

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

ENROLLED

Committee Substitute for
SENATE BILL NO. 95

(By Mr. Sumner & Mr. Harman)

PASSED April 11, 1981

In Effect ninty days from Passage

OFFICE
SECY. OF STATE

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No: 95

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 95

(MR. SUSMAN and MR. HARMAN, *original sponsors*)

[Passed April 11, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, three-a, four, five, six, seven, eight, nine, ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain revisions to the public service district laws; requiring that the metes and bounds of any proposed public service district be included in any order or petition for the creation of such district; changing the number of residents within the limits of a proposed public service district required to petition for the creation of such district from one hundred voters to twenty-five percent of the registered voters who reside within the limits of such proposed public service district; removing the requirement that the boundaries of any public service district follow magisterial district lines; encouraging the expansion or merger of existing public service districts; providing for the dissolution of any inactive public service district by petition or by an order of the county commission in the same manner as required for its creation; providing that applicable provisions pertaining to referendum shall not apply if results of referendum could adversely affect existing financial indebtedness of district;

requiring that county commissions file with the secretary of state a list of all public service districts and their current board members; requiring certain qualifications for public service district board members; removing the requirement that a municipal corporation must have a population of at least three thousand in order to appoint a board member; requiring any board member vacancy to be filled for the unexpired term within thirty days; requiring the board to organize within thirty days following the first appointments; requiring a record of all board proceedings, including the minutes of all board meetings, to be filed with the county commission; requiring the board to meet at least monthly; providing that the number of signatures required on any petition for the removal of any member of the board shall be twenty-five percent of the registered voters who reside within the limits of the proposed public service district; requiring that ten days' notice of a hearing be given to any board member subject to removal; salaries of board members; qualifications; maximum salary permitted of board member; providing board members be reimbursed for expenses; providing for proper public notice of any board meeting; clarifying that the general manager of the board be an employee of the board; providing that a general manager may serve more than one public service district or municipal water system, or both; requiring that the board have supervision and control of all public service properties donated to the district; providing that contracts entered into by the public service district for emergency construction work or purchase of equipment may be entered without notice and publication requirements; requiring the approval of the public service commission whenever any district acquires, constructs, establishes, improves or extends any public service properties of the same kind as, and located within, any municipal corporation within the limits of such district; allowing the board to make, enact and enforce all rules and regulations in connection with the administration of public service district properties owned or controlled by such district; removing the requirement that the board or any municipal corporation located within the district of such board shut off and discontinue sewer services to all delinquent users of such services; permitting the public service commission to promulgate rules and regulations regarding the discontinuance of water and gas services for delinquent

payment; authorizing any district furnishing sewer facilities to require connection with such facilities under certain circumstances; authorizing the public service district to pay under certain circumstances the costs incurred by the property owner for changes in plumbing; providing certain costs to be reflected in the users' charge for approval of public service commission; providing for payment of rates and charges for sewer services after thirty-day notice of service availability; requiring the inclusion of payments to capital replacement accounts and bond payment schedules in the tentative budget prepared by the general manager and submitted to the board; requiring a copy of the budget, as adopted by the board, to be forwarded to the county commission; requiring a copy of an audit to be forwarded to the county commission and the public service commission; requiring the treasurer of a public service district to be responsible for maintaining financial records, including the duty to transfer such records to his successor; requiring that any order for the disbursement of district funds be reflected in the minutes of the board; providing for sale, lease or rental of water systems by district; authorizing a public service district to accept loans, grants or temporary advances to pay costs of construction or acquisition of water, sewer or gas facilities and for other authorized purposes from the United States, any federal or public agency, or any private party, and to enter into necessary contracts and agreements therewith; authorizing payment of loans, temporary advances, and interest thereon from bond proceeds, revenues of said systems and grants from said agencies and parties or combinations thereof; provides consent and approval of public service commission before public service district borrows money or issues revenue bonds; requirements of form for residents to file in opposition to public service district borrowing money or issuing revenue bonds; qualifications for public service commission consenting or approving public service district request to borrow money or issue revenue bonds.

Be it enacted by the Legislature of West Virginia:

That sections two, three, three-a, four, five, six, seven, eight, nine, ten, eleven, twelve, eighteen-a, twenty-four and twenty-five, 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, SEWERAGE AND
GAS SERVICES.**

**§16-13A-2. Creation of districts by county commission;
enlarging, reducing or dissolving district;
consolidation; agreements, etc., infringing upon
powers of county commission; filing list of
members and districts with the secretary of state.**

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, including metes and bounds,
5 sufficient to identify the territory to be embraced therein and
6 the name of such proposed district, or twenty-five percent of
7 the registered voters who reside within the limits of such
8 proposed public service district within one or more counties
9 may petition for the creation thereof, which petition shall
10 contain a description, including metes and bounds, sufficient
11 to identify the territory to be embraced therein and the name
12 of such proposed district. Any territory may be included
13 regardless of whether or not such territory includes one or
14 more cities, incorporated towns or other municipal
15 corporations which own and operate any public service
16 properties and regardless of whether or not it includes one or
17 more cities, incorporated towns or other municipal
18 corporations being served by privately owned public service
19 properties: *Provided*, That the same territory shall not be
20 included within the boundaries of more than one public
21 service district except where such territory or part thereof is
22 included within the boundaries of a separate public service
23 district organized to supply water, sewerage services or gas
24 facilities not being furnished within such territory or part
25 thereof: *Provided, however*, That no city, incorporated town
26 or other municipal corporation shall be included within the
27 boundaries of such proposed district except upon the
28 adoption of a resolution of the governing body of such city,
29 incorporated town or other municipal corporation
30 consenting.

31 Such petition shall be filed in the office of the clerk of the
32 county commission of the county in which the territory to
33 constitute the proposed district is situated, and if such
34 territory is situated in more than one county, then such
35 petition shall be filed in the office of the clerk of the county

36 commission of the county in which the major portion of such
37 territory extends, and a copy thereof (omitting signatures)
38 shall be filed with each of the clerks of the county
39 commission of the other county or counties into which the
40 territory extends. The clerk of the county commission
41 receiving such petition shall present it to the county
42 commission of such county at the first regular meeting after
43 such filing or at a special meeting called for the consideration
44 thereof.

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

78 notice containing the same information as is contained in the
79 published notice. The posted notices shall be posted not less
80 than ten days before the hearing.

81 All persons residing in or owning or having any interest in
82 property in such proposed public service district shall have
83 an opportunity to be heard for and against its creation. At
84 such hearing the county commission before which the
85 hearing is conducted shall consider and determine the
86 feasibility of the creation of the proposed district. If the
87 county commission determines that the construction or
88 acquisition by purchase or otherwise and maintenance,
89 operation, improvement, and extension of public service
90 properties by such public service district will be conducive to
91 the preservation of public health, comfort and convenience of
92 such area, the county commission shall by order create such
93 public service district and such order is conclusive and final
94 in that regard. If the commission, after due consideration,
95 determines that the proposed district will not be conducive to
96 the preservation of public health, comfort or convenience of
97 such area or that the creation of the proposed district as set
98 forth and described in the petition or order is not feasible, it
99 may refuse to enter an order creating the district or it may
100 enter an order amending the description of the proposed
101 district and create the district as amended. If the county
102 commission determines that any other public service district
103 or districts can adequately serve the area of the proposed
104 public service district, whether by expansion, merger or other
105 means, it shall refuse to enter an order creating the proposed
106 district: *Provided*, That prior to refusing to enter such order,
107 evidence must be presented to the satisfaction of the county
108 commission that such expansion, merger or other procedure
109 necessary to provide service to the area of the proposed
110 district will be forthcoming: *Provided, however*, That no
111 expansion of a public service district may occur if the present
112 or proposed physical facilities of the public service district
113 are determined by the appropriate county commission to be
114 inadequate to provide such expanded service. The clerk of
115 the county commission of each county into which any part of
116 such district extends shall retain in his office an authentic
117 copy of the order creating the district: *Provided*, That if at
118 such hearing written protest is filed by thirty percent or more
119 of the qualified voters registered and residing within said

120 district, then the county commission shall not take any
121 further action in creating such district unless the creation of
122 such district is approved by a majority vote of the qualified
123 registered voters voting at a referendum to be called by the
124 county commission for such purpose. Such referendum shall
125 be called and held in the manner provided in the general
126 election laws of the state of West Virginia applicable thereto
127 and the funds therefor shall be supplied from any county
128 funds available for such purpose or from funds supplied from
129 the persons who petitioned for the creation of such district. If
130 a majority of the qualified registered voters participating in
131 the referendum vote against the creation of the district, then
132 such district shall not be created. If, however, a majority of
133 the qualified registered voters participating in such
134 referendum vote in favor of the creation of such district, then
135 the county commission shall duly enter its order creating
136 such district.

137 After the creation of such district the county commission
138 may, if in its discretion it deems it necessary, feasible and
139 proper, enlarge the district to include additional areas, reduce
140 the area of the district, where facilities, equipment, service or
141 materials have not been extended, or dissolve the district if
142 inactive or establish or consolidate two or more such
143 districts: *Provided*, That where the county commission
144 determines on its own motion by order entered of record, or
145 there is a petition, to enlarge the district, reduce the area of
146 the district or dissolve the district if inactive all of the
147 applicable provisions of this article providing for hearing,
148 notice of hearing and protest shall apply with like effect as if a
149 district were being created: *Provided, however*, That no
150 expansion of a public service district may occur if the
151 physical facilities of the public service district are determined
152 by the appropriate county commission to be inadequate to
153 provide such expanded service. The commission shall at all
154 times attempt to bring about the expansion or merger of
155 existing public service districts in order to provide increased
156 services and to eliminate the need for creation of new public
157 service districts in those areas which are not currently
158 serviced by a public service district: *Provided further*, That
159 the applicable provisions pertaining to referendum shall not
160 apply if the results of a referendum could adversely affect the
161 existing financial indebtedness of the district. The districts

162 may not enter into any agreement, contract or covenant that
163 infringes upon, impairs, abridges or usurps the duties, rights
164 or powers of the county commission, as set forth in this
165 article, or conflicts with any provision of this article. A list of
166 all districts and their current board members shall be filed by
167 the county commission with the secretary of state.

**§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; creation of public
service boards; appointment and qualifications of
members; terms; removal; vacancies;
organization.**

1 From and after the date of the adoption of the order
2 creating any such public service district, it shall thereafter be
3 a public corporation and political subdivision of the state, but
4 without any power to levy or collect ad valorem taxes. Each
5 such district may acquire, own and hold property, both real
6 and personal, in its corporate name, and may sue, may be
7 sued, may adopt an official seal and may enter into contracts
8 necessary or incidental to its purposes, including contracts
9 with any city, incorporated town or other municipal
10 corporation located within or without its boundaries for
11 furnishing wholesale supply of water for the distribution
12 system of such city, town or other municipal corporation, and
13 contract for the operation, maintenance, servicing, repair and
14 extension of any properties owned by it or for the operation
15 and improvement or extension by such district of all or any
16 part of the existing municipally owned public service
17 properties of any city, incorporated town or other municipal
18 corporation included within such district: *Provided*, That no
19 such contract shall extend beyond a maximum of forty years,
20 but provisions may be included therein for a renewal or
21 successive renewals thereof and shall conform to and comply
22 with the rights of the holders of any outstanding bonds issued
23 by such municipalities for such public service properties.

24 The powers of each such public service district shall be
25 vested in and exercised by a public service board consisting
26 of not less than three members, who shall be persons residing
27 within the district who have successfully completed a
28 training program to be established and administered by the
29 public service commission in conjunction with the
30 department of natural resources and the department of
31 health. Such members shall be appointed in the following
32 manner:

33 Each city, incorporated town or other municipal
34 corporation shall be entitled to appoint one member of such
35 board, and each such city, incorporated town or other
36 municipal corporation having a population in excess of
37 eighteen thousand shall be entitled to appoint one additional
38 member of such board for each additional eighteen thousand
39 population. The members of the board representing such
40 cities, incorporated towns or other municipal corporations
41 shall be residents thereof and shall be appointed by a
42 resolution of the governing bodies thereof and upon the filing
43 of a certified copy or copies of such resolution or resolutions
44 in the office of the clerk of the county commission which
45 entered the order creating such district, such persons so
46 appointed shall thereby become members of the board
47 without any further act or proceedings. If the number of
48 members of the board so appointed by the governing bodies
49 of cities, incorporated towns or other municipal corporations
50 included in the district shall equal or exceed three, then no
51 further members shall be appointed to such board and such
52 members shall be and constitute the board of said district.

53 If no city, incorporated town or other municipal
54 corporation is included within the district, then the county
55 commission which entered the order creating the district
56 shall appoint three members of the board, who are persons
57 residing within the district, which three members shall
58 become members of and constitute the board of said district
59 without any further act or proceedings.

60 If the number of members of the board appointed by the
61 governing bodies of cities, incorporated towns or other
62 municipal corporations included within the district is less
63 than three, then the county commission which entered the
64 order creating the district shall appoint such additional
65 member or members of the board, who are persons residing
66 within the district, as is necessary to make the number of
67 members of the board equal three, and the additional
68 member or members shall thereupon become members of
69 such board; and the member or members appointed by the
70 governing bodies of the cities, incorporated towns or other
71 municipal corporations included within the district and the
72 additional member or members appointed by such county
73 commission as aforesaid, shall be and constitute the board of
74 the district. A person may serve as a member of the board in
75 one or more public districts.

76 The population of any city, incorporated town or other
77 municipal corporation, for the purpose of determining the
78 number of members of such board, if any, to be appointed by
79 the governing body or bodies thereof, shall be conclusively
80 deemed to be the population stated for such city,
81 incorporated town or other municipal corporation in the last
82 official federal census.

83 The respective terms of office of the members of the first
84 board shall be fixed by the county commission and shall be as
85 equally divided as may be, that is approximately one third of
86 the members for a term of two years, a like number for a term
87 of four, and the term of the remaining member or members
88 for six years, from the first day of the month during which
89 such appointments are made. The first members of the board
90 appointed as aforesaid shall meet at the office of the clerk of
91 the county commission which entered the order creating the
92 district as soon as practicable after such appointments and
93 shall qualify by taking an oath of office: *Provided*, That any
94 member or members of the board may be removed from their
95 respective office as provided in section three-a of this article.

96 Any vacancy shall be filled for the unexpired term within
97 thirty days, otherwise successor members of the board shall
98 be appointed for terms of six years and the terms of office
99 shall continue until successors have been appointed and
100 qualified. All successor members shall be appointed in the
101 same manner as the member succeeded was appointed.

102 The board shall organize within thirty days following the
103 first appointments and annually thereafter at its first meeting
104 after January one of each year by selecting one of its
105 members to serve as chairman and by appointing a secretary
106 and a treasurer who need not be members of such board. The
107 secretary shall keep a record of all proceedings of the board
108 which shall be available for inspection as other public
109 records. Duplicate records shall be filed with the county
110 commission and shall include the minutes of all board
111 meetings. The treasurer is lawful custodian of all funds of the
112 public service district and shall pay same out on orders
113 authorized or approved by the board. The secretary and
114 treasurer shall perform such other duties appertaining to the
115 affairs of the district and shall receive such salaries as shall be
116 prescribed by the board. The treasurer shall furnish bond in
117 an amount to be fixed by the board for the use and benefit of
118 the district.

119 The members of the board, and the chairman, secretary and
 120 treasurer thereof, shall make available to the county
 121 commission, at all times, all of its books and records
 122 pertaining to the district's operation, finances and affairs, for
 123 inspection and audit. The board shall meet at least monthly.

§16-13A-3a. Provisions for removal of members of public service board.

1 The county commission or any other appointive body
 2 creating or establishing a public service district under the
 3 provisions of this article may remove any member of the
 4 governing board thereof for consistent violations of any
 5 provisions of this article, for reasonable cause which includes
 6 but is not limited to a continued failure to attend meetings of
 7 the board, failure to diligently pursue the objectives for which
 8 the district was created or failure to perform any other duty
 9 prescribed by law or for any misconduct in office, or upon
 10 written petition signed by twenty-five percent of the
 11 registered voters who reside within the limits of such
 12 proposed public service district: *Provided*, That such
 13 appointee shall be removed only after a full hearing of any
 14 complaint presented against him and after a ten-day notice of
 15 such hearing.

§16-13A-4. Absence or resignation of chairman; salaries of members; procedural regulations; quorum; liability of members; changing corporate name of district.

1 The chairman shall preside at all meetings of the board and
 2 may vote as any other members of the board but if he should
 3 be absent from any meeting, the remaining members may
 4 select a temporary chairman and if the member selected as
 5 chairman resigns as such or ceases for any reason to be a
 6 member of the board, the board shall select one of its
 7 members as chairman to serve until the next annual
 8 organization meeting. Salaries of each of its members shall be
 9 fifty dollars per attendance at regular monthly meetings and
 10 thirty dollars per attendance at additional special meetings,
 11 total salary not to exceed seven hundred fifty dollars per
 12 annum. Board members may be reimbursed for all
 13 reasonable and necessary expenses actually incurred in the
 14 performance of their duties as provided for by the rules and
 15 regulations of the board. The board shall by resolution

16 determine its own rules of procedure, fix the time and place
17 of its meetings and the manner in which special meetings
18 may be called. Public notice of meetings shall be given in
19 accordance with section three, article nine-a, chapter six of
20 this code. Emergency meetings may be called as provided by
21 section three, article nine-a, chapter six of this code. A
22 majority of the members constituting the board also
23 constitute a quorum to do business. The members of the
24 board are not personally liable or responsible for any
25 obligations of the district or the board but are answerable
26 only for willful misconduct in the performance of their duties.
27 At any time prior to the issuance of bonds as hereinafter
28 provided the board may by resolution change the official or
29 corporate name of the public service district and such change
30 shall be effective from and after filing an authenticated copy
31 of such resolution with the clerk of the county commission of
32 each county in which the territory embraced within such
33 district or any part thereof is located. The official name of any
34 district created under the provisions of this article may
35 contain the name or names of any city, incorporated town or
36 other municipal corporation included therein or the name of
37 any county or counties in which it is located.

§16-13A-5. General manager of board.

1 The board may employ a general manager to serve a term of
2 not more than five years and until his successor is employed,
3 and his compensation shall be fixed by resolution of the
4 board. Such general manager shall devote all or the required
5 portion of his time to the affairs of the district and may
6 employ, discharge and fix the compensation of all employees
7 of the district, except as in this article otherwise provided,
8 and he shall perform and exercise such other powers and
9 duties as may be conferred upon him by the board.

10 Such general manager shall be chosen without regard to his
11 political affiliations and upon the sole basis of his
12 administrative and technical qualifications to manage public
13 service properties and affairs of the district and he may be
14 discharged only upon the affirmative vote of two thirds of the
15 board. Such general manager need not be a resident of the
16 district at the time he is chosen. Such general manager may
17 not be a member of the board but shall be an employee of the
18 board.

19 The board of any public service district which purchases

20 water service from a municipal water system or another
21 public service district may, as an alternative to hiring its own
22 general manager, elect to permit the general manager of the
23 municipal water system or public service district from which
24 such water service is purchased provide professional
25 management to the district, if the appropriate municipality or
26 public service board agrees to provide such assistance. The
27 general manager shall receive reasonable compensation for
28 such service.

§16-13A-6. Employees of board.

1 The board may in its discretion from time to time by
2 resolution passed by a majority vote provide for the
3 employment of an attorney, fiscal agent, one or more
4 engineers and such other employees as the board may
5 determine necessary and expedient. The board shall in and
6 by such resolution fix the term of employment and
7 compensation and prescribe the duties to be performed by
8 such employees.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired, donated to or
3 constructed by the district and shall maintain, operate,
4 extend and improve the same: *Provided*, That no extension of
5 a public service district may occur if the present or proposed
6 physical facilities of the public service district are determined
7 by the appropriate county commission to be inadequate to
8 provide such expanded service. All contracts involving the
9 expenditure by the district of more than two thousand dollars
10 for construction work or for the purchase of equipment and
11 improvements, extensions or replacements, shall be entered
12 into only after notice inviting bids shall have been published
13 as a Class I legal advertisement in compliance with the
14 provisions of article three, chapter fifty-nine of this code and
15 the publication area for such publication shall be the district.
16 The publication shall not be less than ten days prior to the
17 making of any such contract. If the public service
18 commission determines an emergency situation exists within
19 the public service district, all contracts involving the
20 expenditure by the district of more than two thousand dollars
21 for emergency construction work or for the emergency
22 purchase of equipment and improvements, extensions or
23 replacements, may be entered without compliance to notice

24 inviting bids and publication requirements. Any obligations
25 incurred of any kind or character shall not in any event
26 constitute or be deemed an indebtedness within the meaning
27 of any of the provisions or limitations of the constitution but
28 all such obligations shall be payable solely and only out of
29 revenues derived from the operation of the public service
30 properties of the district or from proceeds of bonds issued as
31 hereinafter provided. No continuing contract for the
32 purchase of materials or supplies or for furnishing the district
33 with electrical energy or power shall be entered into for a
34 longer period than fifteen years.

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

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

9 The board may construct any public service properties
10 within or outside the district necessary or incidental to its
11 purposes and each such district may acquire, construct,
12 maintain and operate any such public service properties
13 within the corporate limits of any city, incorporated town or
14 other municipal corporation included within the district or in
15 any unincorporated territory within ten miles of the territorial
16 boundaries of the district: *Provided*, That if any incorporated
17 city, town or other municipal corporation included within the
18 district owns and operates either water facilities, sewer
19 facilities, or gas facilities or all of these, then the district may
20 not acquire, construct, establish, improve or extend any
21 public service properties of the same kind within such city,
22 incorporated towns or other municipal corporations or the
23 adjacent unincorporated territory served by such cities,
24 incorporated towns or other municipal corporations, except
25 upon the approval of the public service commission, the
26 consent of such cities, incorporated towns or other municipal
27 corporations and in conformity and compliance with the
28 rights of the holders of any revenue bonds or obligations
29 theretofore issued by such cities, incorporated towns or other

30 municipal corporations then outstanding and in accordance
 31 with the ordinance, resolution or other proceedings which
 32 authorize the issuance of such revenue bonds or obligations.

33 Whenever such district has constructed, acquired or
 34 established water facilities, sewer facilities or gas facilities for
 35 water, sewer or gas services within any city, incorporated
 36 town or other municipal corporation included within a
 37 district, then such city, incorporated town or other municipal
 38 corporation may not thereafter construct, acquire or establish
 39 any facilities of the same kind within such city, incorporated
 40 town or other municipal corporation without the consent of
 41 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 has the right
 45 of eminent domain to the same extent and to be exercised in
 46 the same manner as now or hereafter provided by law for
 47 such right of eminent domain by cities, incorporated towns
 48 and other municipal corporations: *Provided*, That such board
 49 may not acquire all or any substantial part of a privately
 50 owned waterworks system unless and until authorized so to
 51 do by the public service commission of West Virginia, and
 52 that this section shall not be construed to authorize any
 53 district to acquire through condemnation proceedings either
 54 in whole or substantial part an existing privately owned
 55 waterworks plant or system or gas facilities located in or
 56 furnishing water or gas service within such district or
 57 extensions made or to be made by it in territory contiguous to
 58 such existing plant or system, nor may any such board
 59 construct or extend its public service properties to supply its
 60 services into areas served by or in competition with existing
 61 waterworks or gas facilities or extensions made or to be made
 62 in territory contiguous to such existing plant or system by the
 63 owner thereof.

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

1 The board may make, enact and enforce all needful rules
 2 and regulations in connection with the acquisition,
 3 construction, improvement, extension, management,

4 maintenance, operation, care, protection and the use of any
5 public service properties owned or controlled by the district,
6 and the board shall establish rates and charges for the
7 services and facilities it furnishes, which shall be sufficient at
8 all times, notwithstanding the provisions of any other law or
9 laws, to pay the cost of maintenance, operation and
10 depreciation of such public service properties and principal
11 of and interest on all bonds issued, other obligations incurred
12 under the provisions of this article and all reserve or other
13 payments provided for in the proceedings which authorized
14 the issuance of any bonds hereunder. The schedule of such
15 rates and charges may be based upon either (a) the
16 consumption of water or gas on premises connected with
17 such facilities, taking into consideration domestic,
18 commercial, industrial and public use of water and gas; or (b)
19 the number and kind of fixtures connected with such
20 facilities located on the various premises; or (c) the number of
21 persons served by such facilities; or (d) any combination
22 thereof; or (e) may be determined on any other basis or
23 classification which the board may determine to be fair and
24 reasonable, taking into consideration the location of the
25 premises served and the nature and extent of the services and
26 facilities furnished. Where water, sewer and gas services are
27 all furnished to any premises the schedule of charges may be
28 billed as a single amount for the aggregate thereof. Whenever
29 any rates, rentals or charges for services or facilities furnished
30 remain unpaid for a period of thirty days after the same
31 become due and payable, the property and the owner thereof,
32 as well as the user of the services and facilities shall be
33 delinquent until such time as all such rates and charges are
34 fully paid. The board may, under reasonable rules and
35 regulations promulgated by the public service commission,
36 shut off and discontinue water or gas services to all
37 delinquent users of either water or gas facilities, or both.

38 In the event that any city, incorporated town or other
39 municipal corporation included within the district owns and
40 operates separately either water facilities or gas facilities, and
41 the district owns and operates within such city, incorporated
42 town or other municipal corporation the other kind of
43 facilities, either water or gas facilities, as the case may be,
44 then the district and such city, incorporated town or other
45 municipal corporation may covenant and contract with each

46 other to shut off and discontinue the supplying of the kind of
47 facilities furnished by the district or such city, incorporated
48 town or other municipal corporation, as the case may be, for
49 the nonpayment of fees and charges for the other kind of
50 facilities furnished by the district or city, incorporated town
51 or other municipal corporation, as the case may be.

52 Any district furnishing sewer facilities within the district
53 may require all owners, tenants or occupants of any houses,
54 dwellings and buildings located near any such sewer
55 facilities, where sewage will flow by gravity or be transported
56 by such other methods approved by the department of health
57 from such houses, dwellings or buildings into such sewer
58 facilities, to connect with and use such sewer facilities, and to
59 cease the use of all other means for the collection, treatment
60 and disposal of sewage and waste matters from such houses,
61 dwellings and buildings where there is such gravity flow or
62 transportation by such other methods approved by the
63 department of health and such houses, dwellings and
64 buildings can be adequately served by the sewer facilities of
65 the district, and it is hereby found, determined and declared
66 that the mandatory use of such sewer facilities provided for in
67 this paragraph is necessary and essential for the health and
68 welfare of the inhabitants and residents of such districts and
69 of the state.

70 If the property owner must connect with the sewer facilities
71 even when sewage from such dwellings may not flow to the
72 main line by gravity and the property owner must incur costs
73 for any changes in the existing dwelling plumbing in order to
74 connect to the main sewer line, the public service district
75 board shall authorize the district to pay all reasonable costs
76 for such changes in the plumbing, including but not limited
77 to installation, operation, maintenance and purchase of a
78 pump, or any other method approved by the department of
79 health; maintenance and operation costs for such extra
80 installation should be reflected in the users charge for
81 approval of the public service commission.

82 Whenever any district has made available sewer facilities to
83 any owner, tenant or occupant of any house, dwelling or
84 building located near such sewer facility, and the engineer for
85 the district has certified that such sewer facilities are
86 available to and are adequate to serve such owner, tenant, or

87 occupant, and sewage will flow by gravity or be transported
88 by such other methods approved by the department of health
89 from such house, dwelling or building into such sewer
90 facilities, the district may charge, and such owner, tenant or
91 occupant shall pay the rates and charges for services
92 established under this article only after thirty-day notice of
93 the availability of the facilities has been received by the
94 owner.

95 All delinquent fees, rates and charges of the district for
96 either water facilities, sewer facilities or gas facilities are liens
97 on the premises served of equal dignity, rank and priority
98 with the lien on such premises of state, county, school and
99 municipal taxes. When such fees, rates and charges have been
100 delinquent for thirty days, the district may forthwith
101 foreclose the lien on the premises served in the same manner
102 now provided in the laws of the state of West Virginia for the
103 foreclosure of mortgages on real property.

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

§16-13A-10. Budget.

1 The board shall establish the beginning and ending of its
2 fiscal year, which period shall constitute its budget year, and
3 at least thirty days prior to the beginning of the first full fiscal
4 year after the creation of the district and annually thereafter
5 the general manager shall prepare and submit to the board a
6 tentative budget which shall include all operation and
7 maintenance expenses, payments to a capital replacement
8 account and bond payment schedules for the ensuing fiscal
9 year. Such tentative budget shall be considered by the board,
10 and, subject to any revisions or amendments that may be
11 determined by the board, shall be adopted as the budget for
12 the ensuing fiscal year. Upon adoption of the budget, a copy
13 of the budget shall be forwarded to the county commission.
14 No expenditures for operation and maintenance expenses in
15 excess of the budget shall be made during such fiscal year
16 unless unanimously authorized and directed by the board.

§16-13A-11. Accounts; audit.

1 The general manager, under direction of the board, shall
2 install and maintain a proper system of accounts showing
3 receipts from operation and application of the same, and the
4 board shall at least once a year cause such accounts to be
5 properly audited by an independent public accountant. A
6 copy of the audit shall be forwarded within thirty days of
7 completion to the county commission and to the public
8 service commission.

9 The treasurer of each public service district shall keep and
10 preserve all financial records of the public service district,
11 and shall at all times have such records readily available for
12 public inspection. At the end of his term of office, the
13 treasurer of each public service district shall promptly deliver
14 all financial records of the public service district to his
15 successor in office. Any treasurer of a public service district
16 who knowingly or willfully violates any provision of this
17 section is guilty of a misdemeanor and shall be fined not less
18 than one hundred dollars nor more than five hundred dollars
19 or imprisoned in the county jail not more than ten days, or
20 both.

§16-13A-12. Disbursement of district funds.

1 No money may be paid out by a district except upon an
2 order signed by the chairman and secretary of such board, or
3 such other person or persons authorized by the chairman or
4 secretary, as the case may be, to sign such orders on their
5 behalf. Each order for the payment of money shall specify the
6 purposes for which the amount thereof is to be paid, with
7 sufficient clearness to indicate the purpose for which the
8 order is issued, and there shall be endorsed thereon the name
9 of the particular fund out of which it is payable and it shall be
10 payable from the fund constituted for such purpose, and no
11 other. All such orders shall be reflected in the minutes of the
12 next meeting of the board.

**§16-13A-18a. Sale, lease or rental of water system by district;
distribution of proceeds.**

1 In any case where a public service district owns a water
2 system, and all the members of the public service board
3 thereof deem it for the best interests of the district to sell,
4 lease or rent such water system to any municipality or
5 privately owned water system, or to any water system owned

6 by an adjacent public service district, the board may so sell,
7 lease or rent such water system upon such terms and
8 conditions as said board, in its discretion, considers in the
9 best interests of the district: *Provided*, That such sale, leasing
10 or rental may be made only upon approval by the public
11 service commission of West Virginia.

12 In the event of any such sale, the proceeds thereof, if any,
13 remaining after payment of all outstanding bonds and other
14 obligations of the district shall be ratably distributed to any
15 persons who have made contributions in aid of construction
16 of such water system, such distribution not to exceed the
17 actual amount of any such contribution, without interest, and
18 any balance of funds thereafter remaining shall be paid to the
19 county commission of the county in which the major portion
20 of such water system is located to be placed in the general
21 funds of such county commission.

**§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
2 provisions of this article is authorized and empowered to
3 accept loans or grants and procure loans or temporary
4 advances evidenced by notes or other negotiable instruments
5 issued in the manner, and subject to the privileges and
6 limitations, set forth with respect to bonds authorized to be
7 issued under the provisions of this article, for the purpose of
8 paying part or all of the cost of construction or acquisition of
9 water systems, sewage systems, or gas facilities, or all of
10 these, and the other purposes herein authorized, from any
11 authorized agency or from the United States of America or
12 any federal or public agency or department of the United
13 States or any private agency, corporation or individual, which
14 loans or temporary advances, including the interest thereon,
15 may be repaid out of the proceeds of the bonds authorized to
16 be issued under the provisions of this article, the revenues of
17 the said water system, sewage system or gas facilities or
18 grants to the public service district from any authorized
19 agency or from the United States of America or any federal or
20 public agency or department of the United States or from any
21 private agency, corporation or individual or from any
22 combination of such sources of payment, and to enter into the
23 necessary contracts and agreements to carry out the purposes

24 hereof with any authorized agency or the United States of
 25 America or any federal or public agency or department of the
 26 United States, or with any private agency, corporation or
 27 individual.

**§16-13A-25. Consent and approval of public service commission
 required before public service district borrows
 money, issues bonds, etc.; requirements of form
 for residents to file in opposition to the public
 service district borrowing money or issuing
 revenue bonds; qualifications for public service
 commission consenting or approving public
 service district request to borrow money or issue
 revenue bonds.**

1 Notwithstanding any other provisions of this article to the
 2 contrary, a public service district shall not borrow money or
 3 issue or contract to issue revenue bonds or exercise any of the
 4 powers conferred by the provisions of section thirteen,
 5 twenty or twenty-four of this article without the prior consent
 6 and approval of the public service commission.

7 Notwithstanding any other provision in this code, when a *of Jan*
 8 public service district is seeking to borrow money for the
 9 acquisition or construction of public service properties, or
 10 contract to issue revenue bonds to commence the
 11 construction or acquisition of public service properties, the
 12 public service district shall publish a Class II legal
 13 advertisement in a newspaper of general circulation within
 14 the district, which legal advertisement shall state:

15 (1) the amount of money to be borrowed, or the amount of
 16 revenue bonds to be issued;

17 (2) the interest rate and terms of the loan or bonds;

18 (3) the public service properties to be acquired or
 19 constructed, and the cost of same;

20 (4) the anticipated rates which will be charged by the
 21 district; and

22 (5) the fact that a form is available in the county clerk's
 23 office and at the office of the public service district for
 24 residents of that portion of the public service district which
 25 will be served by the public service property to be acquired or
 26 constructed to sign indicating their opposition to the public
 27 service district borrowing money or issuing revenue bonds.
 28 In addition, the public service district shall cause to be posted
 29 in conspicuous places throughout that portion of the public

30 service district which will be served by the public service
31 property to be acquired or constructed signs measuring not
32 less than eight and one-half inches in width and eleven inches
33 in length which include the same information as required in
34 the Class II legal advertisement.

35 For a period of thirty days beginning with the first
36 publication of the legal advertisement, the county clerk shall
37 maintain within the courthouse of the county containing the
38 public service district and the public service district shall
39 maintain at its office a form provided by the public service
40 district to be signed by any registered voter who is a resident
41 of that portion of the public service district which will be
42 served by the public service property to be acquired or
43 constructed, and who is opposed to the public service district
44 borrowing money or issuing revenue bonds upon the terms or
45 for the purpose stated in the legal advertisement. The form
46 available in the county clerk's office and in the office of the
47 public service district shall state:

48 (1) the amount of money to be borrowed, or the amount of
49 revenue bonds to be issued;

50 (2) the interest rate and terms of the loan or bonds;

51 (3) the public service properties to be acquired or
52 constructed, and the cost of same; and

53 (4) the anticipated rates which will be charged by the
54 district. The form shall be arranged in a manner that permits
55 every registered voter who is opposed to sign his name and
56 list his address. The commission shall not grant its consent
57 and approval if more than fifty percent of the registered
58 voters who are residents of that portion of the public service
59 district which will be served by the public service property to
60 be acquired or constructed sign the form indicating their
61 opposition. The commission may grant its consent and
62 approval subject to such terms and conditions as may be
63 necessary for the protection of the public interest, pursuant to
64 the provisions of chapter twenty-four of this code, or may
65 withhold such consent and approval for the protection of the
66 public interest.

67 In the event of disapproval, the reasons therefor shall be
68 assigned in writing by the commission. If written disapproval
69 has not been given by the commission within sixty days after
70 receipt of the application by the commission, it may be
71 deemed by the applicant that approval has in fact been given.

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

R. P. Baylor
Chairman Senate Committee

Jonny E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Wilks
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Mark R. Holden
President of the Senate

Clayton H. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *29*
day of *April*, 1981.

John R. Rymer
Governor

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OFFICE OF THE GOVERNOR

OFFICE
SECY. OF STATE

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