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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

Committee Substitute For
SENATE BILL NO. 266

(By Senator Toussaint, Mr. President)

PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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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.

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

23 of any outstanding bonds issued by the municipalities for
24 the public service properties.

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

44 Each city, incorporated town or other municipal corpo-
45 ration having a population of more than three thousand
46 but less than eighteen thousand is entitled to appoint one
47 member of the board, and each city, incorporated town or
48 other municipal corporation having a population in excess
49 of eighteen thousand shall be entitled to appoint one
50 additional member of the board for each additional
51 eighteen thousand population. The members of the board
52 representing such cities, incorporated towns or other
53 municipal corporations shall be residents thereof and shall
54 be appointed by a resolution of the governing bodies
55 thereof and upon the filing of a certified copy or copies of
56 the resolution or resolutions in the office of the clerk of
57 the county commission which entered the order creating
58 the district, the persons so appointed become members of
59 the board without any further act or proceedings. If the
60 number of members of the board so appointed by the
61 governing bodies of cities, incorporated towns or other
62 municipal corporations included in the district equals or

63 exceeds three, then no further members shall be appointed
64 to the board and the members so appointed are the board
65 of the district except in cases of merger or consolidation
66 where the number of board members may equal five.

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

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

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

99 Notwithstanding any provision of this code to the
100 contrary, whenever a district is consolidated or merged

101 pursuant to section two of this article, the terms of office
102 of the existing board members shall end on the effective
103 date of the merger or consolidation. The county commis-
104 sion shall appoint a new board according to rules promul-
105 gated by the public service commission. Whenever
106 districts are consolidated or merged no provision of this
107 code prohibits the expansion of membership on the new
108 board to five.

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

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

138 The board shall organize within thirty days following
139 the first appointments and annually thereafter at its first

140 meeting after the first day of January of each year by
141 selecting one of its members to serve as chair and by
142 appointing a secretary and a treasurer who need not be
143 members of the board. The secretary shall keep a record
144 of all proceedings of the board which shall be available for
145 inspection as other public records. Duplicate records shall
146 be filed with the county commission and shall include the
147 minutes of all board meetings. The treasurer is lawful
148 custodian of all funds of the public service district and
149 shall pay same out on orders authorized or approved by
150 the board. The secretary and treasurer shall perform other
151 duties appertaining to the affairs of the district and shall
152 receive salaries as shall be prescribed by the board. The
153 treasurer shall furnish bond in an amount to be fixed by
154 the board for the use and benefit of the district.

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

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

1 The chairman shall preside at all meetings of the board
2 and may vote as any other members of the board but if he
3 should be absent from any meeting, the remaining mem-
4 bers may select a temporary chairman and if the member
5 selected as chairman resigns as such or ceases for any
6 reason to be a member of the board, the board shall select
7 one of its members as chairman to serve until the next
8 annual organization meeting. Salaries of each of its board
9 members shall be as follows: For districts with fewer than
10 six hundred customers, each board member may receive
11 seventy-five dollars per attendance at regular monthly
12 meetings and fifty dollars per attendance at additional
13 special meetings, total salary not to exceed fifteen hun-
14 dred dollars per annum; for districts with six hundred
15 customers or more but fewer than two thousand custom-
16 ers, each board member may receive one hundred dollars

17 per attendance at regular monthly meetings and seventy-
18 five dollars per attendance at additional special meetings,
19 total salary not to exceed two thousand five hundred fifty
20 dollars per annum; for districts with two thousand cus-
21 tomers or more, each board member may receive one
22 hundred twenty-five dollars per attendance at regular
23 monthly meetings and seventy-five dollars per attendance
24 at additional special meetings, total salary not to exceed
25 three thousand seven hundred fifty dollars per annum; and
26 for districts with four thousand or more customers, each
27 board member may receive one hundred fifty dollars per
28 attendance at regular monthly meetings and one hundred
29 dollars per attendance at additional special meetings, total
30 salary not to exceed five thousand four hundred dollars
31 per annum. The public service district shall certify the
32 number of customers served to the public service commis-
33 sion beginning on the first day of July, one thousand nine
34 hundred eighty-six, and continue each fiscal year thereaf-
35 ter. Board members may be reimbursed for all reasonable
36 and necessary expenses actually incurred in the perfor-
37 mance of their duties as provided for by the rules of the
38 board. The board shall by resolution determine its own
39 rules of procedure, fix the time and place of its meetings
40 and the manner in which special meetings may be called.
41 Public notice of meetings shall be given in accordance
42 with section three, article nine-a, chapter six of this code.
43 Emergency meetings may be called as provided by said
44 section. A majority of the members constituting the board
45 also constitute a quorum to do business. The members of
46 the board are not personally liable or responsible for any
47 obligations of the district or the board but are answerable
48 only for willful misconduct in the performance of their
49 duties. At any time prior to the issuance of bonds as
50 hereinafter provided, the board may by resolution change
51 the official or corporate name of the public service district
52 and such change shall be effective from and after filing an
53 authenticated copy of such resolution with the clerk of the
54 county commission of each county in which the territory
55 embraced within such district or any part thereof is
56 located and with the public service commission. The
57 official name of any district created under the provisions

58 of this article may contain the name or names of any city,
59 incorporated town or other municipal corporation in-
60 cluded therein or the name of any county or counties in
61 which it is located.

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

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

40 (a) The amount of money to be borrowed, or the amount
41 of revenue bonds to be issued: *Provided*, That if the
42 amount is an estimate, the notice may be stated in terms
43 of an amount "not to exceed" a specific amount;

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

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

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

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

64 In the event of disapproval, the reasons for the disap-
65 proval shall be assigned in writing by the commission.

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

Ray Schover
.....
Chairman Senate Committee

Nick Juntosia
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Carol K. Helms
.....
Clerk of the Senate

Eugene W. Gray
.....
Clerk of the House of Delegates

Carl Key Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

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

[Signature]
.....
Governor

P. ...ITED TO THE

GOVERNOR

Date 4/22/97

Time 3:33pm