WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Com. Sub. for
HOUSE BILL No. 2322

(By Delegates Sorensen, Hunt & Amore)

Passed ..................... March 11, 1995

In Effect ................... 90 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 commissisons 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.; infringing 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,
dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting. (b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if 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
petition as aforesaid, the person filings the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district,
whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but, shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multicounty area to achieve efficiency of operations: Provided, That where the county
commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

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