

ARTICLE 13-a. PUBLIC SERVICE DISTRICTS FOR WATER AND SEWERAGE SERVICE

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§ 1409(38a). [1] **General Purpose of Districts.**—Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying water or sewerage services, or both, within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area may be constituted a public service district under and in the manner provided by this article. The words "public service properties", when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), or (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities.")

(h) The amounts of insurance to be maintained upon such sewerage system, or any part thereof, and the use and disposition of the proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified, or approved by accountants designated or approved by the holders of bonds issued hereunder;

(j) Such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to such municipalities the power to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia.

§ 1409(37). [23] Article Deemed Full Authority for Construction, etc., of Works and Issue of Bonds; Powers of State Department of Health Unaffected.—This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this article and no publication or any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, however, that all functions, powers and duties of the state department of health shall remain unaffected by this article.

§ 1409(38). [24] Article to be Construed Liberally.—This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof.

§ 1409(38b). [2] **Creation of Districts by County Court.**—The county court of any county may on its own motion by order duly adopted propose the creation of such public service district within such county, setting forth in such order a description sufficient to identify the territory to be embraced therein and the name of such proposed district, or any one hundred legal voters resident within and owning real property within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description sufficient to identify the territory to be embraced therein and the name of such proposed district. Any territory may be included regardless of whether or not such territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, that no territory shall be included within more than one public service district organized under this article and the boundaries shall conform to or follow magisterial district lines except where less than a whole of any magisterial district is to be included, in which latter case that part of any such boundary shall conform to other natural boundary lines, or the lines of a fixed survey: And provided further, that no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting thereto.

Such petition shall be filed in the office of the clerk of the county court of the county in which the territory to constitute the proposed district is situated, and if such territory is situated in more than one county then such petition shall be filed in the office of the clerk of the county court of the county in which the major portion of such territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county courts of the other county or counties into which the territory extends. It shall be the duty of the clerk of the county court receiving such petition to present same to the county court of such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county clerk of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county court shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county court, when fixing a date of hearing, shall provide for notifying the county court and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county court of each county in which any territory in the proposed public service district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication at least once in a newspaper of general circulation published in such county at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated

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by petition as aforesaid the person filing the petition shall advance or satisfactorily indemnify the payment of the costs and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county court out of contingent funds or any other funds available or made available for that purpose.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county court before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. When it shall have been thus determined that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement, and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, then such county court shall by order create such public service district, and such order shall be conclusive and final in that regard. The clerk of the county court of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating the same: Provided, however, that if at such hearing written protest is filed by thirty per cent or more of the qualified voters registered and residing within said district, then the county court shall not take any further action in creating such district unless the creation of such district shall be approved by a majority vote of the qualified registered voters voting at a referendum to be called by the county court for such purpose. Such referendum shall be called and held in the manner provided in the general election laws of the state of West Virginia applicable thereto and the funds therefor shall be supplied from any county funds available for such purpose, or from funds supplied from the persons who petitioned for the creation of such district. If a majority of the qualified registered electors participating in said election shall vote against the creation of said district, then such district shall not be created. If, however, a majority of the qualified, registered voters participating in such referendum vote in favor of the creation of such district, then the county court shall duly enter its order creating such district.

§ 1409(38c). [3] Powers of Districts, Creation of Governing Boards.— From and after the date of the adoption of the order creating any such public service district, it shall thereafter be a public corporation and political subdivision of the state with power of perpetual succession, but without any power to levy or collect ad valorem taxes. Each such district shall have power to acquire, own and hold property, both real and personal, in its corporate name, and shall have power to sue, may be sued, may adopt an official seal, and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of such city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it, or for the operation and improvement or extension by such district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within such district: Provided, that no such contract shall extend over a period of forty

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residing in or owning or having any interest in property in public service district shall have an opportunity to be heard its creation. At such hearing the county court before which conducted shall consider and determine the feasibility of the proposed district. When it shall have been thus determined action or acquisition by purchase or otherwise, and maintenance, improvement, and extension of public service properties service district will be conducive to the preservation of public and convenience of such area, then such county court shall such public service district, and such order shall be conclusive in that regard. The clerk of the county court of each county part of such district extends shall retain in his office an of the order creating the same: Provided, however, that if at written protest is filed by thirty per cent or more of the qualified ed and residing within said district, then the county court any further action in creating such district unless the creation it shall be approved by a majority vote of the qualified registered voters voting at a referendum to be called by the county court for

Such referendum shall be called and held in the manner the general election laws of the state of West Virginia applicable he funds therefor shall be supplied from any county funds such purpose, or from funds supplied from the persons who the creation of such district. If a majority of the qualified voters participating in said election shall vote against the creation of such district, then such district shall not be created. If, however, a majority of the qualified, registered voters participating in such referendum shall vote in favor of the creation of such district, then the county court shall enter its order creating such district.

(c). [3] Powers of Districts, Creation of Governing Boards.— After the date of the adoption of the order creating any such district, it shall thereafter be a public corporation and political subdivision of the state with power of perpetual succession, but without power to levy or collect ad valorem taxes. Each such district shall have the right to acquire, own and hold property, both real and personal, in its name, and shall have power to sue, may be sued, may adopt and execute contracts, and may enter into contracts necessary or incidental to its operation, including contracts with any city, incorporated town or other corporation located within or without its boundaries for furnishing and supply of water for the distribution system of such city, town or municipal corporation, and contract for the operation, maintenance, repair and extension of any properties owned by it, or for the construction and improvement or extension by such district of all or any part of any municipally owned public service properties of any city, town or other municipal corporation included within such district. Provided, that no such contract shall extend over a period of forty

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

The powers of each such public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be appointed in the following manner:

Each city, incorporated town, or other municipal corporation having a population in excess of three thousand, but not exceeding eighteen thousand, shall be entitled to appoint one member of such board, and each such city, incorporated town, or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of such board for each additional eighteen thousand population. The members of said board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof, and upon the filing of a certified copy or copies of such resolution or resolutions in the office of the clerk of the county court which entered the order creating such district, such persons so appointed shall thereby become members of said board without any further act or proceedings. If the number of members of said board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district shall equal or exceed three, then no further members shall be appointed to such board and such members shall be and constitute the board of said district.

If no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, then the county court which entered the order creating the district shall appoint three members of said board, who shall be persons residing within the district, which said three members shall become members of and constitute the board of said district without any further act or proceedings.

If the number of members of said board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district shall be less than three, then the county court which entered the order creating the district shall appoint such additional member or members of said board, who shall be persons residing within the district, as shall be necessary to make the number of members of said board equal three, and said additional member or members shall thereupon become members of such board; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by such county court as aforesaid, shall be and constitute the board of said district.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of such board, if any, to be appointed by the governing body or bodies thereof, shall be conclusively deemed to be the population stated for such city, incorporated town or other municipal corporation in the official federal census for the year one thousand nine hundred fifty.

The respective terms of office of the members of the first board shall be fixed by the county court and shall be as equally divided as may be, that is

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approximately one-third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which such appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county court which entered the order creating the district as soon as practicable after such appointments and shall qualify by taking an oath of office.

Any vacancy shall be filled for the unexpired term, and otherwise successor members of the board shall be appointed for terms of six years, and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize promptly following the first appointments, and annually thereafter at its first meeting after January one of each year, by selecting one of its members to serve as chairman and by appointing a secretary and a treasurer who need not be members of such board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. The treasurer shall be the lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform such other duties appertaining to the affairs of the district and shall receive such salaries as shall be prescribed by the board, and either or both may be required to furnish bond in sums to be fixed by the board for the use and benefit of the district.

§ 1409(38d). [4] **Procedural Regulations.**—The chairman shall preside at all meetings of the board and shall have the right to vote as any other members of the board, but if he should be absent from any meeting the remaining members may select a temporary chairman, and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. The board shall fix the salaries of each of its members, but same shall not be on a basis of more than five hundred dollars per annum payable in equal monthly amounts. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. A majority of the members constituting the board shall also constitute a quorum to do business. The members of the board shall not be personally liable or responsible for any obligations of the district or the board, but shall be answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county court of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located.

§ 1409(38e). [5] **General Manager.**—The board may appoint a general manager to serve a term of not more than five years and until his successor is appointed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and shall have power to employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two-thirds of the board. Such general manager need not be a resident of the district at the time he is chosen.

§ 1409(38f). [6] **Employees.**—The board may in its discretion from time to time by resolution passed by a majority vote provide for the appointment of an attorney, fiscal agent, one or more engineers, and such other officers as said board may determine necessary and expedient. The board shall in and by such resolution fix the term of office, compensation, and prescribe the duties to be performed by such appointees or officers.

§ 1409(38g). [7] **Acquisition and Operation of District Properties.**—The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district and shall have power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than two thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after notice inviting bids shall have been published in a newspaper of general circulation in the district at least once not less than ten days prior to the date of making any such contract. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

§ 1409(38h). [8] **Purchase; Eminent Domain; Extra Territorial Powers.**—The board is hereby authorized to acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation, included within the district, and shall have power to purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board shall have power and authority to construct any public service properties within or outside the district necessary or incidental to its pur-

poses, and each such district is hereby empowered and authorized to acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town, or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, however, That if any incorporated city, town or other municipal corporation included within the district shall own and operate either water facilities or sewer facilities, or both, then the district shall not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations, or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the consent of such cities, incorporated towns or other municipal corporations, and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding, and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district shall have constructed, acquired or established water facilities or sewer facilities for water or sewer services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation shall not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district shall have the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, however, that such board shall not acquire all or any substantial part of a privately owned waterworks system, unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system located in or furnishing water service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor shall any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

§ 1409(38i). [9] **Service Rates and Charges.**—The board shall have the power to make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and it shall be the duty of such board to establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the pro-

visions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued and other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where both water and sewer services are furnished to any premises the schedule of charges may be billed as a single amount for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty days after the same shall become due and payable the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all such rates and charges are fully paid. The board shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities or sewer facilities, or both, and shall not restore either water facilities or sewer facilities to any delinquent user of either water facilities or sewer facilities until all delinquent charges for both water facilities and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

In the event that any city, incorporated town or other municipal corporation included within the district shall own and operate separately either water facilities or sewer facilities, and the district shall own and operate within such city, incorporated town or other municipal corporation the other kind of facilities, either water or sewer facilities, as the case may be, then the district and such city, incorporated town or other municipal corporation shall have power to covenant and contract with each other to shut off and discontinue, the supplying of the kind of facilities furnished by the district or such city, incorporated town or other municipal corporation as the case may be, for the nonpayment of fees and charges for the other kind of facilities furnished by the district or city, incorporated town or other municipal corporation, as the case may be.

Any district furnishing sewer facilities within the district shall also have power to require all owners, tenants or occupants of any houses, buildings or premises abutting on any such sewer facilities, or which can use such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, buildings or premises which can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state.

All delinquent fees, rates and charges of the district for either water facilities or sewer facilities shall be liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. When such fees, rates and charges have been delinquent for thirty days, the district shall have power to forthwith foreclose the lien on the premises served in the same manner now provided in the laws of the state of West Virginia for the foreclosure of mortgages on real property.

§ 1409(38j). [10] **Budget.**—The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by said board, shall be adopted as the budget for the ensuing fiscal year, and no expenditures for operation and maintenance expenses in excess of the budget, shall be made during such fiscal year unless unanimously authorized and directed by the board. It shall not be necessary to include in such budget any statement of necessary expenditures for annual interest or principal payments on bonds or for capital outlays, but it shall be the duty of the board to make provisions for their payment as they become due.

§ 1409(38k). [11] **Accounts; Audits.**—It shall be the duty of the general manager under direction of the board to install and maintain a proper system of accounts showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited by an independent public accountant.

§ 1409(38l). [12] **Disbursement of District Funds.**—No money shall be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other.

§ 1409(38m). [13] **Revenue Bonds.**—For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding five per cent per

annum payable semi-annually, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in the office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed six per cent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

§ 1409(38n). [14] **Items Included in Cost of Properties.**—The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expense for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

§ 1409(38o). [15] **Trust Indenture.**—In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement,

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§ 1409(38p). [16] **Sinking Fund for Revenue Bonds.**—At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions.

§ 1409(38q). [17] **Limited Security and Enforcement of Revenue Bonds.**—The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed, shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage, and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default

causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided.

§ 1409(38r). [18] **Operating Contracts.**—The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid.

§ 1409(38s). [19] **Statutory Mortgage.**—There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the state of West Virginia for the foreclosure of mortgages on real property.

§ 1409(38t). [20] **Refunding Revenue Bonds.**—The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

§ 1409(38u). [21] **Law Complete and to Be Liberally Construed.**—This article shall constitute full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, shall be required in connection therewith except as may be prescribed by this article: Provided, that all functions, powers and duties of the public service commission of West Virginia, the state department of health and the state water commission shall remain unaffected by this article. Every district organized under this article is declared to be a public instrumentality created and functioning in the interest and for the benefit of the public,

and its property and income and any bonds issued by it shall be exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, that the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent.

§ 1409(38v). [22] **Validation of Prior Proceedings by County Courts for Creation of Districts, Inclusion of Additional Territory and Appointment of Members of District Boards.**—All acts and proceedings taken by any county court of this state purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect, for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article.

§ 1409(38w). [23] **Validation of Acts and Proceedings of Public Service Boards.**—All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect, by any county court of this state having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification.

§ 1409(38x). [24] **Acceptance of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.**—Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants or temporary advances

for the purpose of paying part or all of the cost of construction or acquisition of water or sewerage systems, or both, and the other purposes herein authorized, from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

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N. H. DYER, M.D., M.P.H.
STATE DIRECTOR OF HEALTH



State of West Virginia

DEPARTMENT OF HEALTH

CHARLESTON 25305

November 28, 1967

Honorable Robert D. Bailey
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Bailey:

Enclosed are two copies of a Reference Page and two copies of Index Pages for The Public Health Laws of West Virginia and a Manual of Regulations of the West Virginia Board of Health. These Laws and Regulations are filed in the Odd Size File as item number 3.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "N. H. Dyer".

N. H. Dyer, M. D., M. P. H.
State Director of Health

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 11/28/67