd C. Mills*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*W. P. Brotherton Jr*  
President of the Senate

*Clayton M. Lee Jr*  
Speaker House of Delegates

The within is approved this the 26  
day of March, 1980.

*John D. Rhyne*  
Governor

RECEIVED

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OFFICE OF THE GOVERNOR

STATE OF NEW YORK

PL: 55

GOVERNOR