

FILED

2005 APR 29 A 11:31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3045

(By Delegates Boggs and Browning)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

2005 APR 29 A 11:31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 3045

(BY DELEGATES BOGGS AND BROWNING)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §16-13A-2 of the Code of West Virginia, 1931, as amended, relating to the creation and modification of public service districts; requiring the county commission to provide the Public Service Commission a copy of the order or petition seeking the creation, modification or dissolution of a public service district, as well as the time of the hearing to be held by the county commission; providing that the Public Service Commission may conduct a hearing in the affected county on the matter.

Be it enacted by the Legislature of West Virginia:

That §16-13A-2 of the Code of West Virginia, 1931, 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 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,
6 or (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. Within ten days of fixing the date of hearing,
60 the county commission shall provide the Executive Secretary of
61 the Public Service Commission with a copy of the order or
62 petition and notification of the time and place of the hearing to
63 be held by the county commission. If the territory proposed to
64 be included is situated in more than one county, the county
65 commission, when fixing a date of hearing, shall provide for
66 notifying the county commission and clerk thereof of each of
67 the other counties into which the territory extends of the date so

68 fixed. The clerk of the county commission of each county in
69 which any territory in the proposed public service district is
70 located shall cause notice of the hearing and the time and place
71 thereof, and setting forth a description of all of the territory
72 proposed to be included therein to be given by publication as a
73 Class I legal advertisement in compliance with the provisions
74 of article three, chapter fifty-nine of this code, and the publica-
75 tion area for the publication shall be by publication in each city,
76 incorporated town or municipal corporation if available in each
77 county in which any territory in the proposed public service
78 district is located. The publication shall be at least ten days
79 prior to the hearing.

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

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

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

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

137 and approval by the Public Service Commission. The Public
138 Service Commission may provide a hearing in the affected
139 county on the matter and may approve, reject or modify the
140 order of the county commission if it finds it is in the best
141 interests of the public to do so. The Public Service Commission
142 shall adopt rules relating to such filings and the approval,
143 disapproval or modification of county commission orders for
144 creating, enlarging, merging, dissolving or consolidating
145 districts. The provisions of this section shall not apply to the
146 implementation by a county commission of an order issued by
147 the Public Service Commission pursuant to this section and
148 section one-b, of this article.

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

172 continue for the period of bonded indebtedness incurred prior
173 to consolidation. The districts may not enter into any agree-
174 ment, contract or covenant that infringes upon, impairs,
175 abridges or usurps the duties, rights or powers of the county
176 commission, as set forth in this article, or conflicts with any
177 provision of this article.

178 (h) A list of all districts and their current board members
179 shall be filed by the county commission with the Secretary of
180 State and the Public Service Commission by the first day of
181 July of each year.

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


Chairman Senate Committee

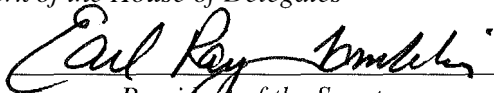

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

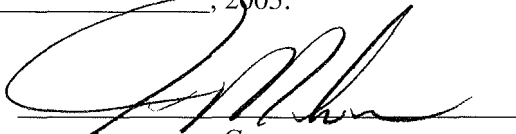

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 29th
day of April, 2005.


Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:05 AM