

HB 2322

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Com. Sub. for

HOUSE BILL No. 2322

(By Delegates Seneff, Hunt & Amodeo)



Passed MARCH 11, 1995

In Effect 90 days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 2322

(BY DELEGATES SEACRIST, HUNT AND AMORES)

[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of county commisions to create, enlarge, reduce, merge, dissolve or consolidate public service districts subject to the approval of the public service commission.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

**§16-13A-2. Creation of districts by county commission;
enlarging, reducing, merging, or dissolving
district; consolidation; agreements, etc.; in-
fringing upon powers of county commission;
filing list of members and districts with the
secretary of state.**

1 (a) The county commission of any county may
2 propose the creation, enlargement, reduction, merger,

3 dissolution, or consolidation of a public service district by
4 any of the following methods: (1) On its own motion by
5 order duly adopted, (2) upon the recommendation of the
6 public service commission, or (3) by petition of twenty-
7 five percent of the registered voters who reside within the
8 limits of the proposed public service district within one or
9 more counties. The petition shall contain a description,
10 including metes and bounds, sufficient to identify the
11 territory to be embraced therein and the name of such
12 proposed district: *Provided*, That after the effective date of
13 this section, no new public service district shall be created,
14 enlarged, reduced, merged, dissolved or consolidated
15 under this section without the written consent and approval
16 of the public service commission, which approval and
17 consent shall be in accordance with rules promulgated by
18 the public service commission and may only be requested
19 after consent is given by the appropriate county
20 commission or commissions pursuant to this section. Any
21 territory may be included regardless of whether or not the
22 territory includes one or more cities, incorporated towns
23 or other municipal corporations which own and operate
24 any public service properties and regardless of whether or
25 not it includes one or more cities, incorporated towns or
26 other municipal corporations being served by privately
27 owned public service properties: *Provided, however*, That
28 the same territory shall not be included within the
29 boundaries of more than one public service district except
30 where the territory or part thereof is included within the
31 boundaries of a separate public service district organized
32 to supply water, sewerage services or gas facilities not
33 being furnished within such territory or part thereof:
34 *Provided further*, That no city, incorporated town or other
35 municipal corporation shall be included within the
36 boundaries of the proposed district except upon the
37 adoption of a resolution of the governing body of the city,
38 incorporated town or other municipal corporation
39 consenting.

40 (b) The petition shall be filed in the office of the
41 clerk of the county commission of the county in which the
42 territory to constitute the proposed district is situated, and
43 if the territory is situated in more than one county, then

44 the petition shall be filed in the office of the clerk of the
45 county commission of the county in which the major
46 portion of the territory extends, and a copy thereof
47 (omitting signatures) shall be filed with each of the clerks
48 of the county commission of the other county or counties
49 into which the territory extends. The clerk of the county
50 commission receiving such petition shall present it to the
51 county commission of the county at the first regular
52 meeting after the filing or at a special meeting called for
53 the consideration thereof.

54 (c) When the county commission of any county
55 enters an order on its own motion proposing the creation,
56 enlargement, reduction, merger, dissolution or consoli-
57 dation of a public service district, as aforesaid, or when a
58 petition for the creation is presented, as aforesaid, the
59 county commission shall at the same session fix a date of
60 hearing in the county on the creation, enlargement,
61 reduction, merger, dissolution or consolidation of the
62 proposed public service district, which date so fixed shall
63 be not more than forty days nor less than twenty days
64 from the date of the action. If the territory proposed to be
65 included is situated in more than one county, the county
66 commission, when fixing a date of hearing, shall provide
67 for notifying the county commission and clerk thereof of
68 each of the other counties into which the territory extends
69 of the date so fixed. The clerk of the county commission
70 of each county in which any territory in the proposed
71 public service district is located shall cause notice of the
72 hearing and the time and place thereof, and setting forth a
73 description of all of the territory proposed to be included
74 therein to be given by publication as a Class I legal
75 advertisement in compliance with the provisions of article
76 three, chapter fifty-nine of this code, and the publication
77 area for the publication shall be by publication in each
78 city, incorporated town or municipal corporation if
79 available in each county in which any territory in the
80 proposed public service district is located. The publication
81 shall be at least ten days prior to the hearing.

82 (d) In all cases where proceedings for the creation,
83 enlargement, reduction, merger, dissolution or consoli-
84 dation of the public service districts are initiated by

85 petition as aforesaid, the person filing the petition shall
86 advance or satisfactorily indemnify the payment of the
87 cost and expenses of publishing the hearing notice, and
88 otherwise the costs and expenses of the notice shall be
89 paid in the first instance by the county commission out of
90 contingent funds or any other funds available or made
91 available for that purpose. In addition to the notice
92 required herein to be published, there shall also be posted
93 in at least five conspicuous places in the proposed public
94 service district, a notice containing the same information
95 as is contained in the published notice. The posted notices
96 shall be posted not less than ten days before the hearing.

97 (e) All persons residing in or owning or having any
98 interest in property in the proposed public service district
99 shall have an opportunity to be heard for and against its
100 creation, enlargement, reduction, merger, dissolution or
101 consolidation. At the hearing the county commission
102 before which the hearing is conducted shall consider and
103 determine the feasibility of the creation, enlargement,
104 reduction, merger, dissolution or consolidation of the
105 proposed district. If the county commission determines
106 that the construction or acquisition by purchase or
107 otherwise and maintenance, operation, improvement and
108 extension of public service properties by the public service
109 district will be conducive to the preservation of public
110 health, comfort and convenience of such area, the county
111 commission shall by order create, enlarge, reduce, merge,
112 dissolve or consolidate such public service district. If the
113 county commission, after due consideration, determines
114 that the proposed district will not be conducive to the
115 preservation of public health, comfort or convenience of
116 the area or that the creation, enlargement, reduction,
117 merger, dissolution or consolidation of the proposed
118 district as set forth and described in the petition or order is
119 not feasible, it may refuse to enter an order creating the
120 district or it may enter an order amending the description
121 of the proposed district and create, enlarge, reduce, merge,
122 dissolve or consolidate the district as amended.

123 (f) If the county commission determines that any
124 other public service district or districts can adequately
125 serve the area of the proposed public service district,

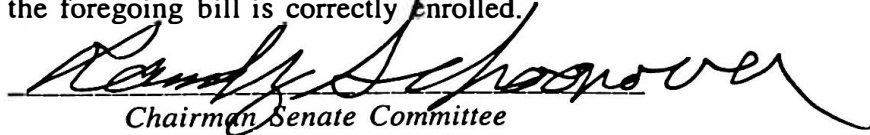
126 whether by enlargement, reduction, merger, dissolution or
127 consolidation, it shall refuse to enter the order, but, shall
128 enter an order creating, enlarging, reducing, merging,
129 dissolving or consolidating the area with an existing public
130 service district, in accordance with rules adopted by the
131 public service commission for such purpose: *Provided,*
132 That no enlargement of a public service district may occur
133 if the present or proposed physical facilities of the public
134 service district are determined by the appropriate county
135 commission or the public service commission to be
136 inadequate to provide such enlarged service. The clerk of
137 the county commission of each county into which any
138 part of such district extends shall retain in his office an
139 authentic copy of the order creating, enlarging, reducing,
140 merging, dissolving or consolidating the district: *Provided,*
141 *however,* That within ten days after the entry of an order
142 creating, enlarging, reducing, merging, dissolving or con-
143 solidating a district, such order must be filed for review
144 and approval by the public service commission. The
145 public service commission shall provide a hearing in the
146 affected county on the matter and may approve, reject or
147 modify the order of the county commission if it finds it is
148 in the best interests of the public to do so. The public
149 service commission shall adopt rules relating to such
150 filings and the approval, disapproval or modification of
151 county commission orders for creating, enlarging,
152 merging, dissolving or consolidating districts. The
153 provisions of this section shall not apply to the
154 implementation by a county commission of an order
155 issued by the public service commission pursuant to this
156 section and section one-b of this article.

157 (g) The county commission may, if in its discretion it
158 deems it necessary, feasible and proper, enlarge the district
159 to include additional areas, reduce the area of the district,
160 where facilities, equipment, service or materials have not
161 been extended, or dissolve the district if inactive or create
162 or consolidate two or more such districts. If consolidation
163 of districts is not feasible, the county commission may
164 consolidate and centralize management and administration
165 of districts within its county or multicounty area to achieve
166 efficiency of operations: *Provided,* That where the county

167 commission determines on its own motion by order
168 entered of record, or there is a petition to enlarge the
169 district, merge and consolidate districts, or the
170 management and administration thereof, reduce the area
171 of the district or dissolve the district if inactive, all of the
172 applicable provisions of this article providing for hearing,
173 notice of hearing and approval by the public service
174 commission shall apply. The commission shall at all times
175 attempt to bring about the enlargement or merger of
176 existing public service districts in order to provide
177 increased services and to eliminate the need for creation of
178 new public service districts in those areas which are not
179 currently serviced by a public service district: *Provided,*
180 *however,* That where two or more public service districts
181 are consolidated pursuant to this section, any rate
182 differentials may continue for the period of bonded
183 indebtedness incurred prior to consolidation. The districts
184 may not enter into any agreement, contract or covenant
185 that infringes upon, impairs, abridges or usurps the duties,
186 rights or powers of the county commission, as set forth in
187 this article, or conflicts with any provision of this article.

188 (h) A list of all districts and their current board
189 members shall be filed by the county commission with the
190 secretary of state and the public service commission by the
191 first day of July of each year.

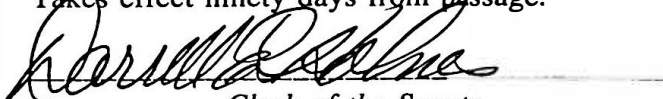
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

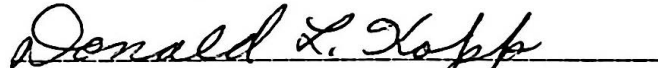

Chairman Senate Committee



Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within _____ this the _____
day of _____, 1995.

Governor



PRESENT.

GOVERNOR

Date 3/31/95

Time 2:00 pm