

No: 538



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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

SENATE BILL NO. 538

(By Mrs. Sprou & Mr. R. Shilline)



PASSED April 13, 1985

In Effect July 1, 1985



ENROLLED
Senate Bill No. 538

(BY MRS. SPEARS AND MR. R. WILLIAMS)

[Passed April 13, 1985; to take effect July 1, 1985.]

AN ACT to amend and reenact sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, all of article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, all relating generally to assessment of public service businesses for ad valorem property taxes; changing title of article; transferring to tax commissioner duty of making such assessments; providing form and manner of making return of property; imposing criminal penalty for failure to make such return; permitting tax commissioner to compel furnishing of information by public service business by issuance of subpoena or subpoena duces tecum; providing for service and enforcement of subpoena and subpoena duces tecum; requiring issuance of tentative assessments; providing for administrative hearing if petition for reassessment is timely filed; making tentative assessment prima facie evidence of assessed value; providing for service of notice of tentative assessments and assessments; providing rules for timely filing of returns and other documents; providing for issuance of assessments; permitting appeal of assessment where tentative assessment

was protested and administrative hearing held; providing procedures for administrative hearing and appeals to court; specifying time periods within which petitions for reassessment and petitions for appeal must be filed; providing for assessment to be prima facie evidence of assessed value; providing for apportionment of value among counties, school districts and municipalities by tax commissioner; and providing for auditor to enter assessments against public service business.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to tax commissioner.

1 (a) On or before the first day of May in each year a return
2 in writing shall be filed with the tax commissioner: (1) By
3 the owner or operator of every railroad, wholly or in part
4 within this state; (2) by the owner or operator of every
5 railroad bridge upon which a separate toll or fare is
6 charged; (3) by the owner or operator of every car or line of
7 cars used upon any railroad within the state for
8 transportation or accommodation of freight or passengers,
9 other than such owners or operators as may own or operate
10 a railroad within the state; (4) by the owner or operator of
11 every express company or express line, wholly or in part
12 within this state, used for the transportation by steam or
13 otherwise of freight and other articles of commerce; (5) by
14 the owner or operator of every pipeline, wholly or in part
15 within this state, used for the transportation of oil or gas or
16 water, whether such oil or gas or water be owned by such
17 owner or operator or not, or for the transmission of
18 electrical or other power, or the transmission of steam or
19 heat and power or of articles by pneumatic or other power;

20 (6) by the owner or operator of every telegraph or telephone
21 line, wholly or in part within this state, except private lines
22 not operated for compensation; (7) by the owner and
23 operator of every gas company and electric lighting
24 company furnishing gas or electricity for lighting, heating
25 or power purposes; (8) by the owner or operator of
26 hydroelectric companies for the generation and
27 transmission of light, heat or power; (9) by the owner or
28 operator of water companies furnishing or distributing
29 water, and (10) by the owner or operator of all other public
30 service corporations or persons engaged in public service
31 business whose property is located wholly or in part within
32 this state.

33 (b) The words "owner or operator," as applied herein to
34 railroad companies, shall include every railroad company
35 incorporated by or under the laws of this state for the
36 purpose of constructing and operating a railroad, or of
37 operating part of a railroad within this state, whether such
38 railroad or any part of it be in operation or not; and shall
39 also include every other railroad company, or persons or
40 associations of persons, owning or operating a railroad or
41 part of a railroad in this state on which freight or
42 passengers, or both, are carried for compensation. The word
43 "railroad," as used herein includes every street, city,
44 suburban or electric or other railroad, or railway.

45 (c) The words "owner or operator," as applied herein to
46 express companies, shall include every express company
47 incorporated by or under the laws of this state, or doing
48 business in this state, whether incorporated or not, and any
49 person or association of persons, owning or operating any
50 express company or express line upon any railroad or
51 otherwise, doing business partly or wholly within this state.

52 (d) Such return shall be signed and sworn to by such
53 owner or operator if a natural person, or, if such owner or
54 operator shall be a corporation, shall be signed and sworn to
55 by its president, vice president, secretary or principal
56 accounting officer.

57 (e) The return required by this section of every such
58 owner or operator shall cover the year ending on the thirty-
59 first day of December, next preceding, and shall be made on
60 forms prescribed by the tax commissioner, who is hereby
61 invested with full power and authority and it is hereby

62 made his duty to prescribe such forms as will require from
63 any owner or operator herein mentioned such information
64 as in the judgment of the tax commissioner may be of use to
65 him in determining the true and actual value of the
66 properties of such owners or operators.

§11-6-3. Same—Toll bridges.

1 In the case of any bridge upon which a separate toll or fare
2 is charged, such return shall show: (a) The location of the
3 same; (b) for what used; and, if used by a railroad, what
4 railroad uses it; (c) the length of such bridge; and, if used by
5 a railroad, the number of tracks on it; (d) all other property
6 owned by such owner or operator and used in connection
7 with such bridge; (e) the capital actually invested; the
8 amount of capital stock authorized and issued, the par
9 value and the market value of the shares into which the
10 capital stock is divided, and the amount of dividends
11 declared on the capital stock within the twelve months
12 preceding the first day of the current assessment year; the
13 total amount of bonded indebtedness and of indebtedness
14 not bonded; gross earnings for the year from all sources; (f)
15 gross expenditures for the year, giving a detailed statement
16 thereof under each class or head of expenditure; and (g) any
17 other information requested by the tax commissioner which
18 the tax commissioner deems may be of use to him in
19 determining the actual value of such bridge or bridges.

§11-6-4. Same—Car line companies.

1 In the case of car lines used for the transportation or
2 accommodation of passengers or freight by owners or
3 operators, other than railroad companies making their
4 return under this law, such return shall show for every such
5 owner or operator: (a) All cars and other rolling stock,
6 giving a detailed statement of the number of cars, including
7 passenger, mail, express, baggage, freight, sleeping, dining,
8 parlor, refrigerator, stock or other cars of every description,
9 and the true and actual value of all such cars used wholly or
10 in part in this state, distinguishing between those used
11 wholly in this state and those used partly within and partly
12 without the state, and the true and actual value of those
13 used wholly within the state and those used partly within
14 and partly without the state, and the proportional value of
15 such cars used partly within and partly without the state,
16 according to the time used and the number of miles run by

17 such cars in and out of the state, the railroad over which
18 they were run, and the proportional value in each county
19 within this state within which such cars were run; but in
20 any case where it may appear to the tax commissioner that
21 from the nature of the employment of such cars, or
22 otherwise, it is not practicable to show the matters
23 hereinbefore required in this section as to the cars used in
24 this state, and the proportional value of the cars used partly
25 within and partly without this state and each county
26 thereof, the tax commissioner may, as to such matters,
27 accept such other information as it may be practicable to
28 obtain, or in its discretion the tax commissioner may
29 dispense with such showing as to any such matter; (b) real
30 and personal property of every kind, whatever, including
31 money, credits and investments and the amount thereof,
32 wholly held or used in this state, showing the amount and
33 the true and actual value in each county; and (c) the actual
34 capital employed in the business of such owner or operator,
35 the total amount of bonded indebtedness with respect to
36 such line, and of indebtedness not bonded; the whole length
37 of the several lines of railroad over which such cars run,
38 including branches and connecting lines in and out of the
39 state; and, if such owner or operator be a corporation, its
40 actual capital stock and the number, character, amount and
41 market value of the shares thereof, and the amount of
42 capital stock actually paid in; its bonded indebtedness and
43 its indebtedness not bonded. The tax commissioner shall
44 have the right to require any such owner or operator to
45 furnish such other and further information as, in the
46 judgment of the tax commissioner, may be of use to him in
47 determining the true and actual value of the property to be
48 assessed to such owner or operator.

§11-6-5. Same — Pipeline companies.

1 In the case of a pipeline, such return shall show for each
2 owner or operator: (a) The number of miles of pipeline
3 owned, leased or operated within this state, the size or sizes
4 of the pipe composing such line, and the material of which
5 such pipe is made; (b) if such pipeline be partly within and
6 partly without this state, the whole number of miles thereof
7 within this state and the whole number of miles without this
8 state, including all branches and connecting lines in and out
9 of the state; (c) the length, size and true and actual value of

10 such pipelines in each county of this state, including in such
11 valuation the main line, branches and connecting lines, and
12 stating the different values of the pipe separately; (d) its
13 pumping stations, machine and repair shops and machinery
14 therein, tanks, storage tanks and all other buildings,
15 structures and appendages connected or used therewith,
16 together with all real estate, other than its pipeline, owned
17 or used by it in connection with its pipeline, including
18 telegraph and telephone lines, and the true and actual value
19 of all such buildings, structures, machinery and
20 appendages and of each parcel of such real estate, including
21 such telegraph and telephone lines, and the true and actual
22 value thereof in each county in this state in which it is
23 located; and the number and value of all tank cars, tanks,
24 barges, boats and barrels; (e) its personal property of every
25 kind whatsoever, including money, credits and
26 investments, and the amount thereof wholly held or used in
27 this state, showing the amount and value thereof in each
28 county; (f) an itemized list of all other real property within
29 this state, with the location thereof; and (g) the actual
30 capital employed in the business of such owner or operator,
31 the total amount of the bonded indebtedness of such owner
32 or operator with respect to such line, and of indebtedness
33 not bonded; and, if such owner or operator be a corporation,
34 its capital stock, the character, number and amount and the
35 market value of the shares thereof, and the amount of
36 capital stock actually paid in; its bonded indebtedness and
37 its indebtedness not bonded. The tax commissioner shall
38 have the right to require such owner or operator to furnish
39 such other and further information as, in the judgment of
40 the tax commissioner may be of use in determining the true
41 and actual value of the property to be assessed to such
42 owner or operator.

§11-6-7. Same — Telegraph and telephone companies.

1 In the case of a telegraph or telephone line, such report
2 shall show for every such owner or operator: (a) The number
3 of miles of lines owned, leased or operated within this state,
4 the gauge of the wire, the number of strands of wire, the
5 material of which it is made, and, as accurately as may be,
6 the time when the line or any material part thereof was
7 constructed or last replaced; (b) if such lines be partly

8 within and partly without the state, the whole number of
9 mines thereof within this state and the whole number of
10 miles without this state, including all branches and
11 connecting lines in and out of the state; (c) the true and
12 actual value per mile of such line in each county of this
13 state; (d) its stations, shops and machinery therein, and all
14 buildings, structures and appendages connected or used
15 therewith, together with all real estate, other than its
16 telegraph or telephone line, owned or used by it in
17 connection with its line, and of each parcel of such real
18 estate and the true and actual value thereof in each county
19 in this state in which it is located; (e) its personal property of
20 every kind whatsoever, including money, credits and
21 investments, and the amounts thereof wholly held or used in
22 this state, showing the amount and value thereof in each
23 county; (f) an itemized list of all other real property within
24 this state, with the location thereof; and (g) the actual
25 capital employed in the business of such owner or operator,
26 the total amount of the bonded indebtedness of such owner
27 or operator, with respect to such line, and of all
28 indebtedness not bonded; and, if such owner or operator be
29 a corporation, its capital stock, the character, number,
30 amount and the market value of the shares thereof, and the
31 amount of capital stock actually paid in; its bonded
32 indebtedness and its indebtedness not bonded. The tax
33 commissioner shall have the right to require any such owner
34 or operator to furnish such other and further information
35 as, in the judgment of the tax commissioner, may be of use to
36 him in determining the true and actual value of the property
37 to be assessed to such owner or operator.

**§11-6-8. Form and manner of making return; failure to make
return; criminal penalty.**

1 All returns to be made to the tax commissioner, under this
2 chapter, shall be made in conformity with any reasonable
3 requirement of the tax commissioner of which the person
4 making the return shall have had notice, and shall be made
5 upon forms which may be furnished by the tax
6 commissioner, and according to instructions which the tax
7 commissioner may give relating thereto, and to the
8 description and itemizing of the property. Such owner or
9 operator, whether a natural person, or a corporation or

10 company, failing to make such return as herein required
11 shall be guilty of a misdemeanor, and fined one thousand
12 dollars for each month such failure continues.

**§11-6-9. Compelling such return; procuring information and
tentative assessments by tax commissioner.**

1 (a) If any owner or operator fails to make such return
2 within the time required by section one of this article, it
3 shall be the duty of the tax commissioner to take such steps
4 as may be necessary to compel such compliance, and to
5 enforce any and all penalties imposed by law for such
6 failure.

7 (b) The return delivered to the tax commissioner shall
8 be examined by him, and if it be found insufficient in form
9 or in any respect defective, imperfect or not in compliance
10 with law, he shall compel the person required to make it to
11 do so in proper and sufficient form, and in all respects as
12 required by law.

13 (c) If any such owner or operator fails to make such
14 return, the tax commissioner shall proceed, in such manner
15 as to him may seem best, to obtain the facts and information
16 required to be furnished by such returns.

17 (d) The tax commissioner may send for persons and
18 papers, and may compel the attendance of any person and
19 the production of any paper necessary, in the opinion of said
20 tax commissioner, to enable him to obtain the information
21 required for the proper discharge of his duties under this
22 section. Service of a subpoena or subpoena duces tecum,
23 and enforcement of compliance with such subpoena or
24 subpoena duces tecum, shall be in conformity with the
25 provisions of section one, article five, chapter twenty-nine-
26 a of this code.

27 (e) The tax commissioner shall arrange, collate and
28 tabulate such returns and all pertinent information and
29 data contained therein, such further evidence or
30 information as may be required by the tax commissioner of
31 such owner or operator, and all other pertinent evidence,
32 information and data he has been able to procure, upon
33 suitable work sheets, so that they may be conveniently
34 considered. The tax commissioner shall retain in his office
35 true copies of such work sheets which shall be available for

36 inspection by any such owner or operator or his duly
37 authorized representative.

38 (f) On or before the first day of September in each year
39 beginning with the current calendar year, the tax
40 commissioner shall make a tentative assessment of the true
41 and actual value of all property owned or operated by each
42 public service business whose property is located in whole
43 or in part within this state.

**§11-6-10. Failure to give information required by tax
commissioner; criminal penalty.**

1 If any person shall refuse to appear before the tax
2 commissioner when required to do so, as aforesaid, or shall
3 refuse to testify before the tax commissioner in regard to
4 any matter as to which the tax commissioner may require
5 him to testify, or if any person shall refuse to produce any
6 paper in his possession or under his control, which the tax
7 commissioner may require him to produce, every such
8 person shall be guilty of a misdemeanor and fined five
9 hundred dollars, and may be imprisoned not less than one
10 nor more than six months, at the discretion of the court.

§11-6-11. Valuation of property by tax commissioner.

1 (a) In ascertaining the true and actual value of all
2 property of such owner or operator hereinbefore required to
3 be returned, the tax commissioner shall consider the return,
4 if any, made by the owner or operator, and any return which
5 may have been previously made by such owner or operator,
6 the work sheets prepared by the tax commissioner, such
7 evidence or information as may be offered by such owner or
8 operator, such further evidence or information as may be
9 required by the tax commissioner of such owner or
10 operator, and any other pertinent evidence, information
11 and data. Any and all evidence, information and data
12 considered by the tax commissioner shall be available for
13 inspection by any such owner or operator or his duly
14 authorized representative, and an opportunity given to be
15 heard thereon as provided in this section.

16 (b) Nothing in this chapter contained shall be construed
17 to require the assessment by the tax commissioner of any
18 part of a railroad, telegraph, telephone or pipeline until
19 such part is so far completed as to be fit for use. But material

20 held by any railroad, telegraph, telephone or pipeline
21 company shall be returned to the tax commissioner for
22 assessment as personal property.

23 (c) The proportionate share of the value of the
24 intangible property of such public service businesses as do
25 business in this and other states, growing out of the use of
26 their tangible property in this state under their franchises,
27 privileges and contracts, shall have it situs in this state and
28 in the several counties and municipalities thereof in which
29 they exercise their rights: *Provided*, That property of any
30 such owner located outside of this state which is not directly
31 used in the business to which the property in this state is
32 devoted, shall not enter into the value of the property within
33 this state to be assessed.

**§11-6-11a. Notice of tentative assessment; petition for
reassessment.**

1 (a) The tax commissioner shall give the owner or
2 operator of the public service business written notice of the
3 amount of any tentative assessment made pursuant to this
4 article.

5 (b) Unless the owner or operator to whom a notice of
6 assessment is given files, within thirty days after date of
7 issuance thereof, either personally or by certified mail, with
8 the tax commissioner a petition in writing, verified under
9 oath by the owner or operator, or his duly authorized agent
10 having knowledge of the facts, setting forth with
11 particularity: (1) The items of the tentative assessment
12 objected to, together with (2) the reasons for the objections,
13 the tentative assessment shall become final and not subject
14 to administrative or judicial review.

§11-6-11b. Administrative hearing; procedures.

1 (a) When a petition for reassessment is filed in the form
2 and within the time prescribed in section eleven-a of this
3 article, the tax commissioner shall assign a time and place
4 for a hearing upon the same. Written notice of the hearing
5 shall be given to the petitioner at least ten days in advance
6 thereof. At the same time that notice is given to the
7 petitioner, notice of the hearing shall also be filed in the
8 state register created in the office of the secretary of state by
9 section two, article two, chapter twenty-nine-a of this code.

10 (b) Any hearing may be continued by the tax

11 commissioner upon his own motion, agreement of the
12 parties, or motion of the petitioner setting forth good cause.
13 Notice of such continuance shall promptly be given to all
14 parties and filed in the state register.

15 (c) A hearing on a petition for reassessment shall be a
16 contested case, as defined in section two, article one,
17 chapter twenty-nine-a of this code, and shall be conducted
18 in accordance with the provisions of article five, chapter
19 twenty-nine-a of this code, that are not inconsistent with
20 this article, notwithstanding the provisions of section five,
21 article five of chapter twenty-nine-a, which exempts the
22 state tax commissioner from the provisions of said article
23 five. A copy of the notice of tentative assessment shall be
24 admissible and shall constitute prima facie evidence of the
25 assessed value of the property of the public service business
26 under the provisions of this article.

§11-6-11c. Service of notice.

1 (a) Notices of tentative assessments and assessments
2 shall be served upon the owner or operator of a public
3 service business, or his designated agent, by personal
4 service, or by regular or certified mail.

5 (b) If served by regular or certified mail, the notice shall
6 be deposited in the United States mail, postage prepaid, in
7 an envelope addressed to such owner or operator, or his
8 designated agent, at the principal office or place of business
9 of such owner or operator, or his designated agent. Service
10 shall be complete upon deposit of the notice in the United
11 States mail in conformity with this subsection.

12 (c) Proof of the giving of notice in conformity with this
13 section may be made by the affidavit of any person over
14 eighteen years of age, naming the owner or operator, or his
15 designated agent, to whom such notice was given and
16 specifying the time, place and manner of the giving thereof.
17 If service was by certified mail, proof of service maybe made
18 by affidavit as aforesaid, or by the certified mail return
19 receipt card. The affidavit or certified mail return receipt
20 card shall be prima facie evidence of service under this
21 section.

§11-6-11d. Timely filing.

1 (a) *Delivery in person.*—If any return, claim, statement

2 or other document required to be filed, within a prescribed
3 period or on or before a prescribed date, is delivered in
4 person on or before such date to the tax commissioner, or
5 the appropriate division or officer of the tax department, at
6 Charleston, West Virginia, during normal business hours of
7 the tax department, it shall be timely filed.

8 (b) *Timely mailing*.—If any return, claim, statement or
9 other document required to be filed, within a prescribed
10 period or on or before a prescribed date under authority of
11 any provision of this article, is after such period or such
12 date, delivered by United States mail to the tax
13 commissioner or the state tax department, the date of the
14 United States postmark stamped on the cover in which such
15 return, claim, statement or other document or payment is
16 mailed shall be deemed to be the date of delivery or the date
17 of payment, as the case may be, provided the following
18 mailing requirements are met:

19 (1) The postmark date falls within the prescribed period
20 or on or before the prescribed date for filing (including any
21 extension granted for such filing), of the return, claim,
22 statement or other document or for making the payment
23 (including any extension granted for such payment), and

24 (2) The return, claim, statement, other document or
25 payment was, within the time prescribed in subsection (a) of
26 this section, deposited in the mail in the United States in an
27 envelope or other appropriate wrapper, postage prepaid,
28 properly addressed to the tax commissioner or the state tax
29 department.

30 (c) *Postmarks*.—This section applies in the case of
31 postmarks not made by the United States post office only if
32 and to the extent provided by rules or regulations
33 prescribed by the tax commissioner.

34 (d) *Registered and certified mailing*.—For purposes of
35 this section, if any return, claim, statement or other
36 document or payment is sent by United States registered or
37 certified mail, the date of registration or certification shall
38 be deemed the postmark date.

39 (e) *Last date for filing or payment*.—The last date for
40 timely filing or timely making payment shall include any
41 extension of time authorized by law or regulation and any
42 extension of time granted in writing by the tax
43 commissioner.

§11-6-11e. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

1 When the last day prescribed under authority of any
2 article of this chapter imposing any tax administered under
3 this article for performing any act falls on Saturday,
4 Sunday or a legal holiday, the performance of such act shall
5 be considered timely if it is performed on the next
6 succeeding day which is not a Saturday, Sunday or a legal
7 holiday. For purposes of this section, the last day for the
8 performance of any act shall be determined by including
9 any authorized extension of time; and the term "legal
10 holiday" means a legal holiday in this state.

§11-6-12. Appeal from valuation by tax commissioner.

1 (a) If the owner or operator of a public service business
2 does not file a petition for reassessment with the tax
3 commissioner within the time prescribed in section eleven-
4 a of this article, the amount of the tentative assessment shall
5 be assessed, and notice of the assessment given to the owner
6 or operator, or his designated agent.

7 (b) If the owner or operator of a public service business
8 timely files a petition for reassessment under section
9 eleven-a of this article, the tax commissioner shall review
10 the petition and any evidence or information as may be
11 offered by the owner or operator, or his duly authorized
12 agent, along with the return, if any, made by the owner or
13 operator, any return which may have been previously made
14 by such owner or operator, the tentative assessment and the
15 work sheets. If after his review the tax commissioner
16 determines that his tentative assessment is too high or low,
17 he shall, if the petitioner be in agreement, correct his
18 tentative assessment and issue an assessment.

19 (1) This agreement shall be in writing, and shall be
20 signed by the tax commissioner and the petitioner. Such
21 agreement shall be final and conclusive of the assessed
22 value of the property, and except upon a showing of fraud or
23 malfeasance, or misrepresentation of a material fact, shall
24 not be subject to administrative or judicial review.

25 (2) Whenever an agreement is made under this
26 subsection, there shall be placed on file in the office of the
27 tax commissioner, the amount of the tentative assessment,

28 the amount of the assessment and the reason or reasons for
29 the difference.

30 (c) If the owner or operator of a public service business
31 timely files a petition for reassessment under section
32 eleven-a of this article, and if an agreement cannot be
33 reached under subsection (b) of this section, an
34 administrative hearing shall be held as provided in section
35 eleven-b of this article, and a final order or decision issued.
36 An assessment shall be made for the amount of the final
37 order or decision and notice of this assessment shall be
38 served on the petitioner along with a copy of the final order
39 or decision. Such decision and assessment shall become
40 final and not subject to judicial or administrative review
41 unless a petition for appeal is filed within thirty days after
42 date the decision and assessment are issued.

43 (d) Any owner or operator claiming to be aggrieved by
44 any such decision may, within the time aforesaid, apply by
45 petition in writing, duly verified, to the circuit court of the
46 county in which the property so assessed is situated, or if
47 such property be situated in more than one county then in
48 the county in which the largest assessment of such owner or
49 operator was made in the next preceding year, for an appeal
50 from the assessment and valuation so made of all such
51 property, and jurisdiction is hereby conferred upon and
52 declared to exist in the court, in which such application is
53 filed, to grant, docket and hear such appeal; and such
54 appeal, as to all of the property so assessed, as well as that
55 situated in the county of the court so applied to, as that
56 situated in the several other counties, shall forthwith be
57 allowed by such court so applied to, and be heard by such
58 court as to all of such property as soon as possible after the
59 appeal is docketed. Except as specifically provided in this
60 subsection (d), judicial review of the final order or decision
61 shall be in accordance with the provisions of section four,
62 article five, chapter twenty-nine-a of this code. A certified
63 copy of the assessment and administrative decision of the
64 tax commissioner shall be admissible and shall constitute
65 prima facie evidence of the assessed value of the property of
66 the public service business under the provisions of this
67 article. An appeal may be taken by either party to the
68 supreme court of appeals, as provided in section one, article

69 six, chapter twenty-nine-a of this code, if the assessed value
70 of the property be fifty thousand dollars or more.

71 (e) Assessments under this section must be made on or
72 before the fifteenth day of January succeeding the date of
73 the tentative assessment.

**§11-6-13. Apportionment of value among counties, districts
and municipalities.**

1 (a) Upon assessment of the property of such owner or
2 operator as aforesaid, the tax commissioner shall
3 immediately apportion to each county, both as to the fixed
4 situs property and the nonfixed but distributable and
5 apportionable operating property, the relative value of such
6 operating property within each county to the value of the
7 total operating property within the state, to be determined
8 upon such factors as the tax commissioner shall deem
9 proper and in respect to the value of property of every such
10 owner or operator as valued or assessed as aforesaid; and
11 further shall apportion such value as aforesaid among the
12 several districts, school districts and independent school
13 districts therein, according to the value thereof, as near as
14 may be and forthwith shall certify to the auditor and to the
15 county commission of such county the values so
16 apportioned. The clerk of the county commission shall
17 forthwith certify such values to the school district and to
18 the several municipalities, respectively, in such county.

19 (b) The assessed value of operating property owned,
20 leased or used by the various public service businesses shall
21 be apportioned to each tax district as provided in sections
22 thirteen-a through thirteen-j of this article: *Provided*, That
23 the tax commissioner may also consider any other factors
24 that will help determine the fair apportionment of
25 indefinite-situs distributable operating property to each
26 tax district. For purposes of apportionment, operating
27 property is classified as definite-situs distributable
28 operating property or as indefinite-situs distributable
29 operating property. Definite-situs distributable operating
30 property as defined in sections thirteen-a through thirteen-
31 j of this article shall be apportioned to the tax district
32 wherein such property is located. Indefinite-situs
33 distributable operating property is any operating property
34 that is not definite-situs distributable operating property,

35 and its assessed value shall be apportioned among the
36 several tax districts as provided in sections thirteen-a
37 through thirteen-j of this article. For purposes of
38 apportionment, the term tax district means and includes
39 the state and local levying bodies, including the county
40 commission, school districts and municipalities of this state.

§11-6-13a. Bridge companies; apportionment of assessed valuation.

1 (a) A bridge company's definite-situs distributable
2 operating property consists of: (1) Bridges; (2) land on
3 which bridge heads are located; and (3) the company's
4 rights-of-way.

5 (b) A bridge company's operating property which is not
6 described in subsection (a) of this section is indefinite-situs
7 distributable operating property. The tax commissioner
8 shall apportion and distribute the assessed valuation of this
9 property among the taxing districts in which the company
10 has property that is described in subsection (a) of this
11 section. The amount which shall be distributed to a taxing
12 district equals the product of (1) the total assessed valuation
13 of the bridge company's indefinite-situs distributable
14 operating property, multiplied by (2) a fraction, the
15 numerator of which is the book value of the company's
16 operating property which is located in the taxing district
17 and which is described in subsection (a) of this section, and
18 the denominator of which is the book value of the
19 company's operating property which is located in this state
20 and which is described in subsection (a) of this section.

§11-6-13b. Bus companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a bus company consists of real property and tangible
3 personal property which is located within or on the real
4 property.

5 (b) A bus company's operating property which is not
6 described in subsection (a) of this section is indefinite-situs
7 distributable operating property. This property includes,
8 but is not limited to, buses and other mobile equipment. The
9 tax commissioner shall apportion and distribute the
10 assessed valuation of this property among the taxing

11 districts in or through which the company operates its
 12 system. The amount which shall be distributed to a taxing
 13 district equals the product of (1) the total assessed valuation
 14 of the bus company's indefinite-situs distributable
 15 operating property, multiplied by (2) a fraction, the
 16 numerator of which is the company's average daily
 17 regularly scheduled passenger vehicle route miles in the
 18 taxing district, and the denominator of which is the
 19 company's average daily regularly scheduled passenger
 20 vehicle route miles in this state.

§11-6-13c. Express companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
 2 of an express company consists of real property and
 3 tangible personal property which has a definite-situs. The
 4 remainder of the express company's property is indefinite-
 5 situs distributable operating property.

6 (b) The tax commissioner shall apportion and distribute
 7 the assessed valuation of an express company's indefinite-
 8 situs distributable operating property among the taxing
 9 districts in which the definite-situs distributable operating
 10 property of the company is located. The amount which shall
 11 be distributed to a taxing district equals the product of (1)
 12 the total assessed valuation of the express company's
 13 indefinite-situs distributable operating property,
 14 multiplied by (2) a fraction, the numerator of which is the
 15 book value of the company's definite-situs distributable
 16 operating property which is located in the taxing district,
 17 and the denominator of which is the book value of the
 18 company's definite-situs distributable operating property
 19 which is located in this state.

§11-6-13d. Light, heat or power companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
 2 of a light, heat or power company consists of: (1) Office
 3 furniture and fixtures; (2) other tangible personal property
 4 which is not used as part of the company's production plant,
 5 transmission system or distribution system; and (3) real

6 property which is not part of the company's rights-of-way,
7 transmission system or distribution system.

8 (b) A light, heat or power company's property which is
9 not described as definite-situs distributable operating
10 property in subsection (a) of this section is indefinite-situs
11 distributable operating property. This property includes,
12 but is not limited to, turbogenerators, boilers, transformers,
13 transmission lines, distribution lines and pipelines. The tax
14 commissioner shall apportion and distribute the assessed
15 valuation of this property among the taxing districts in
16 which the company's transmission lines, distribution lines
17 and pipelines are located. The amount which shall be
18 distributed to a taxing district equals the product of (1) the
19 total assessed valuation of the company's indefinite-situs
20 distributable operating property multiplied by (2) a
21 fraction, the numerator of which is the length of the
22 company's transmission lines, distribution lines and
23 pipelines, weighted by the capacity of such lines which are
24 located in the taxing district, and the denominator of which
25 is the length of the company's lines weighted by the
26 capacity of such lines which are located in this state.

§11-6-13e. Pipeline companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a pipeline company consists of: (1) Real property which is
3 not part of a pipeline or right-of-way of the company; and
4 (2) tangible personal property which is not part of the
5 company's transmission system.

6 (b) A pipeline company's property which is not
7 described in subsection (a) of this section is indefinite-situs
8 distributable operating property. The tax commissioner
9 shall apportion and distribute the assessed valuation of this
10 property among the taxing districts in which the company's
11 pipelines are located. The amount which shall be
12 distributed to a taxing district equals the product of (1) the
13 total assessed valuation of the pipeline company's
14 indefinite-situs distributable operating property,
15 multiplied by (2) a fraction, the numerator of which is the
16 length of the company's pipelines weighted by the capacity
17 of such lines in the taxing district, and the denominator of
18 which is the length of the company's pipelines weighted by
19 the capacity of such lines in this state.

§11-6-13f. Railroad companies; apportionment of assessed valuation.

(a) A railroad company's definite-situs distributable operating property consists of the company's: (1) Rights-of-way and road beds; (2) station and depot grounds; (3) yards, yard sites, superstructures, turntables and turnouts; (4) tracks; (5) telegraph poles, wires, instruments and other appliances, which are located on the rights-of-way; and (6) any other buildings or definite-situs personal property used in the operation of the railroad.

(b) A railroad company's operating property which is not described in subsection (a) of this section is indefinite-situs distributable operating property. This property includes, but is not limited to, rolling stock. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the railroad company operates its system. The amount which the tax commissioner shall distribute to a taxing district equals the product of (1) the total assessed valuation of the railroad company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the main line and second main line track mileage, including such lines and tracks as are leased, which are located in the taxing district, and the denominator of which is the main line and second main line track mileage including such lines and tracks, as are leased, which are located in this state.

§11-6-13g. Railroad car companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a railroad car company consists of real property and tangible personal property which has a definite-situs. The remainder of the railroad car company's operating property is indefinite-situs distributable property.

(b) The tax commissioner shall apportion and distribute a railroad car company's indefinite-situs distributable operating property apportioned to this state on the basis of the number of miles traveled on each railroad company's trackage located in the state weighted by the number of main line and second main line track miles of such railroad in each taxing district. The amount distributable to each

13 taxing district equals the product of: (1) The total assessed
14 valuation of the railroad carline company's indefinite-situs
15 distributable operating property multiplied by (2) a
16 fraction, the numerator of which is the number of miles
17 traveled on each railroad operating in the state, and the
18 denominator of which is the quotient of the number of main
19 line and second main line track miles of the railroad located
20 in each taxing district divided by the number of main line
21 and second main line track miles of railroad located in the
22 state.

§11-6-13h. Telephone and telegraph companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a telephone or telegraph company consists of: (1)
3 Tangible personal property which is not used as part of the
4 distribution system of the company; and (2) real property
5 which is not part of the company's rights-of-way or
6 distribution system.

7 (b) A telephone or telegraph company's property which
8 is not described under subsection (a) of this section is
9 indefinite-situs distributable operating property. The tax
10 commissioner shall apportion and distribute the assessed
11 valuation of this property among the taxing districts in
12 which the company's lines or cables, including laterals, are
13 located. The amount which the tax commissioner shall
14 distribute to a taxing district equals the product of: (1) The
15 total assessed valuation of the telephone or telegraph
16 company's indefinite-situs distributable operating
17 property, multiplied by (2) a fraction, the numerator of
18 which is the length of the company's lines and cables,
19 (including lateral lines and cables), weighted by the
20 capacity of such lines and cables, which are located in the
21 taxing district, and the denominator of which is the length
22 of the company's lines and cables, (including lateral lines
23 and cables), weighted by the capacity of such lines and
24 cables, which are located in this state.

§11-6-13i. Water distribution companies; apportionment of assessed valuation.

1 (a) The definite-situs distributable operating property
2 of a water distribution company consists of: (1) Tangible

3 personal property which is not used as part of the
4 company's distribution system; and (2) real property which
5 is not part of the company's rights-of-way or distribution
6 system. A well, settling basin or reservoir (except an
7 impounding reservoir) is not definite-situs distributable
8 operating property of a water distribution company if it is
9 used to store treated water or water in the process of
10 treatment.

11 (b) A water distribution company's property which is
12 not described as definite-situs distributable operating
13 property under subsection (a) of this section is indefinite-
14 situs distributable operating property. The tax
15 commissioner shall apportion and distribute the assessed
16 valuation of this property among the taxing districts in
17 which the company's water mains, including feeder and
18 distribution mains, are located. The amount which the tax
19 commissioner shall distribute to a taxing district equals the
20 product of: (1) The total assessed valuation of the water
21 distribution company's indefinite-situs distributable
22 operating property, multiplied by (2) a fraction, the
23 numerator of which is the length of the company's water
24 mains, including feeder and distribution mains, weighted
25 by the capacity of all such mains, which are located in the
26 taxing district, and the denominator of which is the length
27 of the company's water mains, including feeder and
28 distribution mains, weighted by the capacity of all such
29 mains, which are located in this state.

§11-6-13j. Other companies; apportionment of assessed valuation.

1 For a public service business which is not within one of
2 the classes of business companies whose property is
3 described in section thirteen-a through thirteen-i of this
4 article, the definite-situs distributable operating property
5 of the company consists of real property and tangible
6 personal property which has a permanent situs. The
7 remainder of the company's property is indefinite-situs
8 distributable operating property. The tax commissioner
9 shall, in a manner which he considers fair, apportion and
10 distribute the assessed valuation of the company's
11 indefinite-situs distributable operating property among
12 the taxing districts in which the public service business
13 operates.

§11-6-16. Entry of assessment by auditor of property of such public service businesses.

1 As soon as possible after the valuation of the property of
2 such owner or operator is fixed by the tax commissioner or
3 by the circuit court on appeal as aforesaid, and after he shall
4 have obtained the information herein provided for to enable
5 him to do so, the auditor shall assess and charge each class
6 of property of every such owner or operator with the taxes
7 properly chargeable thereon, in a book to be kept by him for
8 that purpose, as follows: (a) With the whole amount of taxes
9 upon such property for state and state school purposes, if
10 any such taxes are levied; (b) with the whole amount of
11 taxes on such property in each county for county purposes;
12 (c) with the whole amount of taxes on such property in each
13 school district for free school and building purposes; and (d)
14 with the whole amount of taxes on such property in each
15 municipal corporation for each and all of the purposes for
16 which a levy therein was made by the municipal authorities
17 of such corporation.

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

Samuel E. Ashburn
.....
Chairman Senate Committee

Floyd Fullen
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Jedid C. With
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Don Tomlin
.....
President of the Senate

Joseph Albright
.....
Speaker House of Delegates

The within *approved* this the *2nd*
day of *May* 1985.

Richard R. Proença
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 8:50 p.m.