

70. 191 ✓

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 191

(By Senator.....*Jemblin, et al*.....)



PASSED*March 8,*..... 1986

In Effect.....*90 days from*..... Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 191

(SENATORS TOMBLIN, TUCKER AND R. WILLIAMS, *original sponsors*)

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

AN ACT to amend and reenact section nine, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, three-a, four, five, seven, nine, eleven, eighteen-a, twenty-one and twenty-five, article thirteen-a, chapter sixteen of said code; to further amend said article by adding thereto three new sections, designated sections one-a, one-b and one-c; and to amend article one, chapter twenty-four of said code, by adding thereto a new section, designated section one-b, all relating to public service districts and the jurisdiction of the public service commission; setting forth legislative findings; requiring a performance bond for sewer projects to be approved by the state director of health; expanding the jurisdiction of the public service commission; granting power to promulgate rules and regulations relating to public service districts; mandating county commissions to develop a plan relating to public service districts; general purpose of districts; creating districts and making changes thereto; permitting consolidation of management personnel of said districts; public service commission must consent to and approve the creation, expansion, merger or consolidation of a new district; deleting provisions relating to a referendum;

infringing upon powers of county commissions; qualifications of public service district members; current members terms to end upon merger; filing lists of members in districts with the secretary of state; powers of public service boards; removal of members of public service boards; including power of public service commission to petition for the removal of members; reimbursement of expenses for board member who successfully defends against charges; powers of board chairman; increasing members' compensation; procedure; district name; general manager of board; acquisition and operation of district properties; right of eminent domain; extraterritorial powers; rules and regulations; service rates and charges; discontinuance of service including discontinuance of water service for nonpayment of sewer bills; required water and sewer connections; lien for delinquent fees; accounts; audits; sale, lease or rental of water, sewer or gas system by district; distribution of proceeds; complete authority of article; liberal construction; district to be public instrumentality; tax exemption; issuance of certificate of public convenience and necessity by public service commission; borrowing and bond issuance and contracting for the provision of engineering, design or feasibility studies by public service districts; procedure; consent to borrowing and contracting required by public service commission; issuance of revenue bonds or granting of a certificate of public convenience and necessity; creation of new division within the public service commission relating to public service districts.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, three-a, four, five, seven, nine, eleven, eighteen-a, twenty-one and twenty-five, article thirteen-a, chapter sixteen of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections one-a, one-b and one-c; and that article one, chapter twenty-four of said code be amended and reenacted by adding thereto a new section, designated section one-b, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-9. Supervision over local sanitation.

1 No person, firm, company, corporation, institution or
2 association, whether public or private, county or municipal,
3 shall install or establish any system or method of drainage,
4 water supply, sewage or excreta disposal, or solid waste
5 disposal without first obtaining a written permit to install
6 or establish such system or method from the state director
7 of health or his authorized representative. All such systems
8 or methods shall be installed or established in accordance
9 with plans, specifications and instructions issued by the
10 state director of health or which have been approved in
11 writing by the state director of health or his authorized
12 representative: *Provided*, That any person, firm,
13 corporation or association, which shall install, or cause or
14 direct to be installed, any system or method of sewage or
15 excreta disposal, septic system or sewage treatment plant
16 serving three or more single-family residences, or any
17 privately owned multi-unit residences composed of more
18 than two residential units or commercial enterprise, shall
19 enter into a performance bond, with corporate surety,
20 payable to the state department of health, in an amount
21 equivalent to the projected construction costs of such
22 private system, which performance bond shall be
23 conditioned upon the completion and acceptance or final
24 approval by the appropriate public agency of such private
25 sewage system according to plans, specifications or
26 instructions approved in writing by the state director of
27 health or his authorized representative: *Provided, however*,
28 That any person, firm, company, corporation or association,
29 which shall install or cause or direct to be installed, any
30 system or method of sewage or excreta disposal, septic
31 system or sewage treatment plant serving three or more
32 single-family residences, or any privately owned multi-unit
33 residence composed of more than two residential units or
34 commercial enterprise, shall enter into a performance bond,
35 with corporate surety, payable to the state department of
36 health, in an amount sufficient to guarantee the satisfactory
37 operation and maintenance of such septic system, sewage
38 treatment plant or other sewage disposal system, for a

39 period of not less than one (1) year after completion of
40 construction. The state director of health shall determine
41 the bonds required for both the construction and operation
42 and maintenance of such systems and the director of health
43 is hereby authorized and directed, upon written request of
44 the board, to enforce requirements of this section:
45 *Provided, however,* That in the event of the payment of
46 proceeds of any performance bond required by this section,
47 the state department of health shall be required to use the
48 proceeds to remedy or to assist in remedying any deficiency
49 in the operation or maintenance of such system or plant or
50 to assist in the completion of the construction project.

51 Whenever the state director of health or his authorized
52 representative finds upon investigation that any system or
53 method of drainage, water supply, sewage or excreta
54 disposal, or solid waste disposal, whether publicly or
55 privately owned, has not been installed in accordance with
56 plans, specifications and instructions issued by the state
57 director of health or approved in writing by the state
58 director of health or his authorized representative, the state
59 director of health or his duly authorized representative may
60 issue an order requiring the owner of such system or method
61 to make alterations as may be necessary to correct the
62 improper condition. Such alterations shall be made within
63 a reasonable time which shall not exceed thirty days, unless
64 a time extension is authorized by the state director of health
65 or his duly authorized representative.

66 The presence of sewage, excreta or solid waste being
67 disposed of in a manner not approved by the state director
68 of health or his authorized representative shall constitute
69 prima facie evidence of the existence of a condition
70 endangering public health.

71 The personnel of the state department of health shall be
72 available to consult and advise with any person, firm,
73 company, corporation, institution or association, whether
74 publicly or privately owned, county or municipal, or public
75 service authority, as to the most appropriate design, method
76 of operation or alteration of any such system or method.

77 Any person, firm, company, corporation, institution or
78 association, whether public or private, county or municipal,
79 who shall violate any provisions of this section shall be
80 deemed guilty of a misdemeanor, and, upon conviction

81 thereof, shall be punished by a fine of not less than twenty-
82 five dollars nor more than five hundred dollars. The
83 continued failure or refusal of such convicted person, firm,
84 company, corporation, institution or association, whether
85 public or private, county or municipal, to make the
86 alterations necessary to protect the public health required
87 by the state director of health or his duly authorized
88 representative shall constitute a separate, distinct and
89 additional offense for each twenty-four hour period of such
90 failure or refusal, and, upon conviction thereof, the violator
91 shall be fined not less than twenty-five dollars nor more
92 than five hundred dollars for each such conviction:
93 *Provided*, That none of the provisions contained in this
94 section shall apply to those commercial or industrial wastes
95 which are subject to the regulatory control of the West
96 Virginia department of natural resources or the West
97 Virginia air pollution control commission.
98 Magistrates shall have concurrent jurisdiction with the
99 circuit courts of this state for violations of any provisions of
100 this section.

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE
AND GAS SERVICES.**

§16-13A-1. Legislative findings.

1 The Legislature of the state of West Virginia hereby
2 determines and finds that the present system of public
3 service districts within the state has provided a valuable
4 service at a reasonable cost to persons who would otherwise
5 have been unable to obtain public utility services. To
6 further this effort, and to insure that all areas of the state
7 are benefiting from the availability of public service district
8 utility services and to further correct areas with health
9 hazards, the Legislature concludes that it is in the best
10 interest of the public to implement better management of
11 public service district resources by expanding the ability
12 and the authority of the public service commission to assist
13 public service districts by offering advice and assistance in
14 operational, financial and regulatory affairs.

15 In addition to the expanded powers which shall be given
16 to the public service commission, the Legislature also
17 concludes that it is in the best interest of the public for each
18 county commission to review current technology available

19 and consider consolidating existing public service districts
20 where it is feasible and will not result in the interference
21 with existing bond instruments. Further, if such
22 consolidation is not feasible, the Legislature finds that it is
23 in the best interest of the public for each county commission
24 to review current technology available and consider
25 consolidating or centralizing the management of public
26 service districts within its county or multi-county area to
27 achieve efficiency of operations. The Legislature also finds
28 that additional guidelines should be imposed on the
29 creation of new public service districts and that county
30 commissions shall dissolve inactive public service districts
31 as hereinafter provided. The Legislature also finds that the
32 public service commission shall promulgate rules and
33 regulations to effectuate the expanded powers given to the
34 commission relating to public service districts.

§16-13A-1a. Jurisdiction of the public service commission.

1 The jurisdiction of the public service commission relating
2 to public service districts shall be expanded to include the
3 following powers, and such powers shall be in addition to
4 all other powers of the public service commission set forth
5 in this code:

6 (a) To study, modify, approve, deny or amend the plans
7 created under section one-b of this article for consolidation
8 or merger of public service districts and their facilities,
9 personnel or administration;

10 (b) To petition the appropriate circuit court for the
11 removal of a public service district board member or
12 members; and

13 (c) To create by general order a separate division within
14 the public service commission to provide assistance to
15 public service districts in technological, operational,
16 financial and regulatory matters.

§16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

1 Each county commission shall conduct a study of all
2 public service districts which have their principal offices
3 within its county and shall develop a plan relating to the
4 creation, consolidation, merger, expansion or dissolution of

5 such districts or the consolidation or merger of
6 management and administrative services and personnel
7 and shall present such plan to the public service
8 commission for approval, disapproval, or modification:
9 *Provided*, That within ninety days of the effective date of
10 this section each county commission in this state shall elect
11 either to perform its own study or request that the public
12 service commission perform such study. Each county
13 commission electing to perform its own study shall have one
14 year from the date of election to present such plan to the
15 public service commission. For each county wherein the
16 county commission elects not to perform its own study, the
17 public service commission shall conduct a study of such
18 county. The public service commission shall establish a
19 schedule for such studies upon a priority basis, with those
20 counties perceived to have the greatest need of creation or
21 consolidation of public service districts receiving the
22 highest priority. In establishing the priority schedule, and
23 in the performance of each study, the department of health
24 and the department of natural resources shall offer their
25 assistance and cooperation to the public service
26 commission. Upon completion by the public service
27 commission of each study, it shall be submitted to the
28 appropriate county commission for review and comment.
29 Each county commission shall have six months in which to
30 review the study conducted by the public service
31 commission, suggest changes or modifications thereof, and
32 present such plan to the public service commission. All
33 county plans, whether conducted by the county commission
34 itself or submitted as a result of a public service commission
35 study, shall, by order, be approved, disapproved or
36 modified by the public service commission in accordance
37 with rules and regulations promulgated by the public
38 service commission and such order shall be implemented by
39 the county commission.

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

1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction
3 or acquisition by purchase or otherwise and the
4 maintenance, operation, improvement and extension of,
5 properties supplying water or sewerage services or gas

6 distribution services or all of these within such territory,
7 will be conducive to the preservation of the public health,
8 comfort and convenience of such area, may be constituted a
9 public service district under and in the manner provided by
10 this article. The words "public service properties," when
11 used in this article, shall mean and include any facility used
12 or to be used for or in connection with (1) the diversion,
13 development, pumping, impounding, treatment, storage,
14 distribution or furnishing of water to or for the public for
15 industrial, public, private or other uses (herein sometimes
16 referred to as "water facilities"), (2) the collection,
17 treatment, purification or disposal of liquid or solid wastes,
18 sewage or industrial wastes (herein sometimes referred to
19 as "sewer facilities" or "landfills") or (3) the distribution or
20 the furnishing of natural gas to the public for industrial,
21 public, private or other uses (herein sometimes referred to
22 as "gas utilities or gas system").

**§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 or upon the recommendation
3 of the public service commission, propose the creation of
4 such public service district within such county, setting
5 forth in such order a description, including metes and
6 bounds, sufficient to identify the territory to be embraced
7 therein and the name of such proposed district, or twenty-
8 five percent of the registered voters who reside within the
9 limits of such proposed public service district within one or
10 more counties may petition for the creation thereof, which
11 petition shall contain a description, including metes and
12 bounds, sufficient to identify the territory to be embraced
13 therein and the name of such proposed district: *Provided,*
14 That after the effective date of this section, no new public
15 service district shall be created under this section without
16 the written consent and approval of the public service
17 commission, which approval and consent shall be in
18 accordance with rules and regulations promulgated by the

19 public service commission and may only be requested after
20 consent is given by the appropriate county commission or
21 commissions pursuant to this section. Any territory may be
22 included regardless of whether or not such territory
23 includes one or more cities, incorporated towns or other
24 municipal corporations which own and operate any public
25 service properties and regardless of whether or not it
26 includes one or more cities, incorporated towns or other
27 municipal corporations being served by privately owned
28 public service properties: *Provided, however,* That the
29 same territory shall not be included within the boundaries
30 of more than one public service district except where such
31 territory or part thereof is included within the boundaries
32 of a separate public service district organized to supply
33 water, sewerage services or gas facilities not being
34 furnished within such territory or part thereof: *Provided*
35 *further,* That no city, incorporated town or other municipal
36 corporation shall be included within the boundaries of such
37 proposed district except upon the adoption of a resolution
38 of the governing body of such city, incorporated town or
39 other municipal corporation consenting.

40 Such petition shall be filed in the office of the clerk of the
41 county commission of the county in which the territory to
42 constitute the proposed district is situated, and if such
43 territory is situated in more than one county, then such
44 petition shall be filed in the office of the clerk of the county
45 commission of the county in which the major portion of
46 such territory extends, and a copy thereof (omitting
47 signatures) shall be filed with each of the clerks of the
48 county commission of the other county or counties into
49 which the territory extends. The clerk of the county
50 commission receiving such petition shall present it to the
51 county commission of such county at the first regular
52 meeting after such filing or at a special meeting called for
53 the consideration thereof.

54 When the county commission of any county enters an
55 order on its own motion proposing the creation of a public
56 service district, as aforesaid, or when a petition for such
57 creation is presented, as aforesaid, the county commission
58 shall at the same session fix a date of hearing in such county
59 on the creation of the proposed public service district,
60 which date so fixed shall be not more than forty days nor

61 less than twenty days from the date of such action. If the
62 territory proposed to be included is situated in more than
63 one county, the county commission, when fixing a date of
64 hearing, shall provide for notifying the county commission
65 and clerk thereof of each of the other counties into which
66 the territory extends of the date so fixed. The clerk of the
67 county commission of each county in which any territory in
68 the proposed public service district is located shall cause
69 notice of such hearing and the time and place thereof, and
70 setting forth a description of all of the territory proposed to
71 be included therein to be given by publication as a Class I
72 legal advertisement in compliance with the provisions of
73 article three, chapter fifty-nine of this code, and the
74 publication area for such publication shall be by
75 publication in each city, incorporated town or municipal
76 corporation if available in each county in which any
77 territory in the proposed public service district is located.
78 The publication shall be at least ten days prior to such
79 hearing. In all cases where proceedings for the creation of
80 such public service districts are initiated by petition as
81 aforesaid, the person filing the petition shall advance or
82 satisfactorily indemnify the payment of the cost and
83 expenses of publishing the hearing notice, and otherwise
84 the costs and expenses of such notice shall be paid in the
85 first instance by the county commission out of contingent
86 funds or any other funds available or made available for
87 that purpose. In addition to the notice required herein to be
88 published, there shall also be posted in at least five
89 conspicuous places in the proposed public service district, a
90 notice containing the same information as is contained in
91 the published notice. The posted notices shall be posted not
92 less than ten days before the hearing.

93 All persons residing in or owning or having any interest in
94 property in such proposed public service district shall have
95 an opportunity to be heard for and against its creation. At
96 such hearing the county commission before which the
97 hearing is conducted shall consider and determine the
98 feasibility of the creation of the proposed district. If the
99 county commission determines that the construction or
100 acquisition by purchase or otherwise and maintenance,
101 operation, improvement and extension of public service
102 properties by such public service district will be conducive

103 to the preservation of public health, comfort and
104 convenience of such area, the county commission shall by
105 order create such public service district. If the county
106 commission, after due consideration, determines that the
107 proposed district will not be conducive to the preservation
108 of public health, comfort or convenience of such area or that
109 the creation of the proposed district as set forth and
110 described in the petition or order is not feasible, it may
111 refuse to enter an order creating the district or it may enter
112 an order amending the description of the proposed district
113 and create the district as amended. If the county
114 commission determines that any other public service
115 district or districts can adequately serve the area of the
116 proposed public service district, whether by expansion,
117 merger or other means, it shall refuse to enter an order
118 creating the proposed district and shall enter an order
119 expanding, merging or consolidating the area with an
120 existing public service district, in accordance with rules
121 and regulations adopted by the public service commission
122 for such purpose: *Provided*, That no expansion of a public
123 service district may occur if the present or proposed
124 physical facilities of the public service district are
125 determined by the appropriate county commission or the
126 public service commission to be inadequate to provide such
127 expanded service. The clerk of the county commission of
128 each county into which any part of such district extends
129 shall retain in his office an authentic copy of the order
130 creating, expanding, merging or consolidating the district:
131 *Provided, however*, That within ten days after the entry of
132 an order creating, expanding or merging or consolidating a
133 district, such order must be filed for review and approval by
134 the public service commission. The public service
135 commission shall provide a hearing in the affected county
136 on the matter and may approve, reject or modify the order of
137 the county commission if it finds it is in the best interests of
138 the public to do so. The public service commission shall
139 adopt rules and regulations relating to such filings and the
140 approval, disapproval or modification of county
141 commission orders for creating, expanding, merging or
142 consolidating districts.

143 The county commission may, if in its discretion it deems it
144 necessary, feasible and proper, enlarge the district to

145 include additional areas, reduce the area of the district,
146 where facilities, equipment, service or materials have not
147 been extended, or dissolve the district if inactive or
148 establish or consolidate two or more such districts. If
149 consolidation of districts is not feasible, the county
150 commission may consolidate and centralize management
151 and administration of districts within its county or multi-
152 county area to achieve efficiency of operations: *Provided,*
153 That where the county commission determines on its own
154 motion by order entered of record, or there is a petition to
155 enlarge the district, merge and consolidate districts, or the
156 management and administration thereof, reduce the area of
157 the district or dissolve the district if inactive, all of the
158 applicable provisions of this article providing for hearing,
159 notice of hearing and approval by the public service
160 commission shall apply with like effect as if a district were
161 being created. The commission shall at all times attempt to
162 bring about the expansion or merger of existing public
163 service districts in order to provide increased services and
164 to eliminate the need for creation of new public service
165 districts in those areas which are not currently serviced by a
166 public service district: *Provided, however,* That where two
167 or more public service districts are consolidated pursuant
168 to this section, any rate differentials may continue for the
169 period of bonded indebtedness incurred prior to
170 consolidation. The districts may not enter into any
171 agreement, contract or covenant that infringes upon,
172 impairs, abridges or usurps the duties, rights or powers of
173 the county commission, as set forth in this article, or
174 conflicts with any provision of this article. A list of all
175 districts and their current board members shall be filed by
176 the county commission with the secretary of state and the
177 public service commission by the first day of July of each
178 year.

**§16-13A-3. District to be a public corporation and political
subdivision; powers thereof; public service
boards.**

1 From and after the date of the adoption of the order
2 creating any public service district, it shall thereafter be a
3 public corporation and political subdivision of the state,
4 but without any power to levy or collect ad valorem taxes.

5 Each 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
8 contracts necessary or incidental to its purposes, including
9 contracts with any city, incorporated town or other
10 municipal corporation located within or without its
11 boundaries for furnishing wholesale supply of water for the
12 distribution system of the city, town or other municipal
13 corporation, and contract for the operation, maintenance,
14 servicing, repair and extension of any properties owned by
15 it or for the operation and improvement or extension by the
16 district of all or any part of the existing municipally owned
17 public service properties of any city, incorporated town or
18 other municipal corporation included within the district:
19 *Provided*, That no contract shall extend beyond a maximum
20 of forty years, but provisions may be included therein for a
21 renewal or successive renewals thereof and shall conform to
22 and comply with the rights of the holders of any
23 outstanding bonds issued by the municipalities for the
24 public service properties.

25 The powers of each public service district shall be vested
26 in and exercised by a public service board consisting of not
27 less than three members, who shall be persons residing
28 within the district who possess certain educational,
29 business or work experience which will be conducive to
30 operating a public service district. Each board member
31 shall, within six months of taking office, successfully
32 complete the training program to be established and
33 administered by the public service commission in
34 conjunction with the department of natural resources and
35 the department of health. Board members shall not be or
36 become pecuniarily interested, directly or indirectly, in the
37 proceeds of any contract or service, or in furnishing any
38 supplies or materials to the district, nor shall a former
39 board member be hired by the district in any capacity
40 within a minimum of twelve months after such board
41 member's term has expired or such board member has
42 resigned from the district board. The members shall be
43 appointed in the following manner:

44 Each city, incorporated town or other municipal
45 corporation having a population of more than three
46 thousand but less than eighteen thousand shall be entitled

47 to appoint one member of the board, and each such city,
48 incorporated town or other municipal corporation having a
49 population in excess of eighteen thousand shall be entitled
50 to appoint one additional member of the board for each
51 additional eighteen thousand population. The members of
52 the board representing such cities, incorporated towns or
53 other municipal corporations shall be residents thereof and
54 shall be appointed by a resolution of the governing bodies
55 thereof and upon the filing of a certified copy or copies of
56 the resolution or resolutions in the office of the clerk of the
57 county commission which entered the order creating the
58 district, the persons so appointed shall thereby become
59 members of the board without any further act or
60 proceedings. If the number of members of the board so
61 appointed by the governing bodies of cities, incorporated
62 towns or other municipal corporations included in the
63 district shall equal or exceed three, then no further
64 members shall be appointed to the board and the members
65 shall be and constitute the board of the district.

66 If no city, incorporated town or other municipal
67 corporation having a population of more than three
68 thousand is included within the district, then the county
69 commission which entered the order creating the district
70 shall appoint three members of the board, who are persons
71 residing within the district, which three members shall
72 become members of and constitute the board of the district
73 without any further act or proceedings.

74 If the number of members of the board appointed by the
75 governing bodies of cities, incorporated towns or other
76 municipal corporations included within the district is less
77 than three, then the county commission which entered the
78 order creating the district shall appoint such additional
79 member or members of the board, who are persons residing
80 within the district, as is necessary to make the number of
81 members of the board equal three, and the additional
82 member or members shall thereupon become members of
83 the board; and the member or members appointed by the
84 governing bodies of the cities, incorporated towns or other
85 municipal corporations included within the district and the
86 additional member or members appointed by the county
87 commission as aforesaid, shall be and constitute the board

88 of the district. A person may serve as a member of the board
89 in one or more public service districts.

90 The population of any city, incorporated town or other
91 municipal corporation, for the purpose of determining the
92 number of members of the board, if any, to be appointed by
93 the governing body or bodies thereof, shall be conclusively
94 considered to be the population stated for such city,
95 incorporated town or other municipal corporation in the
96 last official federal census.

97 Notwithstanding any provision of this code to the
98 contrary, whenever a district is consolidated or merged
99 pursuant to section two of this article, the terms of office of
100 the existing board members shall end on the effective date
101 of the merger or consolidation. The county commission
102 shall appoint a new board according to rules and
103 regulations promulgated by the public service commission.

104 The respective terms of office of the members of the first
105 board shall be fixed by the county commission and shall be
106 as equally divided as may be, that is approximately one
107 third of the members for a term of two years, a like number
108 for a term of four, and the term of the remaining member or
109 members for six years, from the first day of the month
110 during which the appointments are made. The first
111 members of the board appointed as aforesaid shall meet at
112 the office of the clerk of the county commission which
113 entered the order creating the district as soon as practicable
114 after the appointments and shall qualify by taking an oath
115 of office: *Provided*, That any member or members of the
116 board may be removed from their respective office as
117 provided in section three-a of this article.

118 Any vacancy shall be filled for the unexpired term within
119 thirty days, otherwise successor members of the board shall
120 be appointed for terms of six years and the terms of office
121 shall continue until successors have been appointed and
122 qualified. All successor members shall be appointed in the
123 same manner as the member succeeded was appointed.

124 The board shall organize within thirty days following the
125 first appointments and annually thereafter at its first
126 meeting after the first day of January of each year by
127 selecting one of its members to serve as chairman and by
128 appointing a secretary and a treasurer who need not be
129 members of the board. The secretary shall keep a record of

130 all proceedings of the board which shall be available for
131 inspection as other public records. Duplicate records shall
132 be filed with the county commission and shall include the
133 minutes of all board meetings. The treasurer is lawful
134 custodian of all funds of the public service district and shall
135 pay same out on orders authorized or approved by the
136 board. The secretary and treasurer shall perform other
137 duties appertaining to the affairs of the district and shall
138 receive salaries as shall be prescribed by the board. The
139 treasurer shall furnish bond in an amount to be fixed by the
140 board for the use and benefit of the district.

141 The members of the board, and the chairman, secretary
142 and treasurer thereof, shall make available to the county
143 commission, at all times, all of its books and records
144 pertaining to the district's operation, finances and affairs,
145 for inspection and audit. The board shall meet at least
146 monthly.

§16-13A-3a. Removal of members of public service board.

1 The county commission or the public service commission
2 or any other appointive body creating or establishing a
3 public service district under the provisions of this article, or
4 any group of five percent or more of the customers of a
5 public service district, may petition the circuit court of the
6 county in which the district maintains its principal office
7 for the removal of any member of the governing board
8 thereof for consistent violations of any provisions of this
9 article, for reasonable cause which includes, but is not
10 limited to, a continued failure to attend meetings of the
11 board, failure to diligently pursue the objectives for which
12 the district was created, or failure to perform any other duty
13 either prescribed by law or required by a final order of the
14 public service commission or for any malfeasance in public
15 office. Any board member charged with a violation under
16 this section who offers a successful defense against such
17 charges shall be reimbursed for the reasonable costs of such
18 defense from district revenues. Such costs shall be
19 considered as costs associated with rate determination by
20 the public service district and the public service
21 commission. If the circuit court judge hearing the petition
22 for removal finds that the charges are frivolous in nature,
23 the judge may assess all or part of the court costs, plus the

24 reasonable costs associated with the board member's
25 defense, against the party or parties who petitioned the
26 court for the board member's removal.

**§16-13A-4. Board chairman; members' compensation;
procedure; district name.**

1 The chairman shall preside at all meetings of the board
2 and may vote as any other members of the board but if he
3 should be absent from any meeting, the remaining members
4 may select a temporary chairman and if the member
5 selected as chairman resigns as such or ceases for any
6 reason to be a member of the board, the board shall select
7 one of its members as chairman to serve until the next
8 annual organization meeting. Salaries of each of its board
9 members shall be as follows: For districts with fewer than
10 six hundred customers, each board member shall receive
11 fifty dollars per attendance at regular monthly meetings
12 and thirty dollars per attendance at additional special
13 meetings, total salary not to exceed nine hundred dollars
14 per annum; for districts with six hundred customers or
15 more but fewer than two thousand customers, each board
16 member shall receive one hundred dollars per attendance at
17 regular monthly meetings and fifty dollars per attendance
18 at additional special meetings, total salary not to exceed
19 eighteen hundred dollars per annum; and for districts with
20 two thousand customers or more, each board member shall
21 receive one hundred dollars per attendance at regular
22 monthly meetings and fifty dollars per attendance at
23 additional special meetings, total salary not to exceed three
24 thousand dollars per annum. The public service district
25 shall certify the number of customers served to the public
26 service commission beginning on the first day of July, one
27 thousand nine hundred eighty-six, and continue each fiscal
28 year thereafter. Board members may be reimbursed for all
29 reasonable and necessary expenses actually incurred in the
30 performance of their duties as provided for by the rules and
31 regulations of the board. The board shall by resolution
32 determine its own rules of procedure, fix the time and place
33 of its meetings and the manner in which special meetings
34 may be called. Public notice of meetings shall be given in
35 accordance with section three, article nine-a, chapter six of
36 this code. Emergency meetings may be called as provided by

37 section three, article nine-a, chapter six of this code. A
38 majority of the members constituting the board also
39 constitute a quorum to do business. The members of the
40 board are not personally liable or responsible for any
41 obligations of the district or the board but are answerable
42 only for willful misconduct in the performance of their
43 duties. At any time prior to the issuance of bonds as
44 hereinafter provided, the board may by resolution change
45 the official or corporate name of the public service district
46 and such change shall be effective from and after filing an
47 authenticated copy of such resolution with the clerk of the
48 county commission of each county in which the territory
49 embraced within such district or any part thereof is located.
50 The official name of any district created under the
51 provisions of this article may contain the name or names of
52 any city, incorporated town or other municipal corporation
53 included therein or the name of any county or counties in
54 which it is located.

§16-13A-5. General manager of board.

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

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

20 The board of any public service district which purchases
21 water or sewer service from a municipal water or sewer
22 system or another public service district may, as an

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

§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 or
3 constructed by the district, and shall have power, and it
4 shall be its duty, to maintain, operate, extend and improve
5 the same. All contracts involving the expenditure by the
6 district of more than five thousand dollars for construction
7 work or for the purchase of equipment and improvements,
8 extensions or replacements, shall be entered into only after
9 notice inviting bids shall have been published as a Class I
10 legal advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be as specified in
13 section two of this article in the county or counties in which
14 the district is located. The publication shall not be less than
15 ten days prior to the making of any such contract. To the
16 extent allowed by law, in-state contractors shall be given
17 first priority in awarding public service district contracts. It
18 shall be the duty of the board to ensure that local in-state
19 labor shall be utilized to the greatest extent possible when
20 hiring laborers for public service district construction or
21 maintenance repair jobs. It shall further be the duty of the
22 board to encourage contractors to use American-made
23 products in their construction to the extent possible. Any
24 obligations incurred of any kind or character shall not in
25 any event constitute or be deemed an indebtedness within
26 the meaning of any of the provisions or limitations of the
27 constitution, but all such obligations shall be payable solely
28 and only out of revenues derived from the operation of the
29 public service properties of the district or from proceeds of
30 bonds issued as hereinafter provided. No continuing
31 contract for the purchase of materials or supplies or for

32 furnishing the district with electrical energy or power shall
33 be entered into for a longer period than fifteen years.

**§16-13A-9. Rules and regulations; service rates and charges;
discontinuance of service; required water and
sewer connections; lien for delinquent fees.**

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

37 notice of any said delinquency by certified mail, return
38 receipt requested. The board may, under reasonable rules
39 and regulations promulgated by the public service
40 commission, shut off and discontinue water or gas services
41 to all delinquent users of either water or gas facilities, or
42 both.

43 In the event that any publicly or privately owned utility,
44 city, incorporated town, other municipal corporation or
45 other public service district included within the district
46 owns and operates separately either water facilities or
47 sewer facilities, and the district owns and operates the other
48 kind of facilities, either water or sewer, as the case may be,
49 then the district and such publicly or privately owned
50 utility, city, incorporated town or other municipal
51 corporation or other public service district may covenant
52 and contract with each other to shut off and discontinue the
53 supplying of water service for the nonpayment of sewer
54 service fees and charges: *Provided*, That any contracts
55 entered into by a public service district pursuant to this
56 section shall be submitted to the public service commission
57 for approval. Any public service district providing water
58 and sewer service to its customers shall have the right to
59 terminate water service for delinquency in payment of
60 either water or sewer bills. Where one public service district
61 is providing sewer service and another public service
62 district or a municipality included within the boundaries of
63 the sewer district is providing water service, and the district
64 providing sewer service experiences a delinquency in
65 payment, the district or the municipality included within
66 the boundaries of the sewer district that is providing water
67 service, upon the request of the district providing sewer
68 service to the delinquent account, shall terminate its water
69 service to the customer having the delinquent sewer
70 account: *Provided, however*, That any termination of water
71 service must comply with all rules, regulations and orders
72 of the public service commission.

73 Any district furnishing sewer facilities within the district
74 may require, or may by petition to the circuit court of the
75 county in which the property is located, compel or may
76 require the department of health to compel all owners,
77 tenants or occupants of any houses, dwellings and buildings
78 located near any such sewer facilities, where sewage will

79 flow by gravity or be transported by such other methods
80 approved by the department of health including, but not
81 limited to, vacuum and pressure systems, approved under
82 the provisions of section nine, article one, chapter sixteen of
83 this code, from such houses, dwellings or buildings into
84 such sewer facilities, to connect with and use such sewer
85 facilities, and to cease the use of all other means for the
86 collection, treatment and disposal of sewage and waste
87 matters from such houses, dwellings and buildings where
88 there is such gravity flow or transportation by such other
89 methods approved by the department of health including,
90 but not limited to, vacuum and pressure systems, approved
91 under the provisions of section nine, article one, chapter
92 sixteen of this code, and such houses, dwellings and
93 buildings can be adequately served by the sewer facilities of
94 the district, and it is hereby found, determined and declared
95 that the mandatory use of such sewer facilities provided for
96 in this paragraph is necessary and essential for the health
97 and welfare of the inhabitants and residents of such
98 districts and of the state: *Provided*, That if the public
99 service district determines that the property owner must
100 connect with the sewer facilities even when sewage from
101 such dwellings may not flow to the main line by gravity and
102 the property owner must incur costs for any changes in the
103 existing dwellings' exterior plumbing in order to connect to
104 the main sewer line, the public service district board shall
105 authorize the district to pay all reasonable costs for such
106 changes in the exterior plumbing, including, but not limited
107 to, installation, operation, maintenance and purchase of a
108 pump, or any other method approved by the department of
109 health; maintenance and operation costs for such extra
110 installation should be reflected in the users charge for
111 approval of the public service commission. The circuit court
112 shall adjudicate the merits of such petition by summary
113 hearing to be held not later than thirty days after service of
114 petition to the appropriate owners, tenants or occupants.
115 Whenever any district has made available sewer facilities
116 to any owner, tenant or occupant of any house, dwelling or
117 building located near such sewer facility, and the engineer
118 for the district has certified that such sewer facilities are
119 available to and are adequate to serve such owner, tenant or
120 occupant, and sewage will flow by gravity or be transported

121 by such other methods approved by the department of
122 health from such house, dwelling or building into such
123 sewer facilities, the district may charge, and such owner,
124 tenant or occupant shall pay the rates and charges for
125 services established under this article only after thirty-day
126 notice of the availability of the facilities has been received
127 by the owner.

128 All delinquent fees, rates and charges of the district for
129 either water facilities, sewer facilities or gas facilities are
130 liens on the premises served of equal dignity, rank and
131 priority with the lien on such premises of state, county,
132 school and municipal taxes. In addition to the other
133 remedies provided in this section, public service districts
134 are hereby granted a deferral of filing fees or other fees and
135 costs incidental to the bringing and maintenance of an
136 action in magistrates court for the collection of delinquent
137 water, sewer or gas bills. If the district collects the
138 delinquent account, plus reasonable costs, from its
139 customer or other responsible party, the district shall pay to
140 the magistrate the normal filing fee and reasonable costs
141 which were previously deferred. In addition, each public
142 service district may exchange with other public service
143 districts a list of delinquent accounts.

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

§16-13A-11. Accounts; audit.

1 The general manager, under direction of the board, shall
2 install and maintain a proper system of accounts, in
3 accordance with all rules, regulations or orders pertaining
4 thereto by the public service commission, showing receipts
5 from operation and application of the same, and the board
6 shall at least once a year cause such accounts to be properly
7 audited: *Provided*, That such audit may be any audit by an
8 independent public accountant completed within one year
9 of the time required for the submission of the report:
10 *Provided, however*, That if the district is required to have

11 its books, records and accounts audited annually by an
12 independent certified public accountant as a result of any
13 covenant in any board resolution or bond instrument, a
14 copy of such audit may be submitted in satisfaction of the
15 requirements of this section, and is hereby found, declared
16 and determined to be sufficient to satisfy the requirements
17 of article nine, chapter six of this code pertaining to the
18 annual audit report by the state tax commission. A copy of
19 the audit shall be forwarded within thirty days of
20 submission to the county commission and to the public
21 service commission.

22 The treasurer of each public service district shall keep
23 and preserve all financial records of the public service
24 district for ten years, and shall at all times have such
25 records readily available for public inspection. At the end of
26 his term of office, the treasurer of each public service
27 district shall promptly deliver all financial records of the
28 public service district to his successor in office. Any
29 treasurer of a public service district who knowingly or
30 willfully violates any provision of this section is guilty of a
31 misdemeanor, and shall be fined not less than one hundred
32 dollars nor more than five hundred dollars or imprisoned in
33 the county jail not more than ten days, or both.

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

1 In any case where a public service district owns a water,
2 sewer or gas system, and all the members of the public
3 service board thereof deem it for the best interests of the
4 district to sell, lease or rent such water, sewer or gas system
5 to any municipality or privately owned water, sewer or gas
6 system, or to any water, sewer or gas system owned by an
7 adjacent public service district, the board may so sell, lease
8 or rent such water, sewer or gas system upon such terms and
9 conditions as said board, in its discretion, considers in the
10 best interests of the district: *Provided*, That such sale,
11 leasing or rental may be made only upon approval by the
12 public service commission of West Virginia.

13 In the event of any such sale, the proceeds thereof, if any,
14 remaining after payment of all outstanding bonds and other
15 obligations of the district, shall be ratably distributed to
16 any persons who have made contributions in aid of

17 construction of such water, sewer or gas system, such
 18 distribution not to exceed the actual amount of any such
 19 contribution, without interest, and any balance of funds
 20 thereafter remaining shall be paid to the county
 21 commission of the county in which the major portion of
 22 such water, sewer or gas system is located to be placed in the
 23 general funds of such county commission.

**§16-13A-21. Complete authority of article; liberal
 construction; district to be public instru-
 mentality; tax exemption.**

1 This article shall constitute full and complete authority
 2 for the creation of public service districts and for carrying
 3 out the powers and duties of same as herein provided. The
 4 provisions of this article shall be liberally construed to
 5 accomplish its purpose and no procedure or proceedings,
 6 notices, consents or approvals, shall be required in
 7 connection therewith except as may be prescribed by this
 8 article: *Provided*, That all functions, powers and duties of
 9 the public service commission of West Virginia, the state
 10 department of health and the state water resources board
 11 shall remain unaffected by this article. Every district
 12 organized, consolidated, merged or expanded under this
 13 article is declared to be a public instrumentality created
 14 and functioning in the interest and for the benefit of the
 15 public, and its property and income and any bonds issued
 16 by it shall be exempt from taxation by the state of West
 17 Virginia, and the other taxing bodies of the state: *Provided*,
 18 *however*, That the board of any such district may use and
 19 apply any of its available revenues and income for the
 20 payment of what such board determines to be tax or license
 21 fee equivalents to any local taxing body and in any
 22 proceedings for the issuance of bonds of such district may
 23 reserve the right to annually pay a fixed or computable sum
 24 to such taxing bodies as such tax or license fee equivalent.

§16-13A-25. Borrowing and bond issuance; procedure.

1 Notwithstanding any other provisions of this article to
 2 the contrary, a public service district shall not borrow
 3 money, enter into contracts for the provision of engineering,
 4 design or feasibility studies, issue or contract to issue
 5 revenue bonds or exercise any of the powers conferred by

6 the provisions of sections thirteen, twenty or twenty-four of
7 this article, without the prior consent and approval of the
8 public service commission. Unless the properties to be
9 constructed or acquired represent ordinary extensions or
10 repairs of existing systems in the usual course of business, a
11 public service district must first obtain a certificate of
12 public convenience and necessity from the public service
13 commission in accordance with the provisions of chapter
14 twenty-four of this code, when a public service district is
15 seeking to acquire or construct public service property.

16 Sixty days prior to making formal application for said
17 certificate, the public service district shall prefile with the
18 public service commission its plans and supporting
19 information for said project and shall publish a Class II
20 legal advertisement in a newspaper or newspapers of
21 general circulation in each city, incorporated town or
22 municipal corporation if available in the district, which
23 legal advertisement shall state:

24 (a) The amount of money to be borrowed, or the amount
25 of revenue bonds to be issued: *Provided*, That if the amount
26 is an estimate, the notice may be stated in terms of an
27 amount "not to exceed" a specific amount;

28 (b) The interest rate and terms of the loan or bonds:
29 *Provided*, That if the interest rate is an estimate, the notice
30 may be stated in terms of a rate "not to exceed" a specific
31 rate;

32 (c) The public service properties to be acquired or
33 constructed, and the cost of same;

34 (d) The anticipated rates which will be charged by the
35 district: *Provided*, That if the rates are an estimate, the
36 notice may be stated in terms of rates "not to exceed" a
37 specific rate; and

38 (e) The date that the formal application for a certificate
39 of public convenience and necessity is to be filed with the
40 public service commission. The public service commission
41 may grant its consent and approval for the certificate, or
42 any other request for approval under this section, subject to
43 such terms and conditions as may be necessary for the
44 protection of the public interest, pursuant to the provisions
45 of chapter twenty-four of this code, or may withhold such
46 consent and approval for the protection of the public
47 interest.

48 In the event of disapproval, the reasons therefor shall be
49 assigned in writing by the commission.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1b. Supplemental rule for reorganization.

1 The public service commission shall, by general order,
2 create a division within its staff which shall provide legal,
3 engineering, financial and accounting advice and
4 assistance to public service districts in operational,
5 financial and regulatory matters, and may perform or
6 participate in the studies required under section one-b,
7 article thirteen-a, chapter sixteen of this code.

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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Paul C. Stelli
.....
Clerk of the Senate

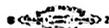
Donald J. Kepp
.....
Clerk of the House of Delegates

Sam Tomlinson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *Approved* this the *26th*
March day of 1986.

Richard S. Inoué
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/20/86

Time 3:50 p.m.

PROPERTY

029 MAR 23 PM 9 02

DEPARTMENT OF STATE

OFFICE OF THE CHIEF OF
CONSUL GENERAL OF
WASHINGTON

THIS DATE 3/26/86