WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
Committee Substitute for
SENATE BILL NO. 191

(By Senator ...)

PASSED March 8, 1986
In Effect 90 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 association, whether public or private, county or municipal, shall install or establish any system or method of drainage, water supply, sewage or excreta disposal, or solid waste disposal without first obtaining a written permit to install or establish such system or method from the state director of health or his authorized representative. All such systems or methods shall be installed or established in accordance with plans, specifications and instructions issued by the state director of health or which have been approved in writing by the state director of health or his authorized representative: Provided, That any person, firm, corporation or association, which shall install, or cause or direct to be installed, any system or method of sewage or excreta disposal, septic system or sewage treatment plant serving three or more single-family residences, or any privately owned multi-unit residences composed of more than two residential units or commercial enterprise, shall enter into a performance bond, with corporate surety, payable to the state department of health, in an amount equivalent to the projected construction costs of such private system, which performance bond shall be conditioned upon the completion and acceptance or final approval by the appropriate public agency of such private sewage system according to plans, specifications or instructions approved in writing by the state director of health or his authorized representative: Provided, however, that any person, firm, company, corporation or association, which shall install or cause or direct to be installed, any system or method of sewage or excreta disposal, septic system or sewage treatment plant serving three or more single-family residences, or any privately owned multi-unit residence composed of more than two residential units or commercial enterprise, shall enter into a performance bond, with corporate surety, payable to the state department of health, in an amount sufficient to guarantee the satisfactory operation and maintenance of such septic system, sewage treatment plant or other sewage disposal system, for a
period of not less than one (1) year after completion of
construction. The state director of health shall determine
the bonds required for both the construction and operation
and maintenance of such systems and the director of health
is hereby authorized and directed, upon written request of
the board, to enforce requirements of this section:

Provided, however, That in the event of the payment of
proceeds of any performance bond required by this section,
the state department of health shall be required to use the
proceeds to remedy or to assist in remedying any deficiency
in the operation or maintenance of such system or plant or
to assist in the completion of the construction project.

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

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

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

Any person, firm, company, corporation, institution or
association, whether public or private, county or municipal,
who shall violate any provisions of this section shall be
deemed guilty of a misdemeanor, and, upon conviction
thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The continued failure or refusal of such convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the state director of health or his duly authorized representative shall constitute a separate, distinct and additional offense for each twenty-four hour period of such failure or refusal, and, upon conviction thereof, the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such conviction:

Provided, That none of the provisions contained in this section shall apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia department of natural resources or the West Virginia air pollution control commission.

Magistrates shall have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

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

§16-13A-1. Legislative findings.

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

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available
and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts.


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

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

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

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

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

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of
such districts or the consolidation or merger of
management and administrative services and personnel
and shall present such plan to the public service
commission for approval, disapproval, or modification:
Provided, That within ninety days of the effective date of
this section each county commission in this state shall elect
either to perform its own study or request that the public
service commission perform such study. Each county
commission electing to perform its own study shall have one
year from the date of election to present such plan to the
public service commission. For each county wherein the
county commission elects not to perform its own study, the
public service commission shall conduct a study of such
county. The public service commission shall establish a
schedule for such studies upon a priority basis, with those
counties perceived to have the greatest need of creation or
consolidation of public service districts receiving the
highest priority. In establishing the priority schedule, and
in the performance of each study, the department of health
and the department of natural resources shall offer their
assistance and cooperation to the public service
commission. Upon completion by the public service
commision of each study, it shall be submitted to the
appropriate county commission for review and comment.
Each county commission shall have six months in which to
review the study conducted by the public service
commission, suggest changes or modifications thereof, and
present such plan to the public service commission. All
county plans, whether conducted by the county commission
itself or submitted as a result of a public service commission
study, shall, by order, be approved, disapproved or
modified by the public service commission in accordance
with rules and regulations promulgated by the public
service commission and such order shall be implemented by
the county commission.

§16-13A-1c. General purpose of districts.
Any territory constituting the whole or any part of one or
more counties in the state so situated that the construction
or acquisition by purchase or otherwise and the
maintenance, operation, improvement and extension of,
properties supplying water or sewerage services or gas
distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to 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.

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district, or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations promulgated by the
public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not such territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where such territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

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

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor
less than twenty days from the date of such action. If the
territory proposed to be included is situated in more than
one county, the county commission, when fixing a date of
hearing, shall provide for notifying the county commission
and clerk thereof of each of the other counties into which
the territory extends of the date so fixed. The clerk of the
county commission of each county in which any territory in
the proposed public service district is located shall cause
notice of such hearing and the time and place thereof, and
setting forth a description of all of the territory proposed to
be included therein to be given by publication as a Class I
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be by
publication in each city, incorporated town or municipal
corporation if available in each county in which any
territory in the proposed public service district is located.
The publication shall be at least ten days prior to such
hearing. In all cases where proceedings for the creation of
such public service districts are initiated by petition as
aforesaid, the person filing the petition shall advance or
satisfactorily indemnify the payment of the cost and
expenses of publishing the hearing notice, and otherwise
the costs and expenses of such notice shall be paid in the
first instance by the county commission out of contingent
funds or any other funds available or made available for
that purpose. In addition to the notice required herein to be
published, there shall also be posted in at least five
conspicuous places in the proposed public service district, a
notice containing the same information as is contained in
the published notice. The posted notices shall be posted not
less than ten days before the hearing.

All persons residing in or owning or having any interest in
property in such proposed public service district shall have
an opportunity to be heard for and against its creation. At
such hearing the county commission before which the
hearing is conducted shall consider and determine the
feasibility of the creation of the proposed district. If the
county commission determines that the construction or
acquisition by purchase or otherwise and maintenance,
operation, improvement and extension of public service
properties by such public service district will be conducive
to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district: Provided, however, That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts. The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to
include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each 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 creating any public service district, it shall thereafter be a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes.
Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

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

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand shall be entitled
to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed shall thereby become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district shall equal or exceed three, then no further members shall be appointed to the board and the members shall be and constitute the board of the district. If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members shall become members of and constitute the board of the district without any further act or proceedings. If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three, and the additional member or members shall thereupon become members of the board; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, shall be and constitute the board
of the district. A person may serve as a member of the board in one or more public service districts.

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

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

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

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

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

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

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

The county commission or the public service commission
or any other appointive body creating or establishing a
public service district under the provisions of this article, or
any group of five percent or more of the customers of a
public service district, may petition the circuit court of the
county in which the district maintains its principal office
for the removal of any member of the governing board
thereof for consistent violations of any provisions of this
article, for reasonable cause which includes, but is not
limited to, a continued failure to attend meetings of the
board, failure to diligently pursue the objectives for which
the district was created, or failure to perform any other duty
either prescribed by law or required by a final order of the
public service commission or for any malfeasance in public
office. Any board member charged with a violation under
this section who offers a successful defense against such
charges shall be reimbursed for the reasonable costs of such
defense from district revenues. Such costs shall be
considered as costs associated with rate determination by
the public service district and the public service
commission. If the circuit court judge hearing the petition
for removal finds that the charges are frivolous in nature,
the judge may assess all or part of the court costs, plus the
reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal.

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

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member shall receive fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed nine hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed eighteen hundred dollars per annum; and for districts with two thousand customers or more, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules and regulations of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three, article nine-a, chapter six of this code. Emergency meetings may be called as provided by
section three, article nine-a, chapter six of this code. A
majority of the members constituting the board also
consistute a quorum to do business. The members of the
board are not personally liable or responsible for any
obligations of the district or the board but are answerable
only for willful misconduct in the performance of their
duties. At any time prior to the issuance of bonds as
hereinafter provided, the board may by resolution change
the official or corporate name of the public service district
and such change shall be effective from and after filing an
authenticated copy of such resolution with the clerk of the
county commission of each county in which the territory
embraced within such district or any part thereof is located.
The official name of any district created under the
provisions of this article may contain the name or names of
any city, incorporated town or other municipal corporation
included therein or the name of any county or counties in
which it is located.

§16-13A-5. General manager of board.

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

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

The board of any public service district which purchases
water or sewer service from a municipal water or sewer
system or another public service district may, as an
alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service.

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

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than five thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American-made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for
furnishing the district with electrical energy or power shall 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 and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given
notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules and regulations promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district may covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers shall have the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules, regulations and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the department of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will
flow by gravity or be transported by such other methods
approved by the department of health including, but not
limited to, vacuum and pressure systems, approved under
the provisions of section nine, article one, chapter sixteen of
this code, from such houses, dwellings or buildings into
such sewer facilities, to connect with and use such sewer
facilities, and to cease the use of all other means for the
collection, treatment and disposal of sewage and waste
matters from such houses, dwellings and buildings where
there is such gravity flow or transportation by such other
methods approved by the department of health including,
but not limited to, vacuum and pressure systems, approved
under the provisions of section nine, article one, chapter
sixteen of this code, and such houses, dwellings and
buildings can be adequately served by the sewer facilities of
the district, and it is hereby found, determined and declared
that the mandatory use of such sewer facilities provided for
in this paragraph is necessary and essential for the health
and welfare of the inhabitants and residents of such
districts and of the state: Provided, That if the public
service district determines that the property owner must
connect with the sewer facilities even when sewage from
such dwellings may not flow to the main line by gravity and
the property owner must incur costs for any changes in the
existing dwellings' exterior plumbing in order to connect to
the main sewer line, the public service district board shall
authorize the district to pay all reasonable costs for such
changes in the exterior plumbing, including, but not limited
to, installation, operation, maintenance and purchase of a
pump, or any other method approved by the department of
health; maintenance and operation costs for such extra
installation should be reflected in the users charge for
approval of the public service commission. The circuit court
shall adjudicate the merits of such petition by summary
hearing to be held not later than thirty days after service of
petition to the appropriate owners, tenants or occupants.
Whenever any district has made available sewer facilities
to any owner, tenant or occupant of any house, dwelling or
building located near such sewer facility, and the engineer
for the district has certified that such sewer facilities are
available to and are adequate to serve such owner, tenant or
occupant, and sewage will flow by gravity or be transported
by such other methods approved by the department of
health from such house, dwelling or building into such
sewer facilities, the district may charge, and such owner,
tenant or occupant shall pay the rates and charges for
services established under this article only after thirty-day
notice of the availability of the facilities has been received
by the owner.

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

Anything in this section to the contrary notwithstanding,
any establishment, as defined in section two, article five-a,
chapter twenty, now or hereafter operating its own sewage
disposal system pursuant to a permit issued by the
department of natural resources, as prescribed by section
seven, article five-a, chapter twenty of this code, is exempt
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
its books, records and accounts audited annually by an
independent certified public accountant as a result of any
covenant in any board resolution or bond instrument, a
copy of such audit may be submitted in satisfaction of the
requirements of this section, and is hereby found, declared
and determined to be sufficient to satisfy the requirements
of article nine, chapter six of this code pertaining to the
annual audit report by the state tax commission. A copy of
the audit shall be forwarded within thirty days of
submission to the county commission and to the public
service commission.

The treasurer of each public service district shall keep
and preserve all financial records of the public service
district for ten years, and shall at all times have such
records readily available for public inspection. At the end of
his term of office, the treasurer of each public service
district shall promptly deliver all financial records of the
public service district to his successor in office. Any
treasurer of a public service district who knowingly or
willfully violates any provision of this section is guilty of a
misdemeanor, and shall be fined not less than one hundred
dollars nor more than five hundred dollars or imprisoned in
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.

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

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

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

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

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

Notwithstanding any other provisions of this article to
the contrary, a public service district shall not borrow
money, enter into contracts for the provision of engineering,
design or feasibility studies, issue or contract to issue
revenue bonds or exercise any of the powers conferred by
the provisions of sections thirteen, twenty or twenty-four of
this article, without the prior consent and approval of the
public service commission. Unless the properties to be
constructed or acquired represent ordinary extensions or
repairs of existing systems in the usual course of business, a
public service district must first obtain a certificate of
public convenience and necessity from the public service
commission in accordance with the provisions of chapter
twenty-four of this code, when a public service district is
seeking to acquire or construct public service property.

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

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

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

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

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

(e) The date that the formal application for a certificate
of public convenience and necessity is to be filed with the
public service commission. The public service commission
may grant its consent and approval for the certificate, or
any other request for approval under this section, subject to
such terms and conditions as may be necessary for the
protection of the public interest, pursuant to the provisions
of chapter twenty-four of this code, or may withhold such
consent and approval for the protection of the public
interest.
In the event of disapproval, the reasons therefor shall be 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, create a division within its staff which shall provide legal, engineering, financial and accounting advice and assistance to public service districts in operational, financial and regulatory matters, and may perform or participate in the studies required under section one-b, 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.

Todd C. Sulli  
Clerk of the Senate

Donald J. Kopp  
Clerk of the House of Delegates

Sam Tucker  
President of the Senate

Joseph P. Alsheimer  
Speaker House of Delegates

The within ......................this the 26th day of March, 1986.

M. M. Shreve Jr.  
Governor