

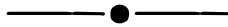
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2002 APR -3 P 6:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

House Bill No. 4619

(By Delegate Staton)



Passed March 9, 2002

In Effect Ninety Days from Passage

FILED

2002 APR -3 P 6: 59

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4619

(BY DELEGATE STATON)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to establishment of stormwater systems and associated stormwater management programs within a public service district; general purpose of districts, including authority for stormwater systems and stormwater management programs, excluding drainage easements or stormwater facilities owned or operated by the West Virginia division of highways; creation of districts by county commission; providing for contracts between a public service district and a city, town or other municipal corporation to furnish stormwater services; allowing a general manager of a municipal stormwater system or a public service district to provide professional management to another public service district purchasing services from such municipal system or district; acquisition, construction, operation and extension of stormwater systems and stormwater management programs by a public service district; right of eminent domain; service rates, fees and charges for stormwater

service; authority to charge rates, fees and charges after thirty days notice of availability of a stormwater system; liens for delinquent fees; cost of properties acquired; sale, lease or rental of stormwater system; and acceptance of loans, grants and temporary advances.

Be it enacted by the Legislature of West Virginia:

That sections one-c, two, three, five, seven, eight, nine, fourteen, eighteen-a and twenty-four, 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-1c. General purpose of districts.

1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction or
3 acquisition by purchase or otherwise and the maintenance,
4 operation, improvement and extension of, properties supplying
5 water, sewerage or stormwater services or gas distribution
6 services or all of these within such territory, will be conducive
7 to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district
8 under and in the manner provided by this article. The words
9 “public service properties,” when used in this article, shall
10 mean and include any facility used or to be used for or in
11 connection with: (1) The diversion, development, pumping,
12 impounding, treatment, storage, distribution or furnishing of
13 water to or for the public for industrial, public, private or other
14 uses (herein sometimes referred to as “water facilities”); (2) the
15 collection, treatment, purification or disposal of liquid or solid
16 wastes, sewage or industrial wastes (herein sometimes referred
17 to as “sewer facilities” or “landfills”); (3) the distribution or the
18 furnishing of natural gas to the public for industrial, public,
19

20 private or other uses (herein sometimes referred to as “gas
21 utilities or gas system”); or (4) the collection, control or
22 disposal of stormwater (herein sometimes referred to as
23 “stormwater system” or “stormwater systems”), or (5) the
24 management, operation, maintenance and control of stormwater
25 and stormwater systems (herein sometimes referred to as
26 “stormwater management program” or “stormwater manage-
27 ment programs”). As used in this article “stormwater system”
28 or “stormwater systems” means a stormwater system in its
29 entirety or any integral part thereof used to collect, control or
30 dispose of stormwater, and includes all facilities, structures and
31 natural water courses used for collecting and conducting
32 stormwater to, through and from drainage areas to the points of
33 final outlet including, but not limited to, any and all of the
34 following: Inlets, conduits, outlets, channels, ponds, drainage
35 easements, water quality facilities, catch basins, ditches,
36 streams, gulches, flumes, culverts, siphons, retention or
37 detention basins, dams, floodwalls, pipes, flood control
38 systems, levies and pumping stations: *Provided*, That the term
39 “stormwater system” or “stormwater systems” does not include
40 highways, road and drainage easements, or stormwater facilities
41 constructed, owned or operated by the West Virginia division
42 of highways. As used in this article “stormwater management
43 program” or “stormwater management programs” means those
44 activities associated with the management, operation, mainte-
45 nance and control of stormwater and stormwater systems, and
46 includes, but is not limited to, public education, stormwater and
47 surface runoff water quality improvement, mapping, planning,
48 flood control, inspection, enforcement and any other activities
49 required by state and federal law: *Provided, however*, That the
50 term “stormwater management program” or “stormwater
51 management programs” does not include those activities
52 associated with the management, operation, maintenance and
53 control of highways, road and drainage easements, or storm-
54 water facilities constructed, owned or operated by the West

55 Virginia division of highways without the express agreement of
56 the commissioner of highways.

§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 propose the
2 creation, enlargement, reduction, merger, dissolution, or
3 consolidation of a public service district by any of the following
4 methods: (1) On its own motion by order duly adopted, (2)
5 upon the recommendation of the public service commission, or
6 (3) by petition of twenty-five percent of the registered voters
7 who reside within the limits of the proposed public service
8 district within one or more counties. The petition shall contain
9 a description, including metes and bounds, sufficient to identify
10 the territory to be embraced therein and the name of such
11 proposed district: *Provided*, That after the effective date of this
12 section, no new public service district shall be created, en-
13 larged, reduced, merged, dissolved or consolidated under this
14 section without the written consent and approval of the public
15 service commission, which approval and consent shall be in
16 accordance with rules promulgated by the public service
17 commission and may only be requested after consent is given
18 by the appropriate county commission or commissions pursuant
19 to this section. Any territory may be included regardless of
20 whether or not the territory includes one or more cities,
21 incorporated towns or other municipal corporations which own
22 and operate any public service properties and regardless of
23 whether or not it includes one or more cities, incorporated
24 towns or other municipal corporations being served by privately
25 owned public service properties: *Provided, however*, That the
26 same territory shall not be included within the boundaries of
27 more than one public service district except where the territory

28 or part thereof is included within the boundaries of a separate
29 public service district organized to supply water, sewerage
30 services, stormwater services or gas facilities not being fur-
31 nished within such territory or part thereof: *Provided further,*
32 That no city, incorporated town or other municipal corporation
33 shall be included within the boundaries of the proposed district
34 except upon the adoption of a resolution of the governing body
35 of the city, incorporated town or other municipal corporation
36 consenting.

37 (b) The petition shall be filed in the office of the clerk of
38 the county commission of the county in which the territory to
39 constitute the proposed district is situated, and if the territory is
40 situated in more than one county, then the petition shall be filed
41 in the office of the clerk of the county commission of the
42 county in which the major portion of the territory extends, and
43 a copy thereof (omitting signatures) shall be filed with each of
44 the clerks of the county commission of the other county or
45 counties into which the territory extends. The clerk of the
46 county commission receiving such petition shall present it to
47 the county commission of the county at the first regular meeting
48 after the filing or at a special meeting called for the consider-
49 ation thereof.

50 (c) When the county commission of any county enters an
51 order on its own motion proposing the creation, enlargement,
52 reduction, merger, dissolution or consolidation of a public
53 service district, as aforesaid, or when a petition for the creation
54 is presented, as aforesaid, the county commission shall at the
55 same session fix a date of hearing in the county on the creation,
56 enlargement, reduction, merger, dissolution or consolidation of
57 the proposed public service district, which date so fixed shall be
58 not more than forty days nor less than twenty days from the
59 date of the action. If the territory proposed to be included is
60 situated in more than one county, the county commission, when
61 fixing a date of hearing, shall provide for notifying the county

62 commission and clerk thereof of each of the other counties into
63 which the territory extends of the date so fixed. The clerk of the
64 county commission of each county in which any territory in the
65 proposed public service district is located shall cause notice of
66 the hearing and the time and place thereof, and setting forth a
67 description of all of the territory proposed to be included
68 therein to be given by publication as a Class I legal advertise-
69 ment in compliance with the provisions of article three, chapter
70 fifty-nine of this code, and the publication area for the publica-
71 tion shall be by publication in each city, incorporated town or
72 municipal corporation if available in each county in which any
73 territory in the proposed public service district is located. The
74 publication shall be at least ten days prior to the hearing.

75 (d) In all cases where proceedings for the creation, enlarge-
76 ment, reduction, merger, dissolution or consolidation of the
77 public service districts are initiated by petition as aforesaid, the
78 person filing the petition shall advance or satisfactorily indem-
79 nify the payment of the cost and expenses of publishing the
80 hearing notice, and otherwise the costs and expenses of the
81 notice shall be paid in the first instance by the county commis-
82 sion out of contingent funds or any other funds available or
83 made available for that purpose. In addition to the notice
84 required herein to be published, there shall also be posted in at
85 least five conspicuous places in the proposed public service
86 district, a notice containing the same information as is con-
87 tained in the published notice. The posted notices shall be
88 posted not less than ten days before the hearing.

89 (e) All persons residing in or owning or having any interest
90 in property in the proposed public service district shall have an
91 opportunity to be heard for and against its creation, enlarge-
92 ment, reduction, merger, dissolution or consolidation. At the
93 hearing the county commission before which the hearing is
94 conducted shall consider and determine the feasibility of the
95 creation, enlargement, reduction, merger, dissolution or

96 consolidation of the proposed district. If the county commission
97 determines that the construction or acquisition by purchase or
98 otherwise and maintenance, operation, improvement and
99 extension of public service properties by the public service
100 district will be conducive to the preservation of public health,
101 comfort and convenience of such area, the county commission
102 shall by order create, enlarge, reduce, merge, dissolve or
103 consolidate such public service district. If the county commis-
104 sion, after due consideration, determines that the proposed
105 district will not be conducive to the preservation of public
106 health, comfort or convenience of the area or that the creation,
107 enlargement, reduction, merger, dissolution or consolidation of
108 the proposed district as set forth and described in the petition or
109 order is not feasible, it may refuse to enter an order creating the
110 district or it may enter an order amending the description of the
111 proposed district and create, enlarge, reduce, merge, dissolve or
112 consolidate the district as amended.

113 (f) If the county commission determines that any other
114 public service district or districts can adequately serve the area
115 of the proposed public service district, whether by enlargement,
116 reduction, merger, dissolution or consolidation, it shall refuse
117 to enter the order, but shall enter an order creating, enlarging,
118 reducing, merging, dissolving or consolidating the area with an
119 existing public service district, in accordance with rules adopted
120 by the public service commission for such purpose: *Provided,*
121 That no enlargement of a public service district may occur if the
122 present or proposed physical facilities of the public service
123 district are determined by the appropriate county commission
124 or the public service commission to be inadequate to provide
125 such enlarged service. The clerk of the county commission of
126 each county into which any part of such district extends shall
127 retain in his office an authentic copy of the order creating,
128 enlarging, reducing, merging, dissolving or consolidating the
129 district: *Provided, however,* That within ten days after the entry
130 of an order creating, enlarging, reducing, merging, dissolving

131 or consolidating a district, such order must be filed for review
132 and approval by the public service commission. The public
133 service commission shall provide a hearing in the affected
134 county on the matter and may approve, reject or modify the
135 order of the county commission if it finds it is in the best
136 interests of the public to do so. The public service commission
137 shall adopt rules relating to such filings and the approval,
138 disapproval or modification of county commission orders for
139 creating, enlarging, merging, dissolving or consolidating
140 districts. The provisions of this section shall not apply to the
141 implementation by a county commission of an order issued by
142 the public service commission pursuant to this section and
143 section one-b, of this article.

144 (g) The county commission may, if in its discretion it
145 deems it necessary, feasible and proper, enlarge the district to
146 include additional areas, reduce the area of the district, where
147 facilities, equipment, service or materials have not been
148 extended, or dissolve the district if inactive or create or consoli-
149 date two or more such districts. If consolidation of districts is
150 not feasible, the county commission may consolidate and
151 centralize management and administration of districts within its
152 county or multi-county area to achieve efficiency of operations:
153 *Provided*, That where the county commission determines on its
154 own motion by order entered of record, or there is a petition to
155 enlarge the district, merge and consolidate districts, or the
156 management and administration thereof, reduce the area of the
157 district or dissolve the district if inactive, all of the applicable
158 provisions of this article providing for hearing, notice of
159 hearing and approval by the public service commission shall
160 apply. The commission shall at all times attempt to bring about
161 the enlargement or merger of existing public service districts in
162 order to provide increased services and to eliminate the need for
163 creation of new public service districts in those areas which are
164 not currently serviced by a public service district: *Provided*,
165 *however*, That where two or more public service districts are

166 consolidated pursuant to this section, any rate differentials may
 167 continue for the period of bonded indebtedness incurred prior
 168 to consolidation. The districts may not enter into any agree-
 169 ment, contract or covenant that infringes upon, impairs,
 170 abridges or usurps the duties, rights or powers of the county
 171 commission, as set forth in this article, or conflicts with any
 172 provision of this article.

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

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

1 From and after the date of the adoption of the order creating
 2 any public service district, it is a public corporation and
 3 political subdivision of the state, but without any power to levy
 4 or collect ad valorem taxes. Each district may acquire, own and
 5 hold property, both real and personal, in its corporate name, and
 6 may sue, may be sued, may adopt an official seal and may enter
 7 into contracts necessary or incidental to its purposes, including
 8 contracts with any city, incorporated town or other municipal
 9 corporation located within or without its boundaries for
 10 furnishing wholesale supply of water for the distribution system
 11 of the city, town or other municipal corporation, or for furnish-
 12 ing stormwater services for the city, town or other municipal
 13 corporation, and contract for the operation, maintenance,
 14 servicing, repair and extension of any properties owned by it or
 15 for the operation and improvement or extension by the district
 16 of all or any part of the existing municipally owned public
 17 service properties of any city, incorporated town or other
 18 municipal corporation included within the district: *Provided,*
 19 That no contract shall extend beyond a maximum of forty years,

20 but provisions may be included therein for a renewal or
21 successive renewals thereof and shall conform to and comply
22 with the rights of the holders of any outstanding bonds issued
23 by the municipalities for the public service properties.

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

42 Each city, incorporated town or other municipal corporation
43 having a population of more than three thousand but less than
44 eighteen thousand is entitled to appoint one member of the
45 board, and each city, incorporated town or other municipal
46 corporation having a population in excess of eighteen thousand
47 shall be entitled to appoint one additional member of the board
48 for each additional eighteen thousand population. The members
49 of the board representing such cities, incorporated towns or
50 other municipal corporations shall be residents thereof and shall
51 be appointed by a resolution of the governing bodies thereof
52 and upon the filing of a certified copy or copies of the resolu-
53 tion or resolutions in the office of the clerk of the county

54 commission which entered the order creating the district, the
55 persons so appointed become members of the board without any
56 further act or proceedings. If the number of members of the
57 board so appointed by the governing bodies of cities, incorpo-
58 rated towns or other municipal corporations included in the
59 district equals or exceeds three, then no further members shall
60 be appointed to the board and the members so appointed are the
61 board of the district except in cases of merger or consolidation
62 where the number of board members may equal five.

63 If no city, incorporated town or other municipal corporation
64 having a population of more than three thousand is included
65 within the district, then the county commission which entered
66 the order creating the district shall appoint three members of the
67 board, who are persons residing within the district and residing
68 within the state of West Virginia, which three members become
69 members of the board of the district without any further act or
70 proceedings except in cases of merger or consolidation where
71 the number of board members may equal five.

72 If the number of members of the board appointed by the
73 governing bodies of cities, incorporated towns or other municip-
74 al corporations included within the district is less than three,
75 then the county commission which entered the order creating
76 the district shall appoint such additional member or members
77 of the board, who are persons residing within the district, as is
78 necessary to make the number of members of the board equal
79 three except in cases of merger or consolidation where the
80 number of board members may equal five, and the member or
81 members appointed by the governing bodies of the cities,
82 incorporated towns or other municipal corporations included
83 within the district and the additional member or members
84 appointed by the county commission as aforesaid, are the board
85 of the district. A person may serve as a member of the board in
86 one or more public service districts.

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

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

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

115 Any vacancy shall be filled for the unexpired term within
116 thirty days, otherwise successor members of the board shall be
117 appointed for terms of six years and the terms of office shall
118 continue until successors have been appointed and qualified.
119 All successor members shall be appointed in the same manner

120 as the member succeeded was appointed. The district shall
121 provide to the public service commission, within thirty days of
122 the appointment, the following information: The new board
123 member's name, home address, home and office phone num-
124 bers, date of appointment, length of term, who the new member
125 replaces and if the new appointee has previously served on the
126 board. The public service commission shall notify each new
127 board member of the legal obligation to attend training as
128 prescribed in this section.

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

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

§16-13A-5. General manager of board.

1 The board may employ a general manager to serve a term
2 of not more than five years and until his or her successor is
3 employed, and his or her compensation shall be fixed by
4 resolution of the board. Such general manager shall devote all
5 or the required portion of his or her time to the affairs of the
6 district and may employ, discharge and fix the compensation of
7 all employees of the district, except as in this article otherwise
8 provided, and he or she shall perform and exercise such other
9 powers and duties as may be conferred upon him or her by the
10 board.

11 Such general manager shall be chosen without regard to his
12 or her political affiliations and upon the sole basis of his or her
13 administrative and technical qualifications to manage public
14 service properties and affairs of the district and he or she may
15 be discharged only upon the affirmative vote of two thirds of
16 the board. Such general manager need not be a resident of the
17 district at the time he or she is chosen. Such general manager
18 may not be a member of the board but shall be an employee of
19 the board.

20 The board of any public service district which purchases
21 water, sewer or stormwater service from a municipal water,
22 sewer or stormwater system or another public service district
23 may, as an alternative to hiring its own general manager, elect
24 to permit the general manager of the municipal water, sewer or
25 stormwater system or public service district from which such
26 water, sewer or stormwater service is purchased provide
27 professional management to the district, if the appropriate
28 municipality or public service board agrees to provide such
29 assistance. The general manager shall receive reasonable
30 compensation for such service.

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

1 The board of such districts shall have the supervision and
2 control of all public service properties acquired or constructed
3 by the district, and shall have the power, and it shall be its duty,
4 to maintain, operate, extend and improve the same, including,
5 but not limited to, those activities necessary to comply with all
6 federal and state requirements, including water quality im-
7 provement activities. All contracts involving the expenditure by
8 the district of more than fifteen thousand dollars for construc-
9 tion work or for the purchase of equipment and improvements,
10 extensions or replacements, shall be entered into only after
11 notice inviting bids shall have been published as a Class I legal
12 advertisement in compliance with the provision of article three,
13 chapter fifty-nine of this code, and the publication area for such
14 publication shall be as specified in section two of this article in
15 the county or counties in which the district is located. The
16 publication shall not be less than ten days prior to the making
17 of any such contract. To the extent allowed by law, in-state
18 contractors shall be given first priority in awarding public
19 service district contracts. It shall be the duty of the board to
20 ensure that local in-state labor shall be utilized to the greatest
21 extent possible when hiring laborers for public service district
22 construction or maintenance repair jobs. It shall further be the
23 duty of the board to encourage contractors to use American
24 made products in their construction to the extent possible. Any
25 obligations incurred of any kind or character shall not in any
26 event constitute or be deemed an indebtedness within the
27 meaning of any of the provisions or limitations of the constitu-
28 tion, but all such obligations shall be payable solely and only
29 out of revenues derived from the operation of the public service
30 properties of the district or from proceeds of bonds issued as
31 hereinafter provided. No continuing contract for the purchase
32 of materials or supplies or for furnishing the district with
33 electrical energy or power shall be entered into for a longer
34 period than fifteen years.

**§16-13A-8. Acquisition and purchase of public service properties;
right of eminent domain; extraterritorial powers.**

1 The board may acquire any publicly or privately owned
2 public service properties located within the boundaries of the
3 district regardless of whether or not all or any part of such
4 properties are located within the corporate limits of any city,
5 incorporated town or other municipal corporation included
6 within the district and may purchase and acquire all rights and
7 franchises and any and all property within or outside the district
8 necessary or incidental to the purpose of the district.

9 The board may construct any public service properties
10 within or outside the district necessary or incidental to its
11 purposes and each such district may acquire, construct, main-
12 tain and operate any such public service properties within the
13 corporate limits of any city, incorporated town or other municip-
14 al corporation included within the district or in any unincorpor-
15 ated territory within ten miles of the territorial boundaries of
16 the district: *Provided*, That if any incorporated city, town or
17 other municipal corporation included within the district owns
18 and operates either water facilities, sewer facilities, stormwater
19 facilities or gas facilities or all of these, then the district may
20 not acquire, construct, establish, improve or extend any public
21 service properties of the same kind within such city, incorpo-
22 rated towns or other municipal corporations or the adjacent
23 unincorporated territory served by such cities, incorporated
24 towns or other municipal corporations, except upon the
25 approval of the public service commission, the consent of such
26 cities, incorporated towns or other municipal corporations and
27 in conformity and compliance with the rights of the holders of
28 any revenue bonds or obligations theretofore issued by such
29 cities, incorporated towns or other municipal corporations then
30 outstanding and in accordance with the ordinance, resolution or
31 other proceedings which authorize the issuance of such revenue
32 bonds or obligations.

33 Whenever such district has constructed, acquired or
34 established water facilities, sewer facilities, a stormwater
35 system, stormwater management program or gas facilities for
36 water, sewer, stormwater or gas services within any city,
37 incorporated town or other municipal corporation included
38 within a district, then such city, incorporated town or other
39 municipal corporation may not thereafter construct, acquire or
40 establish any facilities of the same kind within such city,
41 incorporated town or other municipal corporation without the
42 consent of such district.

43 For the purpose of acquiring any public service properties
44 or lands, rights or easements deemed necessary or incidental for
45 the purposes of the district, each such district has the right of
46 eminent domain to the same extent and to be exercised in the
47 same manner as now or hereafter provided by law for such right
48 of eminent domain by cities, incorporated towns and other
49 municipal corporations: *Provided*, That the power of eminent
50 domain provided in this section does not extend to highways,
51 road and drainage easements, or stormwater facilities con-
52 structed, owned or operated by the West Virginia division of
53 highways without the express agreement of the commissioner
54 of highways: *Provided, however*, That such board may not
55 acquire all or any substantial part of a privately owned water-
56 works system unless and until authorized so to do by the public
57 service commission of West Virginia, and that this section shall
58 not be construed to authorize any district to acquire through
59 condemnation proceedings either in whole or substantial part an
60 existing privately owned waterworks plant or system or gas
61 facilities located in or furnishing water or gas service within
62 such district or extensions made or to be made by it in territory
63 contiguous to such existing plant or system, nor may any such
64 board construct or extend its public service properties to supply
65 its services into areas served by or in competition with existing
66 waterworks or gas facilities or extensions made or to be made

67 in territory contiguous to such existing plant or system by the
68 owner thereof.

**§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections;
lien for delinquent fees.**

1 The board may make, enact and enforce all needful rules in
2 connection with the acquisition, construction, improvement,
3 extension, management, maintenance, operation, care, protec-
4 tion and the use of any public service properties owned or
5 controlled by the district, and the board shall establish rates,
6 fees and charges for the services and facilities it furnishes,
7 which shall be sufficient at all times, notwithstanding the
8 provisions of any other law or laws, to pay the cost of mainte-
9 nance, operation and depreciation of such public service
10 properties and principal of and interest on all bonds issued,
11 other obligations incurred under the provisions of this article
12 and all reserve or other payments provided for in the proceed-
13 ings which authorized the issuance of any bonds hereunder. The
14 schedule of such rates, fees and charges may be based upon
15 either (a) the consumption of water or gas on premises con-
16 nected with such facilities, taking into consideration domestic,
17 commercial, industrial and public use of water and gas; or (b)
18 the number and kind of fixtures connected with such facilities
19 located on the various premises; or (c) the number of persons
20 served by such facilities; or (d) any combination thereof; or (e)
21 may be determined on any other basis or classification which
22 the board may determine to be fair and reasonable, taking into
23 consideration the location of the premises served and the nature
24 and extent of the services and facilities furnished. However, no
25 rates, fees or charges for stormwater services may be assessed
26 against highways, road and drainage easements, or stormwater
27 facilities constructed, owned or operated by the West Virginia
28 division of highways. Where water, sewer, stormwater or gas
29 services, or any combination thereof, are all furnished to any

30 premises, the schedule of charges may be billed as a single
31 amount for the aggregate thereof. The board shall require all
32 users of services and facilities furnished by the district to
33 designate on every application for service whether the applicant
34 is a tenant or an owner of the premises to be served. If the
35 applicant is a tenant, he or she shall state the name and address
36 of the owner or owners of the premises to be served by the
37 district. All new applicants for service shall deposit a minimum
38 of fifty dollars with the district to secure the payment of service
39 rates, fees and charges in the event they become delinquent as
40 provided in this section. In any case where a deposit is forfeited
41 to pay service rates, fees and charges which were delinquent at
42 the time of disconnection or termination of service, no
43 reconnection or reinstatement of service may be made by the
44 district until another minimum deposit of fifty dollars has been
45 remitted to the district. Whenever any rates, fees, rentals or
46 charges for services or facilities furnished remain unpaid for a
47 period of thirty days after the same become due and payable,
48 the property and the owner thereof, as well as the user of the
49 services and facilities provided are delinquent and the owner,
50 user and property are liable at law until such time as all such
51 rates, fees and charges are fully paid: *Provided*, That the
52 property owner shall be given notice of any said delinquency by
53 certified mail, return receipt requested. The board may, under
54 reasonable rules promulgated by the public service commission,
55 shut off and discontinue water or gas services to all delinquent
56 users of either water or gas facilities, or both: *Provided*,
57 *however*, That upon written request of the owner or owners of
58 the premises, the board shall shut off and discontinue water and
59 gas services where any rates, fees, rentals, or charges for
60 services or facilities remain unpaid by the user of the premises
61 for a period of sixty days after the same became due and
62 payable.

63 In the event that any publicly or privately owned utility,
64 city, incorporated town, other municipal corporation or other

65 public service district included within the district owns and
66 operates separately either water facilities or sewer facilities, and
67 the district owns and operates the other kind of facilities, either
68 water or sewer, as the case may be, then the district and such
69 publicly or privately owned utility, city, incorporated town or
70 other municipal corporation or other public service district shall
71 covenant and contract with each other to shut off and discon-
72 tinue the supplying of water service for the nonpayment of
73 sewer service fees and charges: *Provided*, That any contracts
74 entered into by a public service district pursuant to this section
75 shall be submitted to the public service commission for
76 approval. Any public service district providing water and sewer
77 service to its customers has the right to terminate water service
78 for delinquency in payment of either water or sewer bills.
79 Where one public service district is providing sewer service and
80 another public service district or a municipality included within
81 the boundaries of the sewer district is providing water service,
82 and the district providing sewer service experiences a delin-
83 quency in payment, the district or the municipality included
84 within the boundaries of the sewer district that is providing
85 water service, upon the request of the district providing sewer
86 service to the delinquent account, shall terminate its water
87 service to the customer having the delinquent sewer account:
88 *Provided, however*, That any termination of water service must
89 comply with all rules and orders of the public service commis-
90 sion.

91 Any district furnishing sewer facilities within the district
92 may require, or may by petition to the circuit court of the
93 county in which the property is located, compel or may require
94 the bureau of public health to compel all owners, tenants or
95 occupants of any houses, dwellings and buildings located near
96 any such sewer facilities, where sewage will flow by gravity or
97 be transported by such other methods approved by the bureau
98 of public health including, but not limited to, vacuum and
99 pressure systems, approved under the provisions of section

100 nine, article one, chapter sixteen of this code, from such houses,
101 dwellings or buildings into such sewer facilities, to connect
102 with and use such sewer facilities, and to cease the use of all
103 other means for the collection, treatment and disposal of sewage
104 and waste matters from such houses, dwellings and buildings
105 where there is such gravity flow or transportation by such other
106 methods approved by the bureau of public health including, but
107 not limited to, vacuum and pressure systems, approved under
108 the provisions of section nine, article one, chapter sixteen of
109 this code, and such houses, dwellings and buildings can be
110 adequately served by the sewer facilities of the district, and it
111 is hereby found, determined and declared that the mandatory
112 use of such sewer facilities provided for in this paragraph is
113 necessary and essential for the health and welfare of the
114 inhabitants and residents of such districts and of the state:
115 *Provided*, That if the public service district determines that the
116 property owner must connect with the sewer facilities even
117 when sewage from such dwellings may not flow to the main
118 line by gravity and the property owner must incur costs for any
119 changes in the existing dwellings' exterior plumbing in order to
120 connect to the main sewer line, the public service district board
121 shall authorize the district to pay all reasonable costs for such
122 changes in the exterior plumbing, including, but not limited to,
123 installation, operation, maintenance and purchase of a pump, or
124 any other method approved by the bureau of public health;
125 maintenance and operation costs for such extra installation
126 should be reflected in the users charge for approval of the
127 public service commission. The circuit court shall adjudicate
128 the merits of such petition by summary hearing to be held not
129 later than thirty days after service of petition to the appropriate
130 owners, tenants or occupants.

131 Whenever any district has made available sewer facilities
132 to any owner, tenant or occupant of any house, dwelling or
133 building located near such sewer facility, and the engineer for
134 the district has certified that such sewer facilities are available

135 to and are adequate to serve such owner, tenant or occupant,
136 and sewage will flow by gravity or be transported by such other
137 methods approved by the bureau of public health from such
138 house, dwelling or building into such sewer facilities, the
139 district may charge, and such owner, tenant or occupant shall
140 pay the rates and charges for services established under this
141 article only after thirty-day notice of the availability of the
142 facilities has been received by the owner.

143 Whenever any district has made available a stormwater
144 system to any owner, tenant or occupant of any real property
145 located near such stormwater system, and where stormwater
146 from such real property affects or drains into such stormwater
147 system, it is hereby found, determined and declared that such
148 owner, tenant or occupant is being served by such stormwater
149 system, and it is further hereby found, determined and declared
150 that the mandatory use of such stormwater system is necessary
151 and essential for the health and welfare of the inhabitants and
152 residents of such district and of the state. The district may
153 charge, and such owner, tenant or occupant shall pay the rates,
154 fees and charges for stormwater services established under this
155 article only after thirty-day notice of the availability of the
156 stormwater system has been received by the owner.

157 All delinquent fees, rates and charges of the district for
158 either water facilities, sewer facilities, stormwater systems or
159 stormwater management systems or gas facilities are liens on
160 the premises served of equal dignity, rank and priority with the
161 lien on such premises of state, county, school and municipal
162 taxes. In addition to the other remedies provided in this section,
163 public service districts are hereby granted a deferral of filing
164 fees or other fees and costs incidental to the bringing and
165 maintenance of an action in magistrate court for the collection
166 of delinquent water, sewer, stormwater or gas bills. If the
167 district collects the delinquent account, plus reasonable costs,
168 from its customer or other responsible party, the district shall

169 pay to the magistrate the normal filing fee and reasonable costs
170 which were previously deferred. In addition, each public service
171 district may exchange with other public service districts a list
172 of delinquent accounts.

173 Anything in this section to the contrary notwithstanding,
174 any establishment, as defined in section three, article eleven,
175 chapter twenty-two, now or hereafter operating its own sewage
176 disposal system pursuant to a permit issued by the division of
177 environmental protection, as prescribed by section eleven,
178 article eleven, chapter twenty-two of this code, is exempt from
179 the provisions of this section.

§16-13A-14. Items included in cost of properties.

1 The cost of any public service properties acquired under the
2 provisions of this article shall be deemed to include the cost of
3 the acquisition or construction thereof, the cost of all property
4 rights, easements and franchises deemed necessary or conve-
5 nient therefor and for the improvements and extensions thereto;
6 for stormwater systems and associated stormwater management
7 programs, those activities which include, but are not limited to,
8 water quality improvement activities necessary to comply with
9 all federal and state requirements; interest upon bonds prior to
10 and during construction or acquisition and for six months after
11 completion of construction or of acquisition of the improve-
12 ments and extensions; engineering, fiscal agents and legal
13 expenses; expenses for estimates of cost and of revenues,
14 expenses for plans, specifications and surveys; other expenses
15 necessary or incident to determining the feasibility or practica-
16 bility of the enterprise, administrative expense, and such other
17 expenses as may be necessary or incident to the financing
18 herein authorized, and the construction or acquisition of the
19 properties and the placing of same in operation, and the
20 performance of the things herein required or permitted, in
21 connection with any thereof.

§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

1 In any case where a public service district owns a water,
2 sewer, stormwater or gas system, and a majority of not less than
3 sixty percent of the members of the public service board thereof
4 deem it for the best interests of the district to sell, lease or rent
5 such water, sewer, stormwater or gas system to any municipal-
6 ity or privately-owned water, sewer, stormwater or gas system,
7 or to any water, sewer, stormwater or gas system owned by an
8 adjacent public service district, the board may so sell, lease or
9 rent such water, sewer, stormwater or gas system upon such
10 terms and conditions as said board, in its discretion, considers
11 in the best interests of the district: *Provided*, That such sale,
12 leasing or rental may be made only upon: (1) The publication
13 of notice of a hearing before the board of the public service
14 district, as a Class I legal advertisement in compliance with the
15 provisions of article three, chapter fifty-nine of this code, in a
16 newspaper published and of general circulation in the county or
17 counties wherein the district is located, such publication to be
18 made not earlier than twenty days and not later than seven days
19 prior to the hearing; (2) approval by the county commission or
20 commissions of the county or counties in which the district
21 operates; and (3) approval by the public service commission of
22 West Virginia.

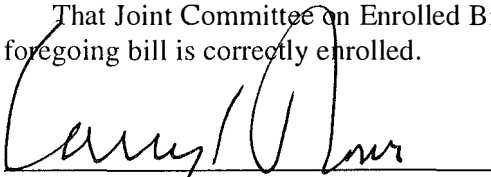
23 In the event of any such sale, the proceeds thereof, if any,
24 remaining after payment of all outstanding bonds and other
25 obligations of the district, shall be ratably distributed to any
26 persons who have made contributions in aid of construction of
27 such water, sewer, stormwater or gas system, such distribution
28 not to exceed the actual amount of any such contribution,
29 without interest, and any balance of funds thereafter remaining
30 shall be paid to the county commission of the county in which
31 the major portion of such water, sewer, stormwater or gas

32 system is located to be placed in the general funds of such
33 county commission.

§16-13A-24. Acceptance of loans, grants or temporary advances.

1 Any public service district created pursuant to the provi-
2 sions of this article is authorized and empowered to accept
3 loans or grants and procure loans or temporary advances
4 evidenced by notes or other negotiable instruments issued in the
5 manner, and subject to the privileges and limitations, set forth
6 with respect to bonds authorized to be issued under the provi-
7 sions of this article, for the purpose of paying part or all of the
8 cost of construction or acquisition of water systems, sewage
9 systems, stormwater systems or stormwater management
10 systems or gas facilities, or all of these, and the other purposes
11 herein authorized, from any authorized agency or from the
12 United States of America or any federal or public agency or
13 department of the United States or any private agency, corpora-
14 tion or individual, which loans or temporary advances, includ-
15 ing the interest thereon, may be repaid out of the proceeds of
16 the bonds authorized to be issued under the provisions of this
17 article, the revenues of the said water system, sewage system,
18 stormwater system or associated stormwater management
19 system or gas facilities, or grants to the public service district
20 from any authorized agency or from the United States of
21 America or any federal or public agency or department of the
22 United States or from any private agency, corporation or
23 individual or from any combination of such sources of payment,
24 and to enter into the necessary contracts and agreements to
25 carry out the purposes hereof with any authorized agency or the
26 United States of America or any federal or public agency or
27 department of the United States, or with any private agency,
28 corporation or individual. Any other provisions of this article
29 to the contrary notwithstanding, interest on any such loans or
30 temporary advances may be paid from the proceeds thereof
31 until the maturity of such notes or other negotiable instrument.

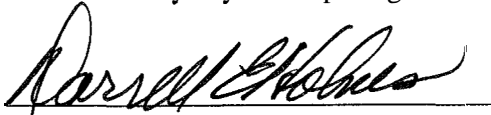
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

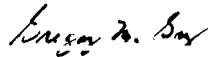

Chairman Senate Committee

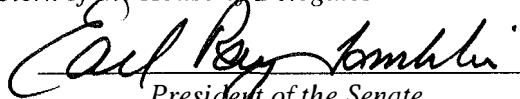

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

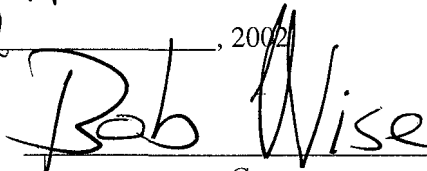

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 3rd day of April, 2002


Governor

DATE RECEIVED

BY

3/27/02

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