WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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ENROLLED

Committee Substitute for

SENXATE BILL NO. 2669

(By Senator Tousley, the President)

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PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 266

(SENATOR TOMBLIN, MR. PRESIDENT, original sponsor)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, seven and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public service commission; allowing for the appointment of five public service district board members in consolidated or merged public service districts; requiring public service districts to notify the public service commission when a new board member is appointed; authorizing the county commission to determine public service district board members' compensation for regular and special board meetings; requiring public service districts to notify the public service commission if the district changes its corporate name; raising the
amount of allowable expenditure before having to advertise for bids from five thousand dollars to ten thousand dollars for public service districts; and providing for a waiver of public service commission approval of contracts for engineering, design or feasibility studies under certain conditions.

Be it enacted by the Legislature of West Virginia:

That sections three, four, seven and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders.
of any outstanding bonds issued by the municipalities for
the public service properties.

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

Each city, incorporated town or other municipal corpo-
ration having a population of more than three thousand
but less than eighteen thousand is entitled to appoint one
member of the board, and each city, incorporated town or
other municipal corporation having a population in excess
of eighteen thousand shall be entitled to appoint one
additional member of the board for each additional
eighteen thousand population. The members of the board
representing such cities, incorporated towns or other
municipal corporations shall be residents thereof and shall
be appointed by a resolution of the governing bodies
thereof and upon the filing of a certified copy or copies of
the resolution or resolutions in the office of the clerk of
the county commission which entered the order creating
the district, the persons so appointed become members of
the board without any further act or proceedings. If the
number of members of the board so appointed by the
governing bodies of cities, incorporated towns or other
municipal corporations included in the district equals or
exceeds three, then no further members shall be appointed
to the board and the members so appointed are the board
of the district except in cases of merger or consolidation
where the number of board members may equal five.

If no city, incorporated town or other municipal corpo-
ration having a population of more than three thousand is
included within the district, then the county commission
which entered the order creating the district shall appoint
three members of the board, who are persons residing
within the district and residing within the state of West
Virginia, which three members become members of the
board of the district without any further act or proceed-
ings except in cases of merger or consolidation where the
number of board members may equal five.

If the number of members of the board appointed by the
governing bodies of cities, incorporated towns or other
municipal corporations included within the district is less
than three, then the county commission which entered the
order creating the district shall appoint such additional
member or members of the board, who are persons resid-
ing within the district, as is necessary to make the number
of members of the board equal three except in cases of
merger or consolidation where the number of board
members may equal five, and the member or members
appointed by the governing bodies of the cities, incorpo-
rated towns or other municipal corporations included
within the district and the additional member or members
appointed by the county commission as aforesaid, are the
board of the district. A person may serve as a member of
the board in one or more public service districts.

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

Notwithstanding any provision of this code to the
contrary, whenever a district is consolidated or merged
pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission. Whenever districts are consolidated or merged no provision of this code prohibits the expansion of membership on the new board to five.

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

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member's name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

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

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

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

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

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

The board of such districts shall have the supervision
and control of all public service properties acquired or
constructed by the district, and shall have the power, and
it shall be its duty, to maintain, operate, extend and
improve the same. All contracts involving the expenditure
by the district of more than fifteen thousand dollars for
construction work or for the purchase of equipment and
improvements, extensions or replacements, shall be
entered into only after notice inviting bids shall have been
published as a Class I legal advertisement in compliance
with the provision of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be as specified in section two of this article in the
county or counties in which the district is located. The
publication shall not be less than ten days prior to the
making of any such contract. To the extent allowed by
law, in-state contractors shall be given first priority in
awarding public service district contracts. It shall be the
duty of the board to ensure that local in-state labor shall
be utilized to the greatest extent possible when hiring
laborers for public service district construction or mainte-
nance repair jobs. It shall further be the duty of the board
to encourage contractors to use American made products
in their construction to the extent possible. Any obliga-
tions incurred of any kind or character shall not in any
event constitute or be deemed an indebtedness within the
meaning of any of the provisions or limitations of the
constitution, but all such obligations shall be payable
solely and only out of revenues derived from the operation
of the public service properties of the district or from
proceeds of bonds issued as hereinafter provided. No
continuing contract for the purchase of materials or
supplies or for furnishing the district with electrical
energy or power shall be entered into for a longer period
than fifteen years.
§16-13A-25. Borrowing and bond issuance; procedure.

1 Notwithstanding any other provisions of this article to
2 the contrary, a public service district shall not borrow
3 money, enter into contracts for the provision of engineer-
4 ing, design or feasibility studies, issue or contract to issue
5 revenue bonds or exercise any of the powers conferred by
6 the provisions of section thirteen, twenty or twenty-four
7 of this article, without the prior consent and approval of
8 the public service commission. The public service com-
9 mission may waive the provision of prior consent and
10 approval for entering into contracts for engineering,
11 design or feasibility studies pursuant to this section for
12 good cause shown which is evidenced by the public service
13 district filing a request for waiver of this section stated in
14 a letter directed to the commission with a brief description
15 of the project, evidence of compliance with chapter five-g
16 of this code, and further explanation of ability to evaluate
17 their own engineering contract, including, but not limited
18 to: (1) Experience with the same engineering firm in the
19 past two years requiring engineering services; or (2)
20 completion of a construction project within the past two
21 years requiring engineering services. The district shall
22 also forward an executed copy of the engineering contract
23 to the commission after receiving approval of the waiver.
24 Unless the properties to be constructed or acquired
25 represent ordinary extensions or repairs of existing
26 systems in the usual course of business, a public service
27 district must first obtain a certificate of public conven-
28 nience and necessity from the public service commission
29 in accordance with the provisions of chapter twenty-four
30 of this code, when a public service district is seeking to
31 acquire or construct public service property.

32 Thirty days prior to making formal application for the
33 certificate, the public service district shall prefile with the
34 public service commission its plans and supporting
35 information for the project and shall publish a Class II
36 legal advertisement in a newspaper or newspapers of
37 general circulation in each city, incorporated town or
38 municipal corporation if available in the public service
39 district, which legal advertisement shall state:
(a) The amount of money to be borrowed, or the amount 
of revenue bonds to be issued: Provided, That if the 
amount is an estimate, the notice may be stated in terms 
of an amount "not to exceed" a specific amount;

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

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

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

(e) The date that the formal application for a certificate 
of public convenience and necessity is to be filed with the 
public service commission. The public service commission 
may grant its consent and approval for the certificate, or 
any other request for approval under this section, subject 
to such terms and conditions as may be necessary for the 
protection of the public interest, pursuant to the provi-
sions of chapter twenty-four of this code, or may withhold 
such consent and approval for the protection of the public 
interest.

In the event of disapproval, the reasons for the disap-
proval shall be assigned in writing by the commission.
That Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd day of May, 1997.

Governor