

No. 1439

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

— ● —

ENROLLED

HOUSE BILL No. 1439

(By ~~Mr.~~ Delegate Smith + Delegate Phillips

— ● —

Passed March 8, 1986

In Effect from Passage

ENROLLED
H. B. 1439

(By DELEGATE SMITH AND DELEGATE PHILLIPS)

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

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

Be it enacted by the Legislature of West Virginia:

That sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i, and thirteen-j, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed;

and that sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen of said article six be amended and reenacted, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

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

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

34 (b) The words "owner or operator," as applied herein
35 to railroad companies, shall include every railroad

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

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

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

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

§11-6-3. Same—Toll bridges.

1 In the case of any bridge upon which a separate toll
2 or fare is charged, such return shall show: (a) The
3 location of the same; (b) for what used; and, if used by
4 a railroad, what railroad uses it; (c) the length of such

5 bridge; and, if used by a railroad, the number of tracks
6 on it; (d) all other property owned by such owner or
7 operator and used in connection with such bridge; (e) the
8 capital actually invested; the amount of capital stock
9 authorized and issued, the par value and the market
10 value of the shares into which the capital stock is
11 divided, and the amount of dividends declared on the
12 capital stock within the twelve months preceding the
13 first day of the current assessment year; the total
14 amount of bonded indebtedness and of indebtedness not
15 bonded; gross earnings for the year from all sources; (f)
16 gross expenditures for the year, giving a detailed
17 statement thereof under each class or head of expendi-
18 tures; (g) any other information requested by the board
19 of public works which the board deems may be of use
20 to it in determining the actual value of such bridge or
21 bridges.

§11-6-4. Same—Car line companies.

1 In the case of car lines used for the transportation or
2 accommodation of passengers or freight by owners or
3 operators, other than railroad companies making their
4 return under this law, such return shall show for every
5 such owner or operator: (a) All cars and other rolling
6 stock, giving a detailed statement of the number of cars,
7 including passenger, mail, express, baggage, freight,
8 sleeping, dining, parlor, refrigerator, stock or other cars
9 of every description, and the true and actual value of
10 all such cars used wholly or in part in this state,
11 distinguishing between those used wholly in this state
12 and those used partly within and partly without the
13 state, and the true and actual value of those used wholly
14 within the state and those used partly within and partly
15 without the state, and the proportional value of such
16 cars used partly within and partly without the state,
17 according to the time used and the number of miles run
18 by such cars in and out of the state, the railroad over
19 which they were run, and the proportional value in each
20 county within this state within which such cars were
21 run; but in any case where it may appear to the board
22 of public works that from the nature of the employment
23 of such cars, or otherwise, it is not practicable to show

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

§11-6-5. Same—Pipeline companies.

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

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

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

1 In the case of a telegraph or telephone line, such
2 report shall show for every such owner or operator: (a)
3 The number of miles of lines owned, leased or operated
4 within this state, the gauge of the wire, the number of
5 strands of wire, the material of which it is made, and,
6 as accurately as may be, the time when the line or any
7 material part thereof was constructed or last replaced;
8 (b) if such lines be partly within and partly without the
9 state, the whole number of miles thereof within this

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

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

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

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

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

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

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

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

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

23 (e) The tax commissioner shall arrange, collate and
24 tabulate such returns and all pertinent information and
25 data contained therein, such further evidence or
26 information as may be required by the tax commissioner
27 of such owner or operator, and all other pertinent
28 evidence, information and data he has been able to
29 procure, upon suitable work sheets, so that they may be
30 conveniently considered, and shall on or before the
31 fifteenth day of September, lay such returns and work
32 sheets, together with his recommendations in the form
33 of a tentative assessment of the property of each such

34 owner or operator, before the board of public works.
 35 And as soon as the tax commissioner has completed the
 36 preparation of such work sheets and tentative assess-
 37 ments, he shall notify the owner or operator affected
 38 thereby of the amount of such tentative assessment by
 39 written notice deposited in the United States post office,
 40 addressed to such owner or operator at the principal
 41 office or place of business of such owner or operator, and
 42 the tax commissioner shall retain in his office true
 43 copies of such work sheets which shall be available for
 44 inspection by any such owner or operator or his duly
 45 authorized representative.

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

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

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

1 Upon the fifteenth day after giving the notices
 2 required by section nine of this article, or as soon
 3 thereafter as reasonably convenient but not later than
 4 the first day of October, the board of public works shall
 5 proceed to assess and fix the true and actual value of
 6 all property of such owner or operator hereinbefore
 7 required to be returned, in each county through which
 8 the railroad, car line, cars, express, telegraph, tele-
 9 phone, or pipeline of such owner or operator runs, and
 10 in which any property to be assessed is located. In
 11 ascertaining such value the board shall consider the
 12 return, if any, made by the owner or operator, and any
 13 return which may have been previously made by such
 14 owner or operator, the work sheets and tentative
 15 assessment recommended by the tax commissioner, such

16 evidence or information as may be offered by such
17 owner or operator, such further evidence or information
18 as may be required by the board of such owner or
19 operator, and any other pertinent evidence, information
20 and data. Any and all evidence, information and data,
21 at a regular meeting of the board held for such purpose
22 at least fifteen days after giving the notice required by
23 section nine of this article. Before any assessment shall
24 be made by the board, any and all evidence, information
25 and data considered by the board shall be available for
26 inspection by any such owner or operator or his duly
27 authorized representative, and an opportunity given to
28 be heard thereon when the board of public works has
29 assessed any property hereby required to be returned,
30 and has determined the valuation thereof, such assess-
31 ment and valuation shall be entered of record in the
32 book of minutes of its proceedings, and shall be certified
33 by the secretary of the board to the auditor.

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

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

1 Any owner or operator claiming to be aggrieved by
2 any such decision may, within the time aforesaid, apply
3 by petition in writing, duly verified, to the circuit court
4 of the county in which the property so assessed is
5 situated, or if such property be situated in more than
6 one county then in the county in which the largest

7 assessment of such owner or operator was made in the
8 next preceding year, for an appeal from the assessment
9 and valuation so made of all such property, and
10 jurisdiction is hereby conferred upon and declared to
11 exist in the court, in which such application is filed, to
12 grant, docket and hear such appeal; and such appeal, as
13 to all of the property so assessed, as well as that situated
14 in the county of the court so applied to, as that situated
15 in the several other counties, shall forthwith be allowed
16 by such court so applied to, and be heard by such court
17 as to all of such property as soon as possible after the
18 appeal is docketed, but notice in writing of such petition
19 shall be given to the secretary of state, as secretary of
20 the board of public works, by mailing a copy of the
21 petition for an appeal filed as aforesaid, which said
22 petition shall recite the fact that copies of such petition
23 have been sent by registered mail. Notice in writing of
24 the hearing upon such petition shall be given to the state
25 tax commissioner at least fifteen days beforehand.
26 Likewise, the state tax commissioner may, by giving
27 notice in writing at least fifteen days beforehand to the
28 petitioner, bring on such appeal for hearing. Upon such
29 hearing the court shall hear all such legal evidence as
30 shall be offered on behalf of the state or any other
31 county, district or municipal corporation interested, or
32 on behalf of the appealing owner or operator. If the
33 court be satisfied that the value so fixed by the board
34 of public works is correct, it shall confirm the same, but
35 if it be satisfied that the value so fixed by the board is
36 either too high or too low, the court shall correct the
37 valuation so made and shall ascertain and fix the true
38 and actual value of such property according to the facts
39 proved, and shall certify such value to the auditor and
40 to the secretary of the board of public works. The state
41 or the owner or operator may appeal to the supreme
42 court of appeals if the assessed value of the property be
43 fifty thousand dollars or more.

44 If the court to which an application for appeal would
45 properly be made as aforesaid shall not be in session,
46 the judge thereof in vacation shall forthwith allow the
47 appeal, and if the judge thereof be disqualified or for
48 any reason not be available, the filing of the aforesaid

49 petition in the office of the clerk of the circuit court of
50 the county in which the largest assessment of such
51 owner or operator was made in the preceding year,
52 within the time of aforesaid, shall constitute sufficient
53 compliance with this section, and the appeal shall
54 thereafter be proceeded with as otherwise provided in
55 this section.

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

1 In case the list and valuation of the property filed with
2 the tax commissioner be satisfactory to the board of
3 public works, or upon assessment of the property of such
4 owner or operator being made by the board of public
5 works, the auditor shall immediately apportion to each
6 county, in which any part of such property is situated,
7 the value of the property therein of every such owner
8 or operator as valued or assessed hereunder and the
9 relative value of such operating property within each
10 county compared to the value of the total operating
11 property within the state, to be determined upon such
12 factors as the auditor shall deem proper; and further
13 shall apportion such values among the several districts,
14 being school districts, and a proportional valuation to
15 each municipality therein, in which any part of such
16 property is situated, according to the value thereof, as
17 near as may be, and forthwith shall certify to the county
18 commission of such county the values so apportioned.
19 The clerk of the county commission shall forthwith
20 certify such values to the school district and to the
21 several municipalities, respectively, in such county.

22 Inasmuch as there was litigation challenging the long
23 term apportionment method consistently used by the
24 state auditor under the provisions of this section by
25 which distribution was made of the ad valorem tax
26 values of the operable properties and assets of public
27 service businesses attributable to more than one county,
28 and with the Legislature subsequently approving,
29 codifying and ordering the continuance of such method
30 of apportionment; and inasmuch as the Legislature
31 having changed such apportionment method and having
32 vested the authority to accomplish such and to issue

33 assessments under this article through actions of the
34 state tax commissioner rather than assessment by the
35 board of public works and apportionment by the state
36 auditor, pursuant to chapter one hundred fifty-nine, acts
37 of the Legislature, regular session, one thousand nine
38 hundred eighty-five; and in light of the Legislature
39 being unaware of the dramatic shifting of valuations
40 among counties as a result of application or use of such
41 new apportionment method and thus desiring to return
42 to the former method of apportionment and that the
43 same be performed by the state auditor, as formerly and
44 that final assessment activity, as such, and hearings in
45 respect thereof be performed by the board of public
46 works, as formerly; therefore, the Legislature finds and
47 determines that apportionment and distribution of ad
48 valorem tax valuations hereunder should and are to be
49 performed by the state auditor promptly and for current
50 periods and on the basis of the above-mentioned long-
51 term apportionment method used consistently by the
52 state auditor and with the valuations as determined by
53 the application of such apportionment method to be
54 certified forthwith to the county commissions. Specifi-
55 cally, as to the true and actual values of the property
56 of public service businesses reported on their tax
57 returns required to be filed by the first day of May, one
58 thousand nine hundred eighty-five and as thereafter
59 determined by tentative assessment and final assess-
60 ment by the tax commissioner or by court decision for
61 tax fiscal year one thousand nine hundred eighty-six, the
62 state auditor shall, by the first day of March, one
63 thousand nine hundred eighty-six, or as soon as may be
64 practicable, apportion and distribute such values, as
65 required, to the respective levying bodies and on the
66 basis of his using the long-term, consistent apportion-
67 ment method of his office as long engaged in the applied
68 under the provisions of this section and article.

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

1 As soon as possible after the valuation of the property
2 of such owner or operator is fixed by the board of public
3 works or by the circuit court on appeal as aforesaid, and

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

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

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

Floyd Tull
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

Gold C. Hicks
.....
Clerk of the Senate

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

Sam Tankard
.....
President of the Senate

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

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

Hubert H. Parson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/86

Time 2:52 p.m.

PROCEEDINGS

1986 MAR 23 PM 9 57

OFFICE OF THE
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86