

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



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
Com. Sub. for
HOUSE BILL No. 4583

(By Delegate *Mr. Speaker, Mr. Chambers,*
and Delegate Preece)



Passed *March 5,* 1992

In Effect *July 1, 1992* ~~Passage~~

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WEST VIRGINIA
LEGISLATURE

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COMMITTEE SUBSTITUTE
FOR
H. B. 4583
(By MR. SPEAKER, MR. CHAMBERS AND DELEGATE PREECE)

[Passed March 5, 1992; in effect July 1, 1992.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-b, relating to the West Virginia Community Improvement Act; providing definitions; authorizing counties and municipalities to create assessment districts and providing other powers with respect to flood relief, wastewater and water projects; requiring determination of necessity and economic feasibility of creating an assessment district and constructing a project therein, and notice to public, prior to creation of assessment district, and requiring public hearing with respect thereto; requiring petition of property owners prior to creation of assessment district and establishing minimum number of property owners who must sign petition with respect to each type of project in order for assessment district to be created; requiring that owners of property to be affected by certain flood relief projects be provided at least thirty days to elect not to have the project undertaken with respect to their property; providing that assessment districts be public corporations and setting forth powers thereof; providing for creation of community improvement boards to administer assessment districts and setting forth

powers, duties and authority thereof; providing for appointment of board and organization thereof; setting forth procedures for construction of projects; providing for levying of assessments and requiring notice to affected property owners and other procedures relating thereto; providing that assessment district may levy assessments on property improved or protected by a project and establishing procedures for determining the amount of assessments and the apportionment thereof; allowing assessments of public and charitable institutions; providing methods of paying for the costs of a project; providing for issuance of assessment certificates and payment of assessments, and creation of liens on property improved or protected by a project and that lien will be prior to all other liens except tax liens and other preexisting, special assessment liens; requiring designation of registrar for assessment certificates; requiring payment of assessment fees to sheriff of county in which assessment district located; providing that state, counties and municipalities not liable for debt of assessment district or for payment of any assessment fees, and that assessment district not liable for payment of any assessment fees; providing for reassessments and addition of territory to assessment districts; addressing operation and maintenance of wastewater and water projects and requiring, upon payment of all assessment fees applicable to such a project, that assessment district transfer its right, title and interest in the project to utility or governmental agency operating same; and requiring liberal construction of article.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-b, to read as follows:

§16-13B-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Community Improvement Act."

§16-13B-2. Definitions.

1 For purposes of this article:

2 (a) "Assessment certificate" means a certificate issued
3 by a board pursuant to section fifteen of this article to
4 evidence an assessment levied against property abutting
5 a wastewater or water project, or on which a flood relief
6 project is completed or protects.

7 (b) "Assessment district" means a community im-
8 provement assessment district created by a governing
9 body pursuant to section eight of this article.

10 (c) "Assessment fee" means the fee paid by a person
11 or governmental agency owning property located within
12 an assessment district, based on the assessment levied
13 against the property pursuant to section ten of this
14 article, to pay for the cost of a project abutting,
15 constructed upon or protecting such property.

16 (d) "Board" means the community improvement
17 board of each assessment district provided under section
18 eight of this article.

19 (e) "Code" means the code of West Virginia, one
20 thousand nine hundred thirty-one, as amended.

21 (f) "Cost" means, as applied to each wastewater, water
22 or flood relief project financed, in whole or in part, with
23 the proceeds from assessment certificates, all costs and
24 expenses incurred by a county or municipality, and the
25 respective assessment districts created under this
26 article, that are reasonable and necessary for the
27 planning, development, construction and carrying out of
28 all works and undertakings necessary or incident to the
29 completion of a project, including, without limitation,
30 the cost and expense of all labor, work, supervision,
31 inspection, equipment leased and materials furnished
32 and used in completing the project, any interest charged
33 on funds borrowed to finance the construction of a
34 project, advertising expenses, and any engineering,
35 legal, surveying, accounting or other professional fees
36 incurred in connection with or otherwise relating to a
37 project.

38 (g) "Flood relief project" means a project involving
39 one or more of the following activities: (1) The moving,

40 removing, renovating, relocation or demolition of, or any
41 other actions taken to provide protection from flooding
42 to, one or more buildings, structures and other perman-
43 ent improvements located on property owned by any
44 person, which the governing body of the county or
45 municipality in which the project is completed, or any
46 other governmental agency, has determined is within an
47 area threatened by flooding; or (2) the acquisition of
48 property which is located outside of an area threatened
49 by flooding to serve as a site on which one or more
50 buildings, structures and other permanent improve-
51 ments which are located within an area that is threat-
52 ened by flooding may be relocated, or on which new
53 buildings, structures and other permanent improve-
54 ments may be constructed, and the construction of such
55 new buildings, structures and improvements if relocat-
56 ing existing buildings, structures and improvements is
57 not feasible; or (3) the construction of levies or stream
58 channel improvements to provide flood protection to
59 specifically identified lots or parcels of land located
60 within an area which a governing body or other
61 governmental agency has determined is threatened by
62 flooding, all so as to protect the health and safety of
63 persons residing or engaged in business on such
64 threatened property and to eliminate or minimize the
65 risk of damage caused by flooding to such buildings,
66 structures and permanent improvements.

67 (h) "Governing body" means, in the case of a county,
68 the county commission, and in the case of a municipal-
69 ity, the mayor and council together, the council, the
70 board of directors or other board or body of any
71 municipality, by whatever name called, as the case may
72 be, charged with the responsibility of enacting ordinan-
73 ces and determining the public policy of such
74 municipality.

75 (i) "Governmental agency" means the state govern-
76 ment or any agency, department, division or unit
77 thereof; counties; municipalities; any watershed im-
78 provement districts, soil conservation districts, sanitary
79 districts, public service districts, drainage districts,
80 urban renewal authorities or regional governmental

81 authorities established pursuant to this code and any
82 other governmental agency, entity, political subdivision,
83 public corporation or agency having the authority to
84 acquire, construct, maintain or operate wastewater
85 water facilities; the United States government or any
86 agency, department, division or unit thereof; and any
87 agency, commission or authority established pursuant to
88 an interstate compact or agreement.

89 (j) "Municipality" means a municipality as defined in
90 section two, article one, chapter eight of this code.

91 (k) "Person" means an individual, firm, partnership,
92 corporation, voluntary association or any other type of
93 entity.

94 (l) "Project" means a flood relief project, wastewater
95 project, water project or any combination thereof.

96 (m) "Public way" means any street, alley, right-of-
97 way, easement or other interest in real estate, or any
98 portion or combination thereof, along or across which a
99 wastewater or water project is constructed.

100 (n) "Public service commission" means the public
101 service commission established under article one,
102 chapter twenty-four of this code.

103 (o) "Recorder" means the recorder, clerk or other
104 municipal officer, by whatever name called, charged
105 with the responsibility of keeping the journal of the
106 proceedings of the governing body of the municipality
107 and other municipal records.

108 (p) "Utility" means a public utility as defined in
109 article one, chapter twenty-four of this code.

110 (q) "Wastewater project" means the planning, acqui-
111 sition, construction, improvement or extension of new or
112 existing sewer lines, pumps and related equipment and
113 facilities, and any land, public ways or other interests
114 in real estate, whether located within or outside of an
115 assessment district, necessary or incident to the trans-
116 portation of sewage, industrial wastes or other wastes,
117 wastewater, and the residue thereof, from property
118 located within an assessment district to a wastewater

119 facility located within or outside of an assessment
120 district.

121 (r) "Wastewater facility" means all facilities used for
122 or in connection with treating, neutralizing, disposing
123 of, stabilizing, cooling, segregating or holding waste-
124 water, including, without limitation, facilities for the
125 treatment and disposal of sewage, industrial wastes or
126 other wastes, wastewater, and the residue thereof,
127 facilities for the temporary or permanent impoundment
128 of wastewater, both surface and underground; and
129 sanitary sewers or other collection systems, whether on
130 the surface or underground, designed to transport
131 wastewater together with the equipment and furnish-
132 ings thereof and their appurtenances and systems,
133 whether on the surface or underground including force
134 mains and pumping facilities therefor.

135 (s) "Water project" means the planning, acquisition,
136 construction, improvement or extension of water lines,
137 pumps and related equipment and facilities, and any
138 land, public ways or other interests in real estate,
139 whether located within or outside of an assessment
140 district, necessary or incident to the transportation and
141 distribution of water from a water facility located
142 within or outside of an assessment district to property
143 located within an assessment district, all for the purpose
144 of providing potable, sanitary water suitable for human
145 consumption and use.

146 (t) "Water facility" means all facilities, land and
147 equipment used for or in connection with the collection
148 of water, both surface and underground, transportation
149 of water, treatment of water and distribution of water
150 all for the purpose of providing potable, sanitary water
151 suitable for human consumption and use.

**§16-13B-3. Power and authority of counties and munic-
ipalities relating to flood relief, wastewater
and water projects.**

1 (a) Every county and municipality is hereby empow-
2 ered and authorized, in addition to any other rights,
3 powers and authority conferred upon it elsewhere in this
4 code, to:

5 (1) Create, modify and expand assessment districts in
6 the manner hereinafter set forth in such county or
7 municipality, and to develop, construct, extend or
8 improve, or assist in the development, construction,
9 extension or improvement of, a project located in such
10 county or municipality;

11 (2) Acquire, by purchase, lease, right of eminent
12 domain, gift or otherwise, such lands, public ways and
13 other interests in real estate, or any other property, as
14 may be necessary or incident to the completion of a
15 project, and to convey such real estate and other
16 property to an assessment district;

17 (3) Appoint the members of the community improve-
18 ment board for each assessment district created by it
19 hereunder;

20 (4) Enter into agreements with any person or govern-
21 mental agency necessary or incident to the development,
22 planning, construction or improvement of a project, or
23 for the operation, maintenance or disposition of a project
24 or for any other services required by a project;

25 (5) Expend funds to acquire, or construct part of a
26 project on, property located outside of an assessment
27 district but within the boundaries of such county or
28 municipality, as the case may be, and for any work
29 undertaken thereon, as may be necessary or incident to
30 the completion of a project;

31 (6) Enter into agreements with one or more counties
32 or municipalities to plan, develop, construct or improve
33 a project jointly;

34 (7) Merge two or more assessment districts into one
35 assessment district: *Provided*, That all such districts are
36 located within the boundaries of the county or munici-
37 pality, as the case may be; and

38 (8) Take any and all other actions consistent with the
39 purpose of this article and not in violation of the
40 constitution of this state, as may be necessary or incident
41 to the construction and completion of a project.

42 (b) Unless agreed to by a municipality, the power and

43 authority hereby conferred on a county shall not extend
44 into territory within the boundaries of any municipality:
45 *Provided*, That notwithstanding any provision in this
46 code to the contrary, the power and authority hereby
47 conferred on counties may extend within the territory
48 of a public service district created under section two,
49 article thirteen-a of this chapter.

**§16-13B-4. Determination of need and feasibility of
creating an assessment district.**

1 (a) The governing body of any county or municipality,
2 on its own motion or upon the receipt of a petition signed
3 by at least twenty-five percent of the total number of
4 persons owning property located within the boundaries
5 of an area described in the petition, by metes and
6 bounds or otherwise in a manner sufficient to describe
7 the area, and which requests that the area be constituted
8 as an assessment district in accordance with this article,
9 may authorize and cause at any time, or from time to
10 time, a study to be prepared to determine the necessity
11 and economic feasibility of creating an assessment
12 district for such area and of developing, constructing,
13 extending or improving a project within such proposed
14 assessment district. All such studies shall be prepared
15 or reviewed under the supervision of a professional
16 engineer or such other person or governmental agency
17 charged by the governing body to prepare or review the
18 study. The study shall describe the boundaries of the
19 proposed assessment district and the nature of the
20 project proposed therefore; list the names and address
21 of all owner of property located within the proposed
22 assessment district; set forth the necessity and economic
23 feasibility of the project and the findings in support of
24 such determinations; and also include plans, drawings
25 and specifications with respect to the project, an
26 estimate of the cost of the project and the amount of the
27 assessments required to be levied against each lot or
28 parcel of land located within the assessment district to
29 pay for the cost of the project. The estimate shall specify
30 the interest rate used in the calculation of the assess-
31 ments and such other data as may be necessary for
32 owners of property within the proposed assessment

33 district to estimate the proportionate part of the cost of
34 the project that may be assessed against their property.

35 (b) In the case of an assessment district created, in
36 whole or in part, to construct a wastewater or water
37 project, the study shall also identify the utility or
38 governmental agency operating the wastewater or water
39 facility, as the case may be, which would serve the
40 assessment district upon completion of the project, and
41 confirm that such wastewater or water facility has the
42 capacity to serve the proposed project.

43 (c) In the case of an assessment district created, in
44 whole or in part, to construct a flood relief project as
45 defined in subparagraph (1) or (2), subsection (g), section
46 two of this article, the study shall also set forth the
47 minimum number of property owners who must elect to
48 have the cost of the proposed project assessed against
49 their property for the project to be economically
50 feasible, and an estimate of the assessments which may
51 be levied against the property owned by such persons
52 if only the minimum number of property owners elect
53 to have the project completed.

54 (d) After reviewing the study prepared pursuant to
55 this section and considering alternative methods of
56 financing the proposed project, the governing body may
57 by order or ordinance determine the necessity and
58 economic feasibility of creating an assessment district
59 and developing, constructing, improving or extending a
60 project therein. If the governing body determines that
61 the creation of an assessment district and construction
62 of the project is necessary and economically feasible, it
63 shall set a date for the public meeting required under
64 section five of this article and shall cause the study to
65 be filed with the clerk of the county commission or the
66 recorder of the municipality, as the case may be, and
67 with the executive secretary of the public service
68 commission, and made available for inspection by
69 interested persons before the hearing.

70 (e) In determining the necessity and economic feasi-
71 bility of an assessment district and the construction of
72 a project, the governing body may rely, in whole or in

73 part, on studies or reports prepared by or for any other
74 governmental agency.

**§16-13B-5. Notice to property owners before creation of
assessment district and construction of
project; form of notice; affidavit of
publication.**

1 (a) Before the adoption or enactment of an order or
2 ordinance creating an assessment district, the governing
3 body shall cause notice to be given to the owners of
4 property abutting a proposed wastewater or water
5 project, or to the owners of property to be protected by
6 a proposed flood relief project, that such ordinance or
7 order will be considered for adoption or enactment, as
8 the case may be, at a public meeting of the governing
9 body at a date, time and place named in the notice and
10 that all persons at that meeting, or any adjournment
11 thereof, shall be given an opportunity to protest or be
12 heard concerning the adoption, enactment or rejection
13 of the order or ordinance. At or after the meeting the
14 governing body may amend, revise or otherwise modify
15 the plans, drawings and specifications for the assess-
16 ment district and project as it may deem appropriate
17 after taking into account any comments received at such
18 meeting.

19 (b) The notice required in this section shall be
20 published at least thirty days prior to the date of the
21 meeting as a Class II-O legal advertisement in com-
22 pliance with the provisions of article three, chapter fifty-
23 nine of this code, and the publication area for such
24 publication shall be the county or municipality in which
25 the proposed assessment district is located. The notice
26 shall be in the form of, or substantially in the form of,
27 the following notice:

28 "NOTICE TO ALL PERSONS OWNING PROP-
29 ERTY LOCATED WITHIN _____ (here
30 describe the boundaries of the proposed assessment
31 district) IN THE _____ (county or
32 municipality) OF _____ (name of county
33 or municipality):

34 A proposal has been made to the _____

35 (county commission, city council or other governing
 36 body) of the _____ (county or municipal-
 37 ity) of _____ (name of county or munic-
 38 ipality) to establish a community improvement assess-
 39 ment district under chapter sixteen, article thirteen-b of
 40 the code of West Virginia to permanently improve
 41 _____ (here describe the portion of the
 42 public ways both within and outside of the proposed
 43 assessment district to be improved, in the case of
 44 wastewater or water project, or the lots or parcels of
 45 land which may be protected, in the case of a flood relief
 46 project) in _____ (name of county or
 47 municipality) by _____ (here provide
 48 general description of the project) as the
 49 _____ (county commission, city council or
 50 other governing body) may deem proper, and to assess
 51 the total cost (or, if the assessments are only necessary
 52 to pay for part of the total cost, the approximate
 53 percentage of the total cost) of such improvement on
 54 _____ (in the case of a wastewater or
 55 water project, the property abutting said portion of the
 56 public ways within the proposed assessment district, or,
 57 in the case of a flood relief project, the lots or parcels
 58 of land on which the project may be constructed or may
 59 protect).

60 The proposal to create an assessment district and to
 61 make such improvements, and the plans, drawings,
 62 specifications and estimates therefor, will be considered
 63 by the _____ (county commission, city
 64 council or other governing body) at a public meeting to
 65 be held on the _____ day of
 66 _____, _____, at ____m.
 67 at _____. Any owner of property who may
 68 be affected by the creation of the above-described
 69 assessment district, and any person whose property is
 70 not located within said assessment district but wishes
 71 his property to be included, will be given an opportunity
 72 to protest or be heard at said meeting or any adjourn-
 73 ment thereof:

74 _____ (name of clerk or recorder)

75 _____ (official position)."

76 (c) An affidavit of publication of the notice made by
77 the newspaper publisher, or a person authorized to do
78 so on behalf of such publisher, and a copy of the notice
79 shall be made part of the minutes of the governing body
80 and spread on its records of the meeting described in
81 the notice. The service of said notice upon all persons
82 owning any interest in any property located within the
83 proposed assessment district shall conclusively be
84 deemed to have been given upon the completion of such
85 newspaper publication.

**§16-13B-6. Petition of property owners for creation of
assessment district.**

1 (a) After the meeting described in section five of this
2 article, and before the governing body may adopt or
3 enact an order or ordinance creating an assessment
4 district, the governing body shall receive, within ninety
5 days after the meeting, a petition in writing of (1)
6 persons owning, in the case of a wastewater or water
7 project, or both, not less than sixty percent of the
8 frontage of the lots abutting on both sides of that portion
9 of the public way located within the proposed assess-
10 ment district on which the wastewater or water project
11 or any part thereof may be constructed; (2) in the case
12 of a flood relief project as defined in subparagraph (1)
13 or (2), subsection (g), section three of this article, such
14 percentage of property owners as the governing body
15 shall have previously determined is necessary for such
16 project to be economically feasible; or (3) in the case of
17 a flood relief project as defined in subparagraph (3),
18 subsection (g), section two of this article, persons owning
19 not less than sixty percent of the lots which may receive
20 flood relief protection from such a project, in each case
21 requesting the creation of the assessment district and
22 the completion of the project according to the plans,
23 drawings and specifications submitted at the meeting,
24 and agreeing to have their property assessed with the
25 total cost of the project (or, if the governing body has
26 previously determined that the assessments are only
27 necessary to pay for part of the total cost, agreeing to
28 have their property assessed with that part of the cost).
29 The governing body may prescribe the form of the

30 petition as it may deem appropriate, and the petition
31 shall be held at all times in the office of the county clerk
32 or the recorder, as the case may be, and shall be open
33 to the public for inspection and execution during the
34 normal business hours of such office.

35 (b) Upon receipt of the petition required under
36 subdivision (2), subsection (a) of this section, and before
37 the governing body may adopt or enact an order or
38 ordinance creating an assessment district, the governing
39 body shall establish, solely in the case of a proposed flood
40 relief project as defined in subparagraph (1) or (2),
41 subsection (g), section two of this article, a period which
42 may not be less than thirty days or more than sixty days,
43 during which any owner of property to be affected
44 thereby may elect not to have the project undertaken
45 with respect to his property, in which event the project
46 shall not be undertaken on such property and such
47 property shall not be subject to any assessments
48 thereafter levied or any lien created pursuant to this
49 article. Such election shall be submitted in writing to
50 the governing body prior to the expiration of the election
51 period so established.

52 (c) The governing body shall provide notice of the
53 election period required in subsection (b) of this section
54 to those persons whose property may be affected by such
55 flood relief projects and shall set forth in the notice the
56 property owner's election rights with respect thereto
57 and an estimate of the assessments which may be levied
58 against each lot or parcel of land so affected, based on
59 the number of persons who signed the petition described
60 in subsection (a) of this section, and shall also set forth
61 the minimum number of persons who must elect to have
62 the project completed to make the project economically
63 feasible and the assessments which may be levied if not
64 more than the minimum number of persons so elect. The
65 notice shall be published as a Class II-O legal advertise-
66 ment in compliance with the provisions of article three,
67 chapter fifty-nine of this code, and the publication area
68 for such publication shall be the assessment district.
69 After the expiration of the election period, if the number
70 of property owners not opting out of the flood relief

71 project is less than the minimum number of property
72 owners necessary for the project to be economically
73 feasible, the governing body may, by ordinance or order,
74 terminate any further actions concerning the proposed
75 flood relief project and assessment district.

**§16-13B-7. Receipt of petition of property owners;
ordinance or order authorizing creation
of assessment district and construction of
project.**

1 Upon receipt of the petition required under section six
2 of this article and, solely in the case of a flood relief
3 project as defined in subparagraph (1) or (2), subsection
4 (g), section two of this article, not earlier than the
5 expiration of the election period required under section
6 six of this article, the governing body, by ordinance or
7 order, may create a community improvement assess-
8 ment district and shall set forth in such ordinance or
9 order, as the case may be, the boundaries of the
10 assessment district and authorize the completion of the
11 project therein in accordance with the study described
12 in section four of this article.

**§16-13B-8. Assessment district to be a public corporation
and political subdivision; powers thereof;
community improvement boards.**

1 (a) From and after the date of the adoption or
2 enactment of the order or ordinance creating an
3 assessment district, it shall thereafter be a public
4 corporation and political subdivision of this state, but
5 without any power to levy or collect ad valorem taxes.
6 Each assessment district is hereby empowered and
7 authorized, in addition to any other rights, powers and
8 authorities conferred upon it in this article or elsewhere
9 in this code, to:

10 (1) Acquire, own and hold, in its corporate name, by
11 purchase, lease, right of eminent domain, gift or
12 otherwise, such property, both real and personal, public
13 ways and other interests in real estate, or any other
14 property, whether tangible or intangible, as may be
15 necessary or incident to the construction and completion
16 of a project;

17 (2) Construct and complete one or more projects, and
18 assess the cost of all or any portion of a project on
19 abutting property located in the assessment district, in
20 the case of a wastewater or water project, or on the
21 property protected by a flood relief project;

22 (3) Sue or be sued;

23 (4) Establish a bank account or accounts in its name;

24 (5) Enter into agreements or other transactions with
25 any person or governmental agency necessary or
26 incident to the development, planning, construction or
27 improvement of a project, or for the operation, maintenance or disposition of a project or for any other services
28 required by a project;
29

30 (6) Provide grants to any person owning property
31 abutting a wastewater or water project, or on which a
32 flood relief project is undertaken, in consideration of the
33 completion by such person of a portion of the work
34 necessary or incident to the completion of the project;

35 (7) Expend funds to acquire, or construct part of a
36 project on property located outside of an assessment
37 district, and for any work undertaken thereon, as may
38 be necessary or incident to the completion of a project;

39 (8) Enter into agreements with one or more counties,
40 municipalities or assessment districts to plan, develop,
41 construct or improve a project jointly;

42 (9) Accept appropriations, gifts, grants, bequests and
43 devises, and use or dispose of the same to carry out its
44 corporate purpose;

45 (10) Make and execute contracts, releases, assignments, compromises, and other instruments necessary or
46 convenient for the exercise of its powers, or to carry out
47 its corporate purpose;
48

49 (11) Have a seal and alter the same;

50 (12) Issue assessment certificates to carry out and
51 effectuate the purpose of this article;

52 (13) Borrow money to carry out and effectuate the
53 purpose of this article and to issue its notes as evidence

54 of any such borrowing in such principal amounts and
55 upon such terms as shall be necessary to provide
56 sufficient funds for achieving its corporate powers;

57 (14) Obtain options to acquire real property, or any
58 interest therein, by purchase, lease or otherwise, which
59 is found by the board to be suitable as a site, or part
60 of a site, for the construction of a project; and

61 (15) Take any and all other actions consistent with the
62 purpose of this article and not in violation of the
63 Constitution of this state, as may be necessary or
64 incident to the construction and completion of a project.

65 (b) The powers of each assessment district shall be
66 vested in and exercised by a community improvement
67 board which shall be composed of five members, four
68 of whom shall be appointed by the governing body of
69 the county or municipality in which the assessment
70 district is located, and one of whom shall be the sheriff
71 of the county or the treasurer of the municipality (or
72 such other person serving in an equivalent capacity if
73 there is no treasurer), as the case may be, in which the
74 assessment district is located. At least one member of
75 the board shall be a professional engineer and at least
76 three members of the board shall be residents of the
77 assessment district. No more than three members of the
78 board may be from the same political party.

79 (c) The provisions of this subsection apply to the four
80 members appointed by the governing body. They shall
81 be appointed for overlapping terms of four years each
82 and until their respective successors have been ap-
83 pointed and have qualified, except for the original
84 appointments. For the purpose of original appointments,
85 one member shall be appointed for a term of four years
86 and until his or her successor has been appointed and
87 qualified; one member shall be appointed for a term of
88 three years and until his or her successor has been
89 appointed and qualified; one member shall be appointed
90 for a term of two years and until his or her successor
91 has been appointed and qualified; and one member shall
92 be appointed for a term of one year and until his or her
93 successor has been appointed and qualified. Members

94 may be reappointed for any number of terms. Before
95 entering upon the performance of his or her duties, each
96 member shall take and subscribe to the oath required
97 by section five, article four of the constitution of this
98 state. Vacancies shall be filled by appointment by the
99 governing body of the county or municipality creating
100 the assessment district for the unexpired term of the
101 member whose office shall be vacant and such appoint-
102 ment shall be made within thirty days of the occurrence
103 of such vacancy. Any such member may be removed by
104 the governing body which appointed such member in
105 case of incompetency, neglect of duty, gross immorality
106 or malfeasance in office. Members shall not be entitled
107 to any compensation for their services.

108 (d) The board shall organize within thirty days
109 following the first appointments and annually thereafter
110 at its first meeting after the first day of January of each
111 year by selecting one of its members to serve as
112 chairman, one to serve as treasurer and one to serve as
113 secretary. The secretary shall keep a record of all
114 proceedings of the board which shall be available for
115 inspection as other public records, and the treasurer
116 shall maintain records of all financial matters relating
117 to the assessment district, which shall also be available
118 for inspection as other public records. Duplicate records
119 shall be filed with the clerk or recorder, as the case may
120 be, of the county or municipality which created the
121 assessment district and shall include the minutes of all
122 board meetings. The secretary and treasurer shall
123 perform such other duties pertaining to the affairs of the
124 assessment district as shall be prescribed by the board.

125 (e) The members of the board, and the chairman,
126 secretary and treasurer thereof, shall make available to
127 the governing body responsible for appointing the
128 board, at all times, all of its books and records
129 pertaining to the assessment district's operation,
130 finances and affairs, for inspection and audit. The board
131 shall meet at least monthly.

132 (f) A majority of the members of the board constitutes
133 a quorum and meetings shall be held at the call of the
134 chairman.

135 (g) Staff, office facilities and costs of operation of the
136 board shall be provided by the county or municipality
137 which created the assessment district.

138 (h) The chairman shall preside at all meetings of the
139 board and may vote as any other members of the board,
140 but if he should be absent from any meeting the
141 remaining members may select a temporary chairman,
142 and if the member selected as chairman resigns as such
143 or ceases for any reason to be a member of the board,
144 the board shall select one of its members as chairman
145 to serve until the next annual organizational meeting.

146 (i) The board shall by resolution determine its own
147 rules of procedure, fix the time and place of its meetings
148 and the manner in which special meetings may be
149 called. The members of the board shall not be personally
150 liable or responsible for any obligations of the assess-
151 ment district or the board but are answerable only for
152 willful misconduct in the performance of their duties.

153 (j) The official name of an assessment district created
154 under the provisions of this article may contain the
155 name of the county or municipality, as the case may be,
156 in which it is located.

157 (k) Notwithstanding any provision in this code to the
158 contrary, the power and authority hereby conferred on
159 assessment districts may extend within the territory of
160 a public service district created under section two,
161 article thirteen-a of this chapter.

§16-13B-9. Provisions for construction of a project.

1 (a) After the creation of an assessment district and
2 the appointment of the board thereof, the board shall
3 provide by resolution for the construction of the project,
4 and shall also provide in the same or subsequent
5 resolutions for the supervision of such work by a
6 professional engineer, governmental agency or any other
7 person designated by the board. The board may provide
8 for the construction of the project by one of the two
9 following methods, or any combination thereof:

10 (1) If there exists another governmental agency with
11 the experience, knowledge and authority to construct

12 the project, the board may elect to enter into a contract
 13 with such agency for the construction of all or part of
 14 the project or for any other service necessary or incident
 15 to the construction of the project, in which case such
 16 governmental agency shall be responsible for entering
 17 into contracts, subject to the board's approval, with such
 18 other persons as may be necessary or incident to the
 19 construction of the project; or

20 (2) The board may elect to enter into one or more
 21 contracts with such contractors and other persons as
 22 may be necessary or incident to the construction of the
 23 project, in which case it shall provide notice to the
 24 public and appropriate contractor associations of the
 25 general nature of the project, and shall designate in such
 26 notice the place where detailed plans, drawings and
 27 specifications of the project may be reviewed, and call
 28 for sealed proposals for construction of the project by a
 29 date not earlier than ten days after the last of such
 30 publications. Such notice shall be published as a Class
 31 II-O legal advertisement in compliance with the
 32 provisions of article three, chapter fifty-nine of this code
 33 and the publication area for such publication shall be
 34 the assessment district. All contracts for work on any
 35 project, the expense of which will exceed five hundred
 36 dollars, shall be let to the lowest responsible bidder
 37 therefor, and the board may impose such conditions as
 38 it may deem necessary upon the bidders with regard to
 39 bond and surety, guaranteeing the good faith and
 40 responsibility of such bidders, and the faithful perfor-
 41 mance of such work according to contract, or for any
 42 other purpose. The board may reject any and all bids,
 43 and if it rejects all bids notices shall be published as
 44 originally required before any other bids may be
 45 received. The board may let portions of the work
 46 necessary to complete a project under different
 47 contracts.

48 (b) The resolution described in subsection (a) of this
 49 section shall also provide for payment of the cost of the
 50 project. The board shall provide in such resolution for
 51 the payment by (1) persons owning property abutting a
 52 wastewater or water project, in the case of such a

53 project; (2) persons owning property on which a flood
54 relief project, as defined in subparagraph (1) or (2),
55 subsection (g), section two of this article, is constructed,
56 in the case of such a project; or (3) persons owning
57 property protected by a flood relief project, as defined
58 in subparagraph (3), subsection (g), section two of this
59 article, in the case of such a project, of the cost of the
60 work in equal installments payable over a period of not
61 less than five years nor more than ten years from the
62 date of assessment, with interest payable from the date
63 of assessment at such rate or rates as the board may
64 determine are necessary or appropriate, and shall fix
65 the number of installments in which the amounts
66 assessed shall be payable: *Provided*, That upon failure
67 of the owner of the property assessed to pay any
68 installment as and when due, and if such default
69 continues for sixty days after receipt of written notice
70 of the default, then at the option of the holder of the
71 assessment certificates applicable to such property, the
72 entire balance due may be declared immediately due
73 and payable and the holder of the certificates may
74 forthwith proceed to enforce the collection thereof in
75 accordance with this article. Delivery of notice of default
76 shall be deemed complete upon the delivery of such
77 notice by certified mail, return receipt requested,
78 directed to the address of the property owner in default
79 as shown on the face of the assessment certificate, or
80 such other address provided in writing to the holder of
81 the certificate subsequent to the issuance thereof.

**§16-13B-10. Notice to property owners of assessments;
hearings, correcting and laying assess-
ments; report on project completion;
permits.**

1 (a) After the execution of an agreement or agree-
2 ments for the construction of a project with another
3 governmental agency or the acceptance by the board of
4 a bid by one or more contractors as contemplated by
5 section ten of this article, but prior to the commence-
6 ment of construction, the board shall cause the engineer,
7 governmental agency or person charged by the board
8 with the supervision of the project, to prepare a report

9 describing each lot or parcel of land abutting the project
10 in the case of a wastewater or water project, or each lot
11 or parcel on which a flood relief project shall be
12 undertaken or shall protect in the case of such a project;
13 and setting forth the total cost of the project based on
14 the contract with the governmental agency, or the
15 accepted bid or bids, and all other costs incurred prior
16 to the commencement of construction, and the respective
17 amounts chargeable upon each lot or parcel of land
18 which may be assessed and the proper amount to be
19 assessed against the respective lots or parcels of land in
20 accordance with sections eleven and twelve of this
21 article, with a description of the lots and parcels of land
22 as to ownership, frontage and location. If two or more
23 different kinds of projects are involved, the report shall
24 set forth the portion of the assessment attributable to
25 each respective project. The board shall thereupon give
26 notice to the owners of property to be assessed that on
27 or after a date specified in the notice an assessment may
28 be levied against the property: *Provided*, That construc-
29 tion of a project shall not commence until the assessment
30 district has laid all assessments on the property to be
31 benefitted by the project and has issued all assessment
32 certificates necessary to evidence the assessments in
33 accordance with section fifteen of this article. The notice
34 shall state that the owner of assessed property, or other
35 interested party, may on said date appear before the
36 board to move the revision or correction of the proposed
37 assessment, and shall show the total cost of the project,
38 whether the assessments will pay for all or part of the
39 total cost of the project, and the lots or parcels of
40 property to be assessed and the respective amounts to
41 be assessed against such lots or parcels, with a descrip-
42 tion of the respective lots and parcels of land as to
43 ownership, frontage and location. The notice shall be
44 published as a Class II-O legal advertisement in
45 compliance with the provisions of article three, chapter
46 fifty-nine of the code, and the publication area for such
47 publication shall be the assessment district. On or after
48 the date so advertised, the board may revise, amend,
49 correct and verify the report and proceed by resolution
50 to lay the assessments as corrected and verified.

51 (b) Upon completion of a project, or the completion of
52 that portion of a project that provides water, wastewater
53 or flood protection benefits to the property subject to the
54 assessments, the board shall cause the engineer or
55 committee charged by the board with the supervision of
56 the project, to prepare a final report certifying the
57 completion of the project and showing the total cost of
58 the project and whether the cost is greater or less than
59 the cost originally estimated. If the total cost of the
60 project is less or greater than the cost shown in the
61 report prepared prior to construction, the board may
62 revise the assessment charged on each lot or parcel of
63 land pursuant to subsection (a) of this section to reflect
64 the total cost of the project as completed, and in so doing
65 shall, in the case of an assessment increase only, (1)
66 follow the same procedure with regard to notice and
67 providing each owner of assessed property the right to
68 appear before the board to move for the revision or
69 correction of such proposed reassessment as required for
70 the original assessment, and (2) issue such additional
71 assessment certificates as may be necessary to evidence
72 the amount by which the assessment applicable to each
73 lot or parcel of land has increased. If an assessment is
74 decreased, the board shall, by resolution and written
75 notice to the sheriff of the county in which the assess-
76 ment district is located, cause the next installment or
77 installments of assessment fees then due and payable by
78 each affected property owner to be reduced pro rata,
79 and shall provide written notice to such property owners
80 of the amount of such decrease by the deposit of such
81 notice in the United States mail, postage prepaid. In
82 such cases the board shall also transmit to the sheriff
83 an amount of funds equal to the difference between the
84 cost of the project upon which the assessments were
85 originally laid and the cost of the project as completed,
86 and the sheriff shall disburse such funds to the holders
87 of the assessment certificates issued in connection with
88 the project on a pro rata basis.

89 (c) Prior to the construction of a project, the board
90 shall obtain all permits and licenses required by law for
91 the construction and operation of the project: *Provided,*
92 That the board shall not be required to obtain a

93 certificate of public convenience from the public service
94 commission under article two, chapter twenty-four of
95 this code: *Provided, however*, That prior to the construc-
96 tion of each project, the board shall apply to the public
97 service commission for authorization enabling the
98 construction and shall submit with said application any
99 certificate required by the division of public health, any
100 certification or permit required by the division of
101 natural resources, the contract for utility service, if a
102 utility will be involved, a copy of the utility's applicable,
103 existing rate tariff, a copy of the order or ordinance
104 creating the board and a certificate of a qualified
105 professional engineer that the utility providing service
106 has the capacity to provide or treat, as the case may be.
107 The public service commission shall render its final
108 decision on any application filed under the provisions of
109 this section within (i) ninety days in the case of a project
110 serving twenty-five or fewer residential customers, or
111 (ii) one hundred twenty days in the case projects serving
112 commercial customers or more than twenty-five residen-
113 tial customers, following the submission of such appli-
114 cation and all information herein required.

**§16-13B-11. Construction of projects; assessments; corner
lots, etc.**

1 (a) Each board is hereby empowered and authorized
2 to order and cause to be constructed, within its
3 respective assessment district, any project for the
4 benefit of said assessment district or any part thereof.
5 Upon the completion of a project or any part thereof,
6 (1) the property located within the assessment district
7 abutting on a wastewater or water project or abutting
8 upon that portion of a public way within the assessment
9 district in which such wastewater or water project shall
10 be constructed, or (2) the property protected by the flood
11 relief project, may be charged by the assessment district
12 in which the project is located with all or any part of
13 the cost thereof, including the cost of such wastewater
14 or water project across public ways. No lot or parcel of
15 land abutting any portion of a project which is located
16 outside of an assessment district shall be subject to any
17 assessment unless and until the owner of such lot or

18 parcel receives any services provided by the project, in
19 which event such lot or parcel may be subject to
20 assessment under section twenty of this article.

21 (b) Assessments made with respect to wastewater or
22 water projects shall be subject to the restrictions set
23 forth in this subsection and subsection (c) of this section.
24 In case of a corner lot, or acreage which has not been
25 divided into lots, frontage which may be assessed shall
26 be measured along the longest dimension thereof
27 abutting on each public way in which a wastewater or
28 water project is constructed, but if the project is
29 constructed on two or more sides then such corner lot,
30 or acreage which has not been divided into lots, shall
31 be charged only with the side on which the project is
32 first completed unless such lot or acreage is two
33 hundred feet or more in depth measured from such first
34 side, in which event the corner lot, or acreage which has
35 not been divided into lots, shall be charged only with the
36 footage in excess of two hundred feet. Any lot, or any
37 acreage which has not been divided into lots, having a
38 depth of two hundred feet or more and abutting on two
39 or more public ways, one on the front and one in the
40 rear of said lot, or said acreage which has not been
41 divided into lots, shall be assessed on both of said public
42 ways, if a project is constructed on both such public
43 ways. Where a corner lot, or any acreage which has not
44 been divided into lots, has been assessed on both ends,
45 it shall not be assessed on the side, and where it has been
46 assessed on the side, it shall not be assessed on either
47 end.

48 (c) In case of corner lots, or any acreage which has
49 not been divided into lots, where the cost of a waste-
50 water or water project along one dimension is not
51 assessed against the owner thereof, and in the case of
52 lots, or acreage, less than two hundred feet deep
53 abutting at each end on a public way in which a project
54 is completed, the cost of the project along the dimension
55 or end not assessed against the property owner shall in
56 every case be apportioned and assessed against the other
57 property abutting on the public way within the assess-
58 ment district being improved, in the manner of appor-

tionment of the cost of improvements in intersections.

§16-13B-12. Apportionment and assessment of cost.

(a) The cost of a wastewater or water project, including the cost of all improvements at and within intersections and the cost attributable to any portion of the project located outside an assessment district, shall be apportioned to, and assessed against and borne by the properties abutting upon all public ways located within the assessment district, in or upon which the improvements involved in the project shall have been made. Each lot or parcel of land located within the assessment district so abutting shall be assessed, subject to the provisions of section eleven of this article respecting assessment for improvements of corner lots, acreage not divided into lots and lots or acreage improved on more than one side or end, with that portion of the cost of the entire project, located both within and outside the assessment district, which is represented by the proportion which the abutting frontage in feet of such lot or parcel of land bears to the total abutting frontage in feet of all the lots or parcels of land abutting on the public ways so improved within the assessment district: *Provided*, That if the character of the improvements shall be substantially different upon different public ways or portions thereof, the cost may be equitably apportioned to the respective public ways, or portions thereof, in proportion to the character and cost of the respective improvements thereon and the part of the cost so apportioned to each respective public way, or portion thereof, shall be apportioned to and assessed against the respective lots or parcels of land abutting thereupon in the proportion as hereinabove provided: *Provided, however*, That property shall be assessed only to the extent it is benefited and if there is any property abutting on the portion of the public way located within the assessment district, so improved which the board in the resolution authorizing the project has determined will not be specially benefited by the improvements, or will not be specially benefited to the full extent of the cost of the project, or for other reasons which would not be liable to assessment for any of, or for some part of,

40 the cost of the project, then the cost of such project
41 abutting such part of said public way, or so much
42 thereof as is so determined to be nonassessable, shall be
43 apportioned among, assessed against and borne by the
44 remaining property abutting upon the public ways
45 located within the assessment district, improved in
46 proportion, subject to the aforesaid provisions of section
47 eleven of this article, to the frontage of such remaining
48 abutting property as hereinabove provided: *Provided*
49 *further*, That if there be property abutting the public
50 way located in the assessment district, so improved,
51 which is owned by the United States of America, and,
52 for that reason, not legally subject to assessment, then
53 the county or municipality shall pay the proportionate
54 part of the cost of the improvement which otherwise
55 would be assessable against such federally owned
56 property.

57 (b) Solely in the case of a flood relief project as
58 defined in subparagraph (1) or (2), subsection (g), section
59 two of this article, that portion of the cost of the project
60 incurred in the preparation of the studies and reports
61 required under this article prior to the construction of
62 the project and all other costs relating to the develop-
63 ment and planning of the project and which are
64 incurred prior to the commencement of construction of
65 the project and not in the actual construction of the
66 project on or protecting one lot or parcel of land, shall
67 be apportioned equally to each lot or parcel of land
68 benefited and protected by the project, and all construc-
69 tion costs and any development costs incurred solely in
70 completing a flood relief project benefiting and protect-
71 ing a specific lot or parcel of land, shall be apportioned
72 solely to such parcel or lot.

73 (c) Solely in the case of a flood relief project as defined
74 in subparagraph (3), subsection (g), section two of this
75 article, the cost of the project shall be apportioned pro
76 rata to each lot or parcel of land benefited and protected
77 by the project on which a house, building or other
78 structure is situate, based on the ratio which the total
79 square footage of protected space in such house, building
80 or other structure bears to the total square footage of

81 space in all houses, buildings and other structures
82 located on property benefited and protected by the
83 project.

84 (d) In apportioning the cost of any project to any lot
85 or parcel of land in any circumstances not expressly
86 covered in this article, the cost shall be apportioned
87 equitably, as determined by the board, in keeping with
88 the concepts and principles expressed in this article and
89 the special benefit to the property in question from the
90 improvements made.

**§16-13B-13. Assessment against property of public,
charitable, eleemosynary, educational or
religious institutions; duty of those in
charge to cause assessments to be paid.**

1 When any of the lots or parcels of land within an
2 assessment district abutting the portion of the public
3 way improved by a wastewater or water project consist
4 of property owned or controlled by this state, any
5 municipality, county, board of education or other public
6 body, or consist of property owned by, or used for, a
7 church, or a religious, charitable, educational or
8 eleemosynary institution, for purposes not subject to
9 taxation, such property shall nevertheless be assessed
10 with its proper proportion of the cost of said improve-
11 ment, and it shall be the duty of those persons having
12 charge of the fiscal affairs of such owner or the
13 management of any such property or institution to make
14 proper arrangements for the payment of, and cause to
15 be paid, such assessments as and when due and payable.

**§16-13B-14. Method of paying for cost of project; how
assessments may be evidenced.**

1 (a) The board shall determine and provide in the
2 resolution laying the assessments, adopted in accordance
3 with section ten of this article, the method of financing
4 the cost of a project, for the cost of which assessments
5 are levied as in this article provided, and such method
6 may include the receipt of gifts, grants from any
7 governmental agency or appropriations from the county
8 or municipality in which the assessment district is
9 located, or borrowing funds from any person or govern-

10 mental agency, or any combination thereof: *Provided,*
11 That any funds borrowed by an assessment district,
12 including any interest accruing thereon, shall be repaid
13 solely from the proceeds of the assessment certificates
14 issued pursuant to section fifteen of this article and from
15 the assessments evidenced thereby.

§16-13B-15. Assessment certificates; assignments; designation of registrar for assessment certificates.

1 (a) All assessments levied under this article shall be
2 evidenced by assessment certificates issued by the
3 assessment district in accordance with this section. The
4 board may issue assessment certificates to any person
5 or governmental agency financing the cost of a project,
6 and may also issue assessment certificates in the name
7 of the assessment district, on behalf of itself or as agent
8 for any other person or governmental agency. The board
9 shall issue the assessment certificates as soon as
10 practicable after it has determined the method of
11 financing the cost of the project and laid the assessments
12 against the property, as provided in section ten of this
13 article. The assessment certificates shall evidence on
14 their face the assessments applicable to the property for
15 which each such certificate has been issued and each
16 installment of principal and interest payable, and a copy
17 of each assessment certificate shall be provided to the
18 owner of the property against which the assessment
19 evidenced by the assessment certificate has been laid.
20 Each assessment certificate shall be issued in registered
21 form and shall show on the face thereof the name and
22 address of the owner of the property to which the
23 assessment certificate applies, the name and address of
24 the person serving as the registrar for such certificate
25 in accordance with subsection (c) of this section, and the
26 name and address of the person to whom the certificate
27 is issued. Assessment certificates shall be signed by the
28 chairman and secretary of the board of the assessment
29 district issuing the certificates, shall refer to the
30 resolution laying the assessments and shall show the
31 amount and date of the assessment and describe the
32 property against which the assessment is laid, describ-

33 ing the same as to ownership, amount, frontage (solely
34 in case of a wastewater and water project) and briefly
35 as to location, and the mailing address of the owner
36 thereof. Assessment certificates shall also show the dates
37 on which principal and interest payments are due, shall
38 set forth that the payment of all such installments shall
39 be made to the sheriff of the county in which the
40 assessment district is located, as provided in section
41 seventeen of this article, and shall contain a provision
42 that in the event there is default in the payment of any
43 one of such installments and such default continues for
44 a period of sixty days after written notice of such
45 default, then all unpaid installments shall become due
46 and payable at the election of the certificate holder and
47 the holder may proceed to collect all of the unpaid
48 balances of installments, with interest until paid.

49 (b) Each assessment certificate issued under this
50 article shall be enforceable by the holder thereof, and
51 shall be assignable by endorsement and delivery of the
52 certificate and upon delivery to the registrar of the
53 assessment certificates of a written notice of such
54 assignment executed by the assignor and assignee, each
55 of whose signatures shall be duly notarized.

56 (c) Prior to the issuance of any assessment certi-
57 ficates, the board shall, by resolution, designate a
58 financial institution located in this state as the registrar
59 for such certificates, who shall maintain a complete and
60 accurate record of the names and addresses of the
61 persons or governmental agencies to whom the assess-
62 ment certificates are issued. Within ten days of the
63 issuance of an assessment certificate or any revised
64 assessment certificates in lieu thereof, the board of the
65 assessment district issuing the same shall provide to
66 such registrar a list of the names and addresses of the
67 person or governmental agency to whom the certificates
68 were issued, which shall be certified by the secretary of
69 the board. The record of certificate holders maintained
70 by the registrar shall be open to inspection by the sheriff
71 of the county in which the assessment district is located
72 and may be relied upon by the sheriff for purposes of
73 disbursing assessment fees in accordance with section

74 seventeen of this article or in otherwise determining the
75 lawful holders of the assessment certificates.

**§16-13B-16. No liability of state, county, municipality and
assessment district.**

1 Neither the state nor any county or municipality shall
2 be liable on notes or other evidences of indebtedness of
3 an assessment district or for the payment of any
4 assessment fees evidenced by any assessment certificate,
5 and such notes or other evidences of indebtedness and
6 assessment certificates shall not be a debt of the state
7 or any county or municipality, and such notes or other
8 evidences of indebtedness and assessment certificates
9 shall contain on the face thereof a statement to such
10 effect. No assessment district shall be liable for the
11 payment of any assessment fees evidenced by any
12 assessment certificates issued pursuant to this article
13 and assessment certificates shall contain on the face
14 thereof a statement to such effect.

§16-13B-17. Payment of assessment fees; releases.

1 (a) Payments of assessment fees or any installment
2 thereof shall be made to the sheriff of the county in
3 which the assessment district is located, who shall hold
4 and disburse all such fees as agent for the assessment
5 district in accordance with this section. The sheriff shall
6 promptly deposit all assessment fees upon receipt
7 thereof in a segregated account established by the
8 sheriff for such purpose and shall maintain a record of
9 the assessment fees so received. Within thirty days of
10 receipt of assessment fees from any person or govern-
11 mental agency, the sheriff shall disburse the assessment
12 fees to the holder of the assessment certificate pursuant
13 to which such assessment fees were paid, and within
14 sixty days after the receipt of all assessment fees due
15 for the calendar year in question, but in no event later
16 than the first day of October of such year, prepare and
17 deliver to the board of each assessment district located
18 in the county, a statement setting forth the aggregate
19 amount of assessment fees received for such district and
20 the name of any property owner who failed to pay the
21 assessment fees due and payable for the period in

22 question.

23 (b) On or before the thirtieth day of April of each year
24 in which assessments are owed with respect to any lot
25 or parcel of property within an assessment district
26 located in a county, the sheriff of the county shall send
27 a notice to the person owning such lot or parcel setting
28 forth the assessment fee due for such period and that
29 such assessment fee shall be due and payable on or
30 before the first day of June of such year. In preparing
31 and mailing such notices, the sheriff may rely on the
32 information contained in the records maintained by the
33 registrar of each assessment district, as provided in
34 section fifteen of this article.

35 (c) If payment in full is made to the holder of a
36 certificate, the holder shall deliver the certificate to the
37 assessment district marked "paid" to evidence the
38 payments made of principal and interest, and the
39 assessment district shall thereupon deliver the certifi-
40 cate to the payor. On presentation to the board for
41 cancellation of all certificates for the full assessment
42 made against a specific lot or parcel of property
43 assessed, the chairman of the board shall on request
44 execute and deliver a release of the lien of such
45 assessment.

**§16-13B-18. Liens; recording notice of liens; suit for
enforcement; priority.**

1 The property abutting the portion of the public way
2 located within the assessment district, so improved, in
3 the case of a wastewater or water project, or the
4 property improved or protected by a flood relief project,
5 against which properties an assessment has been laid as
6 herein provided, shall be subject to a lien, from the date
7 of the resolution laying the assessment, for the payment
8 of that portion of the cost of the project assessed against
9 said property. A notice of the liens of said assessments
10 referring to the assessing resolution, and setting forth
11 a list of the property assessed, described respectively as
12 to amounts of assessment and ownership, frontage
13 (solely in case of a wastewater or water project) and
14 location of the property, shall be certified, by the

15 chairman and secretary of the board, to the clerk of the
16 county commission of the county wherein the project is
17 located. The county clerk shall record the notice of such
18 lien in the appropriate trust deed book or other
19 appropriate county lien book and index the same in the
20 name of each owner of property assessed. From the date
21 of an assessment, the holder of the assessment certificate
22 shall have such lien and shall be entitled to enforce the
23 same in its, his or their name to the extent of the
24 amount, including principal and interest and any
25 penalty due for any failure to pay an installment when
26 due, of such assessments and against the property to
27 which the assessment certificate applies, as to any
28 assessment not paid as and when due. Such assessments
29 shall be and constitute liens in the hands of the holders
30 of said certificates upon the respective lots and parcels
31 of land assessed and shall have priority over all other
32 liens except those for land taxes due the state, county
33 and municipality and except any liens for preexisting
34 special assessments provided under this code. If any
35 assessment is revised in accordance with sections ten or
36 twenty of this article, the lien created by this section
37 shall extend to the assessment so revised and shall have
38 same priority as the priority of the lien created upon the
39 laying of the original assessment. Such assessments and
40 interest thereon shall be paid by the owners of the
41 property assessed as and when the installments are due.
42 The holders of any such assessment certificates may
43 enforce the lien thereof in any proper suit, and when
44 default in the payment, as and when due, of any
45 assessment, principal or interest, or installment thereof,
46 shall occur and such default shall have continued for
47 more than sixty day after the receipt by the property
48 owner of written notice of such default from the sheriff
49 of the county in which the assessment district which
50 issued the certificates is located, the holders of any such
51 certificates may declare the whole unpaid balance due
52 and payable and by proper civil action enforce the lien
53 thereof, upon process issued and served according to law
54 upon the owner or owners of the lots or parcels of land
55 subject to said lien at the time such suit may be brought
56 as shown by the records of the clerk of the county

57 commission of the county in which said lots or parcels
58 of land are located. The notice required under this
59 section shall be complete when such notice is mailed by
60 certified mail, return receipt requested, directed to the
61 address shown on the records maintained by the
62 registrar under section fifteen of this article.

§16-13B-19. Reassessment for void, irregular or omitted assessments.

1 In the case of the construction of any permanent
2 improvements where an assessment has heretofore been
3 laid or may hereafter be laid for the cost thereof, which
4 said assessment is or shall be void or voidable by reason
5 of errors, irregularities or defects in the proceedings
6 under which such improvements were made, or in case
7 such assessment shall have been made against the
8 wrong person or property, or shall have been omitted
9 to be made in a case where the same was proper, it shall
10 be the duty of the board within five years after the
11 completion of such improvements, or after any court
12 shall have declared such assessment invalid, to cause
13 notice to be given to any person or persons against whom
14 the cost of said improvements might properly be or have
15 been assessed, of its intention to lay such assessment and
16 fixing a date, time and place at which the owner or
17 owners may appeal and show case against the same.
18 Said notice shall be served in the manner provided in
19 this article for the giving of notices in assessment
20 proceedings, or in any other manner provided by law.
21 At the time and place specified in the notice aforesaid
22 or at any time thereafter, the board shall proceed to lay
23 and levy an assessment or assessments for the cost of
24 such improvements as would have been lawful under
25 proper proceedings at the time said improvements were
26 completed, unless the owner or owners so notified shall
27 show good cause against the same. The reassessment or
28 reassessments so laid shall be a lien upon the property
29 liable therefor in the manner hereinabove provided from
30 the date of the original assessment, with interest
31 therefrom, and proper assessment certificate may be
32 issued, recordation had, and the payment thereof and
33 the lien thereof may be enforced in the same manner

34 and upon the same terms as would have been proper at
35 the time of the completion of the said improvements had
36 the assessments therefor been then properly laid and
37 levied.

**§16-13B-20. How additional territory may be added to
assessment district.**

1 (a) A governing body may, with respect to any
2 assessment district created by it, modify, expand or
3 extend the boundaries of the assessment district to
4 develop, construct, improve or extend any project, or to
5 enable persons residing or engaged in business on
6 property located outside the assessment district to
7 obtain the services provided by a wastewater or water
8 facility, (1) by satisfying the same requirements
9 provided in this article for the creation of the assessment
10 district, or (2) upon the unanimous written agreement
11 of persons owning all of the property to be added to the
12 assessment district that such property be added to the
13 district and assessed in accordance with subsection (b)
14 of this section: *Provided*, That no property may be added
15 to an assessment district for connection to a wastewater
16 or water project unless it abuts the assessment district.

17 (b) Any property added to an assessment district shall
18 be assessed for and bear a proportionate share of the
19 cost of the project then remaining unpaid, consistent
20 with the concepts and principles set forth in sections
21 eleven and twelve of this article and the assessment so
22 laid shall be a lien upon the property in the same
23 manner hereinabove provided from the date such
24 assessment is laid. Contemporaneously with the resolu-
25 tion laying the assessment against such property, all
26 other property located in the assessment district shall
27 be reassessed to reflect the addition of such property to
28 the assessment district. In all such cases, the assessment
29 district shall be the holder of the assessment certificates
30 issued to evidence the assessments laid upon the added
31 property, and all assessment fees received by the sheriff
32 from such assessment certificates shall be applied, pro
33 rata, to reduce the final installment of principal and
34 interest due from the owners of all other property
35 located in the assessment district as it existed prior to

36 the addition of property to the district.

37 (c) If any property is connected to a wastewater or
 38 water project after the cost of the project has been paid
 39 in full and the transfer of the project to a utility or
 40 governmental agency pursuant to section twenty-one of
 41 this article, the owner of such property shall pay to the
 42 utility or governmental agency the same rates and
 43 charges paid by other customers of the utility or
 44 governmental agency for the services provided by the
 45 wastewater or water facility operated and maintained
 46 by it.

**§16-13B-21. Operation and maintenance of wastewater
 and water projects; rates and charges
 therefor.**

1 (a) Prior to the construction of a wastewater or water
 2 project, the assessment district in which the project
 3 shall be located shall enter into one or more agreements
 4 with a utility or governmental agency operating a
 5 wastewater or water facility within the service area
 6 covered by the assessment district for the operation and
 7 maintenance of the project and for the provision of
 8 wastewater or water services, as the case may be, and
 9 such utility or governmental agency shall thereupon be
 10 authorized and empowered to charge and collect from
 11 each person connected to the project such rates and
 12 charges customarily paid by customers of such utility or
 13 governmental agency for similar wastewater or water
 14 services. All such agreements shall have terms of
 15 duration equal to or greater than the period necessary
 16 for the cost of the project to be paid in full, and may
 17 otherwise contain such terms and conditions as may be
 18 mutually agreed to by the parties, and shall be pres-
 19 ented as part of the application to the public service
 20 commission required by section ten (c) hereof.

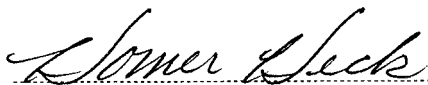
21 (b) Immediately upon the final payment of all assess-
 22 ment fees due under all assessment certificates issued
 23 in connection with a wastewater or water project
 24 constructed within an assessment district, the assess-
 25 ment district shall transfer and convey all of its right,
 26 title and interest in and to such project to the utility or

27 governmental agency providing wastewater or water
28 services, as the case may be.

§16-13B-22. Liberal construction.

1 This article being necessary for the public health,
2 safety and welfare, it shall be liberally construed to
3 effectuate the purpose hereof.

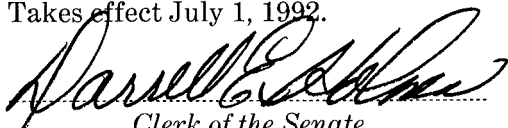
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

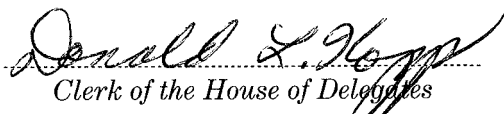

Chairman Senate Committee

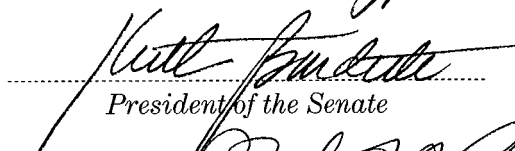

Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

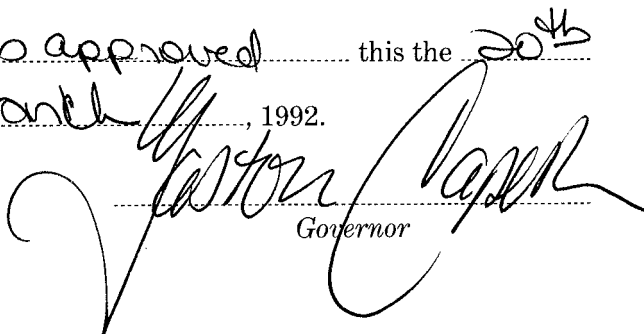

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 20th
day of March, 1992.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/92

Time 2:47 pm