WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED

HOUSE BILL No. 1439

(By Delegate Smith and Delegate Phillips)

Passed March 8, 1986
In Effect from Passage
ENROLLED

H. B. 1439

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[Passed March 8, 1986; in effect from passage.]

AN ACT to repeal 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, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen of said article, all relating generally to assessment of public service businesses for ad valorem property taxes; transferring and restoring to the board of public works the duty of making such assessments and holding hearings in connection therewith; providing for apportionment of values among counties, school districts and municipalities by the state auditor for current periods and thereafter, with prompt certification of valuations to be made by the state auditor to county commissions; specifying that state auditor, in providing for apportionment of values, use former, long-term consistent method of such apportionment; and terminating authority and activities of state tax commissioner in respect of making of final assessments, holdings of hearings in connection therewith and apportionment of values.

Be it enacted by the Legislature of West Virginia:

That 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, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed;
and that sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen of said article six be amended and reenacted, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.

(a) On or before the first day of May in each year a return in writing shall be filed with the board of public works: (1) By the owner or operator of every railroad, wholly or in part within this state; (2) by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; (3) by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than such owners or operators as may own or operate a railroad within the state; (4) by the owner or operator of every express company or express line, wholly or in part within this state, used for the transportation by steam or otherwise of freight and other articles of commerce; (5) by the owner or operator of every pipeline, wholly or in part within this state, used for the transportation of oil or gas or water, whether such oil or gas or water be owned by such owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power; (6) by the owner or operator of every telegraph or telephone line, wholly or in part within this state, except private lines not operated for compensation; (7) by the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; (8) by the owner or operator of hydroelectric companies for the generation and transmission of light, heat or power; (9) by the owner or operator of water companies furnishing or distributing water, and (10) by the owner or operator of all other public service corporations or persons engaged in public service business whose property is located wholly or in part within this state.

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

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

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

(e) The return required by this section of every such
owner or operator shall cover the year ending on the
thirty-first day of December, next preceding, and shall
be made on forms prescribed by the board of public
works, which board is hereby invested with full power
and authority and it is hereby made its duty to prescribe
such forms as will require from any owner or operator
herein mentioned such information as in the judgment
of the board may be of use to it in determining the true
and actual value of the properties of such owners or
operators.

§ 11-6-3. Same—Toll bridges.

In the case of any bridge upon which a separate toll
or fare is charged, such return shall show: (a) The
location of the same; (b) for what used; and, if used by
a railroad, what railroad uses it; (c) the length of such
bridge; and, if used by a railroad, the number of tracks
on it; (d) all other property owned by such owner or
operator and used in connection with such bridge; (e) the
capital actually invested; the amount of capital stock
authorized and issued, the par value and the market
value of the shares into which the capital stock is
divided, and the amount of dividends declared on the
capital stock within the twelve months preceding the
first day of the current assessment year; the total
amount of bonded indebtedness and of indebtedness not
bonded; gross earnings for the year from all sources; (f)
gross expenditures for the year, giving a detailed
statement thereof under each class or head of expendi-
tures; (g) any other information requested by the board
of public works which the board deems may be of use
to it in determining the actual value of such bridge or
bridges.

§11-6-4. Same—Car line companies.

In the case of car lines used for the transportation or
accommodation of passengers or freight by owners or
operators, other than railroad companies making their
return under this law, such return shall show for every
such owner or operator: (a) All cars and other rolling
stock, giving a detailed statement of the number of cars,
including passenger, mail, express, baggage, freight,
sleeping, dining, parlor, refrigerator, stock or other cars
of every description, and the true and actual value of
all such cars used wholly or in part in this state,
distinguishing between those used wholly in this state
and those used partly within and partly without the
state, and the true and actual value of those used wholly
within the state and those used partly within and partly
without the state, and the proportional value of such
cars used partly within and partly without the state,
according to the time used and the number of miles run
by such cars in and out of the state, the railroad over
which they were run, and the proportional value in each
county within this state within which such cars were
run; but in any case where it may appear to the board
of public works that from the nature of the employment
of such cars, or otherwise, it is not practicable to show
the matters hereinbefore required in this section as to
the cars used in this state, and the proportional value
of the cars used partly within and partly without this
state and each county thereof, the board may, as to such
matters, accept such other information as it may be
practicable to obtain, or in its discretion the board may
dispense with such showing as to any such matter; (b)
real and personal property of every kind, whatever,
including money, credits and investments and the
amount thereof, wholly held or used in this state,
showing the amount and the true and actual value in
each county; and (c) the actual capital employed in the
business of such owner or operator, the total amount of
bonded indebtedness with respect to such line, and of
indebtedness not bonded; the whole length of the several
lines of railroad over which such cars run, including
branches and connecting lines in and out of the state;
and, if such owner or operator be a corporation, its
actual capital stock and the number, character, amount
and market value of the shares thereof, and the amount
of capital stock actually paid in; its bonded indebtedness
and its indebtedness not bonded. The board of public
works shall have the right to require any such owner
or operator to furnish such other and further informa-
tion as, in the judgment of the board, may be of use to
it in determining the true and actual value of the
property to be assessed to such owner or operator.

§11-6-5. Same—Pipeline companies.

In the case of a pipeline, such return shall show for
each owner or operator: (a) The number of miles of
pipeline owned, leased or operated within this state, the
size or sizes of the pipe composing such line, and the
material of which such pipe is made; (b) if such pipeline
be partly within and partly without this state, the whole
number of miles thereof within this state and the whole
number of miles without this state, including all
branches and connecting lines in and out of the state;
(c) the length, size and true and actual value of such
pipelines in each county of this state, including in such
valuation the main line, branches and connecting lines,
and stating the different values of the pipe separately;
(d) its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, together with all real estate, other than its pipeline, owned or used by it in connection with its pipeline, including telegraph and telephone lines, and the true and actual value of all such buildings, structures, machinery and appendages and of each parcel of such real estate, including such telegraph and telephone lines, and the true and actual value thereof in each county in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amount thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of such owner or operator with respect to such line, and of indebtedness not bonded; and, if such owner or operator be a corporation, its capital stock, the character, number and amount and the market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The board of public works shall have the right to require such owner or operator to furnish such other and further information as, in the judgment of the board may be of use in determining the true and actual value of the property to be assessed to such owner or operator.

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

In the case of a telegraph or telephone line, such report shall show for every such owner or operator: (a) The number of miles of lines owned, leased or operated within this state, the gauge of the wire, the number of strands of wire, the material of which it is made, and, as accurately as may be, the time when the line or any material part thereof was constructed or last replaced; (b) if such lines be partly within and partly without the state, the whole number of miles thereof within this
state and the whole number of miles without this state, including all branches and connecting lines in and out of the state; (c) the true and actual value per mile of such line in each county of this state; (d) its stations, shops and machinery therein, and all buildings, structures and appendages connected or used therewith, together with all real estate, other than its telegraph or telephone line, owned or used by it in connection with its line, and of each parcel of such real estate and the true and actual value thereof in each county in this state in which it is located; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amounts thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of such owner or operator, with respect to such line, and of all indebtedness not bonded; and, if such owner or operator be a corporation, its capital stock, the character, number, amount and the market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The board of public works shall have the right to require any such owner or operator to furnish such other and further information as, in the judgment of the board, may be of use to it in determining the true and actual value of the property to be assessed to such owner or operator.

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

All returns to be made to the board of public works, under this chapter, shall be made in conformity with any reasonable requirement of the board of which the person making the return shall have had notice, and shall be made upon forms which may be furnished by the board, and according to instructions which the board may give relating thereto, and to the description and itemizing of the property. Such owner or operator, whether a natural person, or a corporation or company,
failing to make such return as herein required shall be
guilty of a misdemeanor, and fined one thousand dollars
for each month such failure continues.

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

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

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

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

(d) The tax commissioner may send for persons and
papers, and may compel the attendance of any person
and the production of any paper necessary, in the
opinion of said tax commissioner, to enable him to obtain
the information required for the proper discharge of his
duties under this section.

(e) The tax commissioner shall arrange, collate and
tabulate such returns and all pertinent information and
data contained therein, such further evidence or
information as may be required by the tax commissioner
of such owner or operator, and all other pertinent
evidence, information and data he has been able to
procure, upon suitable work sheets, so that they may be
conveniently considered, and shall on or before the
fifteenth day of September, lay such returns and work
sheets, together with his recommendations in the form
of a tentative assessment of the property of each such
owner or operator, before the board of public works. And as soon as the tax commissioner has completed the preparation of such work sheets and tentative assessments, he shall notify the owner or operator affected thereby of the amount of such tentative assessment by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator, and the tax commissioner shall retain in his office true copies of such work sheets which shall be available for inspection by any such owner or operator or his duly authorized representative.

§11-6-10. Failure to give information required by board of public works; criminal penalty.

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

§11-6-11. Valuation of property by board.

Upon the fifteenth day after giving the notices required by section nine of this article, or as soon thereafter as reasonably convenient but not later than the first day of October, the board of public works shall proceed to assess and fix the true and actual value of all property of such owner or operator hereinbefore required to be returned, in each county through which the railroad, car line, cars, express, telegraph, telephone, or pipeline of such owner or operator runs, and in which any property to be assessed is located. In ascertaining such value the board shall consider the return, if any, made by the owner or operator, and any return which may have been previously made by such owner or operator, the work sheets and tentative assessment recommended by the tax commissioner, such
evidence or information as may be offered by such owner or operator, such further evidence or information as may be required by the board of such owner or operator, and any other pertinent evidence, information and data. Any and all evidence, information and data, at a regular meeting of the board held for such purpose at least fifteen days after giving the notice required by section nine of this article. Before any assessment shall be made by the board, any and all evidence, information and data considered by the board shall be available for inspection by any such owner or operator or his duly authorized representative, and an opportunity given to be heard thereon when the board of public works has assessed any property hereby required to be returned, and has determined the valuation thereof, such assessment and valuation shall be entered of record in the book of minutes of its proceedings, and shall be certified by the secretary of the board to the auditor.

Nothing in this chapter contained shall be construed to require the assessment by the board of public works of any part of a railroad, telegraph, telephone or pipeline until such part is so far completed as to be fit for use. But material held by any railroad, telegraph, telephone or pipeline company shall be returned to the board of public works for assessment as personal property. As soon as such assessment is made, the secretary of the board shall notify the owner or operator affected thereby of the amount thereof by written notice deposited in the United States post office, addressed to such owner or operator at the principal office or place of business of such owner or operator. Such assessment and valuation shall be final and conclusive, unless the same be appealed from in the manner following, within fifteen days after such notice is so deposited.

§11-6-12. Appeal from valuation by board.

Any owner or operator claiming to be aggrieved by any such decision may, within the time aforesaid, apply by petition in writing, duly verified, to the circuit court of the county in which the property so assessed is situated, or if such property be situated in more than one county then in the county in which the largest
assessment of such owner or operator was made in the
next preceding year, for an appeal from the assessment
and valuation so made of all such property, and
jurisdiction is hereby conferred upon and declared to
exist in the court, in which such application is filed, to
grant, docket and hear such appeal; and such appeal, as
to all of the property so assessed, as well as that situated
in the county of the court so applied to, as that situated
in the several other counties, shall forthwith be allowed
by such court so applied to, and be heard by such court
as to all of such property as soon as possible after the
appeal is docketed, but notice in writing of such petition
shall be given to the secretary of state, as secretary of
the board of public works, by mailing a copy of the
petition for an appeal filed as aforesaid, which said
petition shall recite the fact that copies of such petition
have been sent by registered mail. Notice in writing of
the hearing upon such petition shall be given to the state
tax commissioner at least fifteen days beforehand.
Likewise, the state tax commissioner may, by giving
notice in writing at least fifteen days beforehand to the
petitioner, bring on such appeal for hearing. Upon such
hearing the court shall hear all such legal evidence as
shall be offered on behalf of the state or any other
county, district or municipal corporation interested, or
on behalf of the appealing owner or operator. If the
court be satisfied that the value so fixed by the board
of public works is correct, it shall confirm the same, but
if it be satisfied that the value so fixed by the board is
either too high or too low, the court shall correct the
valuation so made and shall ascertain and fix the true
and actual value of such property according to the facts
proved, and shall certify such value to the auditor and
to the secretary of the board of public works. The state
or the owner or operator may appeal to the supreme
court of appeals if the assessed value of the property be
fifty thousand dollars or more.

If the court to which an application for appeal would
properly be made as aforesaid shall not be in session,
the judge thereof in vacation shall forthwith allow the
appeal, and if the judge thereof be disqualified or for
any reason not be available, the filing of the aforesaid
petition in the office of the clerk of the circuit court of
the county in which the largest assessment of such
owner or operator was made in the preceding year,
within the time of aforesaid, shall constitute sufficient
compliance with this section, and the appeal shall
thereafter be proceeded with as otherwise provided in
this section.

§11-6-13. Apportionment of value among counties, dis-
tricts and municipalities.

In case the list and valuation of the property filed with
the tax commissioner be satisfactory to the board of
public works, or upon assessment of the property of such
owner or operator being made by the board of public
works, the auditor shall immediately apportion to each
county, in which any part of such property is situated,
the value of the property therein of every such owner
or operator as valued or assessed hereunder and the
relative value of such operating property within each
county compared to the value of the total operating
property within the state, to be determined upon such
factors as the auditor shall deem proper; and further
shall apportion such values among the several districts,
being school districts, and a proportional valuation to
each municipality therein, in which any part of such
property is situated, according to the value thereof, as
near as may be, and forthwith shall certify to the county
commission of such county the values so apportioned.
The clerk of the county commission shall forthwith
certify such values to the school district and to the
several municipalities, respectively, in such county.

Inasmuch as there was litigation challenging the long
term apportionment method consistently used by the
state auditor under the provisions of this section by
which distribution was made of the ad valorem tax
values of the operable properties and assets of public
service businesses attributable to more than one county,
and with the Legislature subsequently approving,
codifying and ordering the continuance of such method
of apportionment; and inasmuch as the Legislature
having changed such apportionment method and having
vested the authority to accomplish such and to issue
assessments under this article through actions of the
state tax commissioner rather than assessment by the
board of public works and apportionment by the state
auditor, pursuant to chapter one hundred fifty-nine, acts
of the Legislature, regular session, one thousand nine
hundred eighty-five; and in light of the Legislature
being unaware of the dramatic shifting of valuations
among counties as a result of application or use of such
new apportionment method and thus desiring to return
to the former method of apportionment and that the
same be performed by the state auditor, as formerly and
that final assessment activity, as such, and hearings in
respect thereof be performed by the board of public
works, as formerly; therefore, the Legislature finds and
determines that apportionment and distribution of ad
valorem tax valuations hereunder should and are to be
performed by the state auditor promptly and for current
periods and on the basis of the above-mentioned long-
term apportionment method used consistently by the
state auditor and with the valuations as determined by
the application of such apportionment method to be
certified forthwith to the county commissions. Specifi-
cally, as to the true and actual values of the property
of public service businesses reported on their tax
returns required to be filed by the first day of May, one
thousand nine hundred eighty-five and as thereafter
determined by tentative assessment and final assess-
ment by the tax commissioner or by court decision for
tax fiscal year one thousand nine hundred eighty-six, the
state auditor shall, by the first day of March, one
thousand nine hundred eighty-six, or as soon as may be
practicable, apportion and distribute such values, as
required, to the respective-levying bodies and on the
basis of his using the long-term, consistent apportion-
ment method of his office as long engaged in the applied
under the provisions of this section and article.

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

As soon as possible after the valuation of the property
of such owner or operator is fixed by the board of public
works or by the circuit court on appeal as aforesaid, and
after he shall have obtained the information herein provided for to enable him to do so, the auditor shall assess and charge each class of property of every such owner or operator with the taxes properly chargeable thereon, in a book to be kept by him for that purpose, as follows: (a) With the whole amount of taxes upon such property for state and state school purposes, if any such taxes are levied; (b) with the whole amount of taxes on such property in each county for county purposes; (c) with the whole amount of taxes on such property in each school district for free school and building purposes; and (d) with the whole amount of taxes on such property in each municipal corporation for each and all of the purposes for which a levy therein was made by the municipal authorities of such corporation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approve this the 26th day of June, 1986.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/20/86
Time 2:52 p.m.