

# Public Service Commission Of West Virginia

FILED

Michael D. Greer, Chairman  
Otis D. Casto, Commissioner  
Charlotte R. Lane, Commissioner



1986 JUN 18 10 41 AM '86  
204 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323  
OFFICE OF THE SECRETARY OF STATE  
SECRETARY OF STATE

## NOTICE OF EMERGENCY RULE

RULE TITLE: Rules and Regulations for the Government of Public Service Districts

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in order to have rules and regulations as required by West Virginia Code 16-13A-1b in effect within the 90-day period during which each county commission must determine whether or not to perform the study required by S.B. 191. Unless rules are in effect on or soon after the effective date of S.B. 191, the county commissions will not have knowledge as to what will be required in the development of the county plan, and, thus, will not be able to make an informed decision, within the 90-day deadline, as to whether or not the county should perform its own study. Normal rulemaking procedures require at the very least 30 days before final rules can be approved and 90 days before proposed rules can become effective. Therefore, normal rulemaking procedures do not allow for the implementation of the statutory mandate of West Virginia Code §16-13A-1b within the timetable established by the Legislature.

Date: June 12, 1986

*Michael D. Greer*  
Michael D. Greer, Chairman



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1986 JUN 16 7 49 AM '86

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

WILLIAM H. HARRINGTON  
Chief of Staff

RICH O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

Telephone: (304) 345-4000  
Corporations: 345-8000

STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

PROPOSED RULES

STATE REGISTER FILING

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AGENCY PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

CONTACT PERSON Howard M. Cunningham PHONE 340-0426

TYPE OF RULE Legislative

TITLE OF RULE Rules and Regulations for the Government of Public  
Service Districts

CHAPTER 24 ARTICLE 1 SERIES XVII

AUTHORITY 24-1-7, 16-13A-1

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CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

NEW RULE

NOTICE OF HEARING

AMENDMENTS TO EXISTING RULE

NOTICE OF AGENCY APPROVAL  
(legislative rules only)

REPEAL OF EXISTING RULE

NOTICE OF AGENCY ADOPTION  
(interpretive & procedural  
rules only)

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SECOND EMERGENCY FILING

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1966 JUN 13 AM 9 00

WEST VIRGINIA EMERGENCY LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION  
CHAPTER 24-1  
SERIES XVII

OFFICE OF THE SECRETARY OF STATE

TITLE: Rules and Regulations for the Government of Public  
Service Districts

SECTION: 1.0 General  
2.0 Procedure for County Plans  
3.0 County Plans  
4.0 Commission Approval of County Plan, Notice and  
Hearing, Implementation

FILED  
1986 JUN 13 AM 9:01  
OFFICE OF THE CLERK  
SECRETARY OF STATE

WEST VIRGINIA EMERGENCY LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION  
CHAPTER 24-1  
SERIES XVII

RULES AND REGULATIONS FOR  
THE GOVERNMENT OF PUBLIC SERVICE DISTRICTS

1.0 GENERAL

1.1 Scope - This legislative rule establishes the procedure and requirements for county plans relating to the creation, consolidation, merger, expansion or dissolution of public service districts, or the merger of management and administrative services and personnel, to be submitted by the county commission or performed by the Public Service Commission of West Virginia, pursuant to West Virginia Code §16-13A-1b, and for the operation and government of public service districts pursuant to the legislative mandate in Code §16-13A-1, et seq.

1.2 Authority - West Virginia Code §24-1-1, et seq., and §16-13A-1, et seq.

1.3 Filing Date -

1.4 Effective Date -

1.5 Except as herein modified, these rules incorporate by reference the Commission's Rules and Regulations for the Government of Water Utilities (Series VII) and Rules and Regulations for the Government of Sewer Utilities (Series V.).

2.0 PROCEDURE FOR COUNTY PLANS

2.1 Within ninety (90) days of June 6, 1986, each county commission shall determine whether the county will develop a county plan as required by West Virginia Code §16-13A-1b, or whether the county will have the Public Service Commission Staff develop the plan with the county's assistance. Immediately after making such determination, the county commission shall notify the chairman of each public service district in the county of its decision. The county plan shall be developed in accordance with these rules and provide the information herein required.

- 2.2 Within fourteen (14) days after receiving the notice required by Rule 2.1, the chairman of each public service district, or his designated representative, shall submit to the county commission and the Public Service Commission a Public Service District Profile, which shall contain general information about the size, location, history, personnel, operations, and finances of the district, and in which the district expresses its opinion regarding dissolution or consolidation or merger with other districts and which lists major strong areas and major problem areas of the district. The Public Service District Profile shall contain the information indicated in District Form A which is available in the office of the Executive Secretary of the Public Service Commission.
- 2.3 The county commission or Public Service Commission Staff shall supply or obtain the specific information hereinafter required from the chairman of each public service district or his designated representative. The county commission and public service district board(s) shall consult with each other in the development of the county plans prior to the submission of the plan to the Public Service Commission.
- 2.4 The public service district(s) within the county shall be consulted by and shall cooperate to the fullest extent with the county commission and/or Public Service Commission Staff in providing information necessary to complete the county plans in accordance with these rules.
- 2.5 Upon completion of a county plan developed by the Public Service Commission Staff, the plan shall be submitted to the county commission for review and comment. The county commission shall solicit comments and recommendations from each active public service district as part of its review of the plan. The county commission must submit to the Public Service Commission its final plan showing any modifications to the Staff plan within six (6) months of the date the plan is submitted to the county commission.
- 2.6 A plan developed by a county commission shall be submitted to the Public Service Commission within one (1) year of the date that the county elects to develop the plan. The plan shall be made available to active public service districts for review and comment prior to submission of the plan to the Public Service Commission. At the time the plan is filed with the Public Service Commission the county commission shall submit any public service district comments or recommendations along with the plan.

2.7 In a case in which the county commission(s) or the Public Service Commission Staff believes it is feasible to develop a multi-county plan, such as in the case that two or more counties are served, or would be better served, by the same public service district, the county commission or Public Service Commission Staff shall request, by petition, that the Public Service Commission investigate the possibility of developing a multi-county plan. Such petition shall specifically state the benefits of a multi-county plan and why such a plan should be considered instead of a single county plan for each of the counties involved.

### 3.0 COUNTY PLANS

- 3.1 The objective of the plan shall be to identify problem areas and study the possible creation, consolidation, merger, expansion or dissolution of existing districts, or consolidation or merger of the management and administrative services and personnel of existing districts, or any combination of the above. The plan shall address the overall goals and objectives of the county commission and/or the Public Service Commission to meet the water and sewer needs of the residents of West Virginia. The plan shall state which of these specific purposes are to be achieved in meeting the water and sewer needs of the county.
- 3.2 The plan shall enumerate specific goals to be achieved in meeting the purposes set forth in section 3.1 and shall describe how each existing public service district relates to one or more of the goals.
- 3.3 The plan shall define specific actions for implementing the goals to be achieved as required by section 3.2. There shall be at least a summary objective for each district and unserved area. If there are no changes proposed for any district or unserved area, the plan shall explain why no changes are necessary and the overall result of making no changes.
- 3.4 A cost-benefit analysis shall be included in the county plan. The plan shall also include other alternatives considered and rejected.
- 3.5 County Information - The following county information shall be incorporated in the county plan.

(A) Personnel Information:

1. Name, address and term of office of each county commissioner.
2. Name and address of person(s) or firm who prepared the plan.

(B) Geographic and Demographic Information:

1. A physical description of the county, average income of county residents, employment statistics, types of industries and any business or industries moving into or leaving the county. Provide the total population of the county and projected trends in population, and census figures for 1960, 1970 and 1980, and projected census figures for 1990 and 2000.
2. The names of each active or inactive public service district, designate as "AW" Active Water, "AS" - Active Sewer, "AWS" - Active Water and Sewer or, "IW" - Inactive Water, "IS" - Inactive Sewer, "IWS" - Inactive Water and Sewer.
3. A topographic map of the county delineating the following areas:
  - a. the location and service area for each public service district, active and inactive, indicating the number of customers served by each district and the number of customers formerly served by each inactive district and indicating how these former customers are obtaining water and sewer service, if any.
  - b. the location and service area of any other type of system of water or sewer service, except individual wells (such as but not limited to, municipal utilities, private water companies, or private districts) and indicating the number of customers served by these other water and/or sewer systems, areas not served by any public source of water or sewer service and the number of people not served by any public source.

3.6 Public Service District Information - The following information shall be included in the county plan.

(A) Personnel Information:

1. The name, address, present occupation, position and length of service with the district for each district board member and employee.
2. The number of full-time and part-time employees, the job description for each position indicating the job title, the nature of the work, hours per week, required skills, minimum training and experience requirements and examples of work performed, and the district's personnel policies, such as leave policy, employee benefits, and required working hours.

(B) Operations:

1. The district's office facilities and location.
2. The district's billing procedures and whether or not a place is provided for customers to deposit payments after office hours.
3. The district's procedures for customers to report and the district to deal with emergencies or repairs after hours.
4. Any vehicles and heavy equipment owned by the district.

(C) Accounting System:

1. Whether or not the district's billing, accounts receivable, general ledger, accounts payable, inventory, payroll and plant and depreciation are maintained by the district, or by outside accounting services or a combination of in-house and outside services, and whether or not the above functions are performed manually or by computer.
2. The annual cost of outside accounting services and what person(s) or firm(s) provided the service.

3. The cost of the district's annual audit and name and address of the accountant who performs the annual audit.
4. Any computer systems in use, including the manufacturer, model, operating system's RAM memory, external storage memory, capacity of floppy disks, capacity of hard disks, and backup storage system, whether or not the hardware is owned or leased or provided by an outside accounting service or service bureau, and the accounting system software used with the computer system.

(D) General Financial Information:

1. All debt instruments and the purpose for which the debt was incurred, and the outstanding balance on each such debt instrument, including annual payments of principal and interest.
2. The sources, amount and date of any grants received by the district and how the grant was used.
3. Sources of contributions in aid of construction and the amount contributed from each source.
4. The status of all reserve accounts, including the amount of reserves required by bond resolution and the amount now on deposit, and the amount of revenue being deposited in the reserve accounts on a monthly basis.
5. Any funds available to the district.
6. The dollar amount of the gross plant in service and the net plant in service.
7. Operating budgets, construction and equipment budgets and construction projects anticipated within the next twelve months.
8. The district's insurance coverage(s), giving the name of the company, type(s) of coverage, policy period, premium and amount of any increase since last renewal.

(E) Engineering Information:

1. Water - The district's distribution system, including the number of customers by class, when the original system was built, the last major extension, the source(s) of supply and describing the number, capacity, age and condition of each storage tank and pump, the quality of water, the district's percentage of unaccounted for water and any necessary repairs, extensions or replacements to the district's distribution system.
2. Sewer - The district's sewage collection system including the type, age, capacity and condition of the lines and the treatment and pumping facilities, when the original system was built, the last major extension, the number of customers by class and any necessary improvements to the system.

(F) Legal Information:

The amount spent annually on legal services itemized by hours and/or cases; the name and case number for all pending lawsuits and proceedings before the Public Service Commission. A list of customer complaints over the last year and all agreements or contracts to which the District is a party, including, but not limited to operating contracts, legal service contracts, purchase agreements, resale contracts and treatment agreements shall be included.

- 3.7 A county commission which elects to develop the county plan shall give the Public Service Commission notice if the county intends to use a consultant to develop the plan and shall obtain Public Service Commission approval prior to contracting for the services of such consultant.
- 4.0 COMMISSION APPROVAL OF COUNTY PLAN, NOTICE AND HEARING, IMPLEMENTATION.
- 4.1 Upon submission to the Public Service Commission of a plan developed by the county commission, the Public Service Commission shall set a date for public comment and hearing on the county plan.

- 4.2 Upon submission of county commission suggestions and proposed modifications to a county plan developed by the Public Service Commission Staff, the Public Service Commission shall set a date for public comment and hearing on the county plan.
- 4.3 The county commission shall provide notice of any hearings on a county plan by posting a notice of hearing and a copy of the proposed plan at the county courthouse and at all public service district offices where bills are paid in that county. The county commission shall also publish notice of any hearings as a Class II publication in a newspaper published and of general circulation in the county no earlier than thirty (30) days nor later than ten (10) days prior to the hearing.
- 4.4 After public comment and hearing, the Public Service Commission shall, by order, approve, disapprove or modify the county plan, and establish an implementation date(s) for the recommendations adopted by the plan. In the case of Public Service Commission disapproval of a county plan, the order disapproving such plan shall specifically set forth the reasons for disapproval and necessary steps for re-submission of the plan.
- 4.5 Within thirty (30) days after the Public Service Commission enters an order approving or modifying a county plan, the county commission or clerk thereof shall file a follow-up report detailing the steps that have been and are being taken to implement the approved plan. Such follow-up report shall be updated by the first day of October following the filing of the initial follow-up report, and annually thereafter, unless otherwise ordered.

PUBLIC SERVICE DISTRICT PROFILE

District Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

A. Size and Location

District's service area (square miles): \_\_\_\_\_

Do you have an office? \_\_\_\_\_ Owned \_\_\_\_\_ Or Rented \_\_\_\_\_

Office location \_\_\_\_\_

Distance to next district's office: \_\_\_\_\_

B. History

Year district formed: \_\_\_\_\_

Service began in (year) \_\_\_\_\_ with \_\_\_\_\_ customers.

Service began with water \_\_\_\_\_, sewer \_\_\_\_\_, or both \_\_\_\_\_.

Customer size (number): 1986 \_\_\_\_\_ 1981 \_\_\_\_\_ 1976 \_\_\_\_\_.

Year(s) of rate increases: \_\_\_\_\_

Year(s) boundary expanded: \_\_\_\_\_

C. Personnel

Do you have a manager? Yes \_\_\_\_\_ No \_\_\_\_\_ Full Time \_\_\_\_\_ Part Time \_\_\_\_\_

How many managers have been employed in the last five years? \_\_\_\_\_

Why have managers been replaced? \_\_\_\_\_

How many full-time employees? \_\_\_\_\_

How many part-time employees? \_\_\_\_\_

E. Operations

Do you have your own source of water? \_\_\_\_\_

If yes, what is the percent of water loss? \_\_\_\_\_ %

Do you have your own treatment plant? \_\_\_\_\_

If yes, what are the gallons treated? \_\_\_\_\_ Gallons billed? \_\_\_\_\_

Do you do your own billing? \_\_\_\_\_

Are you in the midst of a large construction project? \_\_\_\_\_

If so, are you in the planning \_\_\_\_\_, or construction \_\_\_\_\_, phase?

Estimated completion date of project? \_\_\_\_\_

Service Provided:	<u>Water</u>	<u>Sewer</u>
	Gallons per day _____	Gallons per day _____
	Purchased _____	Regional (other operate) _____
	Surface _____	Package Plants/Lagoons _____
	Ground _____	Treatment Plant _____

What Health Department, Department of Natural Resources, and Public Service Commission orders do you have to satisfy? (None, or explain): \_\_\_\_\_

What lawsuits have the district been involved in during the last five years?

E. Customers

Number of customers \_\_\_\_\_

Number of customer complaints received by the Public Service Service Commission (last three years) \_\_\_\_\_

Most frequent complaint: \_\_\_\_\_

How many requests do you have for extensions? \_\_\_\_\_

Schedule of Rates:

Are you currently requesting a rate increase? \_\_\_\_\_

G. Finances

Attach a copy of Income Statement from last audit.

Attach a copy of Balance Sheet from last audit.

Complete the Modified Cash Flow Analysis sheet (attached)

What is the Accounts Receivable Balance? \_\_\_\_\_

What is your average monthly revenue? \_\_\_\_\_

How often do you bill? \_\_\_\_\_

F. Statement of Agreement on Data:

The undersigned agree that the data in this report is correct, to the best of our knowledge, information and belief.

Board Members (sign): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Manager (sign): \_\_\_\_\_

G. Statement on Consolidation of this District:

(Express your opinion on the need for this district to consolidate or merge with another district. Explain whether it would be helpful, advantageous, harmful, etc.) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(List any specific proposals, such as "who with", "how-to", and any structure suggestions). \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

H. Major Strong Areas and Major Problem Areas of this District:

(List and explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

Telephone: (304) 346-4000  
Corporations: 342-8000

WILLIAM H. HARRINGTON  
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Director, Corporations

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

July 15, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Public Service Commission

RULE: Series 17 Rules and Regulations for the Government of  
Public Service Districts

DATE FILED AS AN EMERGENCY RULE: June 13, 1986

DECISION NO. 9-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER  
Secretary of State

SECRETARY OF STATE  
OFFICE OF THE  
1986 JUL 16 AM 9:39  
FILED

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STAROCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

Telephone: (304) 345-4000  
Corporations: 342-8000



STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
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DECISION

Emergency Rule Decision  
(ERD 9-86)

AGENCY: Public Service Commission  
RULE: Series 17 Rules and Regulations for the Government of  
Public Service Districts

DATE FILED AS AN EMERGENCY RULE: June 13, 1986

- par. 1 The Public Service Commission has filed as an emergency rule a new rule titled Rules and Regulations for the Government of Public Service Districts.
- par. 2 This legislative rule establishes the procedure and requirements for county plans relating to the creation, consolidation, merger, expansion or dissolution of public service districts, or the merger of management and administrative services and personnel, to be submitted by the county commission or performed by the Public Service Commission of West Virginia, pursuant to West Virginia Code §16-13A-1b, and for the operation and government of public service districts pursuant to the legislative mandate in Code §16-13A-1, et seq.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Public Service Commission has filed this emergency rule with supporting documents with the Secretary of State on June 13, 1986.

par. 8 Although WV Code §29A-1-3(b) requires exempt agencies to file with the Legislative Rule Making Review Committee (LRMRC) and WV Code §29A-3-15 requires emergency rules to also be filed with the LRMRC WV Code 24-1-7 governing the Public Service Commission reads in part:

*"The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-A of this code."*

par. 9 It is, therefore, the determination of the Secretary of State that the procedural requirements for emergency rule making by the Public Service Commission within the first forty-two day period of the emergency rule effect shall be met by only filing the rule and necessary documents with the Secretary of State.

par. 10 It is the determination of the Secretary of State that the Public Service Commission has complied with the necessary procedural requirements for emergency rule making.

par. 11 (B) Statutory Authority: WV Code §24-1-7 reads in part:

*§24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.*

*The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter, including rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful: Provided, that no such rule or regulation shall be effective unless promulgated pursuant to the provisions of sections one through ten [§§ 29A-3-1 through 29A-3-10], article three, chapter twenty-nine-A of this Code: Provided, however, that no such rule or regulation shall become effective until sixty days after its final adoption or until the effective date proposed by the commission, whichever is later:*

par. 12 WV Code §16-13A-1a reads:

*§16-13A-1a. Jurisdiction of the public service commission.*

*The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:*

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;  
(b) To petition the appropriate circuit court for the removal of a public service district board member of members; and  
(c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters.

par. 13 WV Code §16-13A-1 reads in part:

*The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts.*

par. 14 It is the determination of the Secretary of State that the Public Service Commission has not exceeded its statutory authority by adopting this rule.

par. 15 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 16 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 17 The Public Service Commission claims that this proposal is needed to comply with a time limitation established by this code and to prevent substantial harm to the public interest.

par. 18 The facts and circumstances as presented by the Public Service Commission are as follows:

(A) SB 191 requires that within ninety days of the effective date of the bill each county shall elect either to perform its own study or request the PSC to conduct the study relating to the organization of its public service districts.

(B) SB 191 went into effect June 6, 1986.

(C) Approval, disapproval or modification by the PSC must be under rules of the PSC.

(D) The rules establish the requirements for the county plan to assist the county commission in determining whether the county will elect to do their own plan or allow the PSC to perform the study.

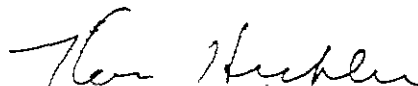
par. 19 The time limitation of 90 days does not specifically require rules to be in place prior to that time, however, the existence for such rules are needed to allow the county commission to meet the 90 day limitation.

par. 20 The legislature in WV Code §16-13A-1 repeatedly states "it is in the best interest of the public" to implement these charges to the government of public service districts.

par. 21 The Secretary of State determines that the Public Service Commission has demonstrated the need to make effective this proposal.

par. 22 It is the decision of the Secretary of State that this proposal by the Public Service Commission is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Public Service Commission; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 23 This decision shall be cited as Emergency Rule Decision 9-86 or ERD 9-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Public Service Commission, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered

THIS DATE July 16, 1986

ADMINISTRATIVE LAW DIVISION