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HB 203

FILED

JUN 19 2003

IN THE OFFICE OF
JOE MANCHIN III
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

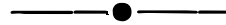
SECOND EXTRAORDINARY SESSION, 2003



ENROLLED

House Bill No. 203

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed June 12, 2003

In Effect from Passage

FILED

JUN 19 2003

IN THE OFFICE OF
JOE MANCHIN III
SECRETARY OF STATE

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H. B. 203

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed June 12, 2003; in effect from passage.]

AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eighty-six and eighty-seven; and to amend chapter sixteen of said code by adding thereto a new article, designated article thirteen-e, all relating to expanding funding methods for community improvement generally; authorizing the use of voluntary proffers through zoning ordinance; providing enforcement mechanism for proffers; authorizing the creation of and empowerment of community improvement districts; providing for the development, construction, acquisition, financing, extension and improvement of projects; providing for notice to owners of real property of assessments; authorizing the issuance of assessment bonds; and providing for assessments and liens related thereto.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by adding thereto two new sections, designated sections eighty-six and eighty-seven; and that chapter sixteen of said code be amended by adding thereto a new article, designated article thirteen-e, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 24. PLANNING AND ZONING.

PART XXI. VOLUNTARY PROFERRING.

§8-24-86. Conditions as part of final plat approval.

1 (a) A zoning ordinance may provide for the voluntary
2 proffering by a landowner as a requirement of final plat
3 approval for a development project.

4 (b) For purposes of this article, a “voluntary proffer” is a
5 written offer by a landowner to the planning commission
6 whereby the landowner offers to satisfy certain reasonable
7 conditions as a requirement of the final plat approval for a
8 development project. A voluntary proffer made to a county
9 shall be in lieu of payment of an impact fee as authorized by
10 section four, article twenty, chapter seven of this code.

11 (c) For purposes of this section, a condition contained in a
12 voluntary proffer is considered reasonable if: (1) The develop-
13 ment project results in the need for the conditions; (2) the
14 conditions have a reasonable relation to the development
15 project; and (3) all conditions are in conformity with the
16 comprehensive plan adopted pursuant to this article.

17 (d) No proffer may be accepted by a county or municipality
18 unless it has approved a list detailing any proposed capital
19 improvements from all areas within the county or municipality,
20 to which the proffer is made, and containing descriptions of any
21 proposed capital improvements, cost estimates, projected time

22 frames for constructing the improvements and proposed or
23 anticipated funding sources: *Provided*, That the approval of the
24 list does not limit the county or municipality from accepting
25 proffers relating to items not contained on the list. For purposes
26 of this subsection, “capital improvement” has the same defini-
27 tion as found in section three, article twenty, chapter seven of
28 this code.

29 (e) If a voluntary proffer includes the dedication of real
30 property or the payment of cash, the proffer shall provide for
31 the alternate disposition of the property or cash payment in the
32 event the property or cash payment is not to be used for the
33 purpose for which it was proffered.

34 (f) Notwithstanding any provision of this code to the
35 contrary, a municipality may transfer the portion of the pro-
36 ceeds of a voluntary proffer intended by the terms of the proffer
37 to be used by the board of education of a county in which the
38 municipality is located upon the condition that the portion so
39 transferred may only be used by the board for capital improve-
40 ments.

§8-24-87. Enforcement and guarantees.

1 (a) The planning commission is vested with all the neces-
2 sary authority to administer and enforce conditions attached to
3 the final plat approved for a development project, including, but
4 not limited to, the authority to: (1) Order in writing the remedy
5 for any noncompliance with the conditions; (2) bring legal
6 action to insure compliance with the conditions, including
7 injunction, abatement, or other appropriate action or proceed-
8 ing; and (3) require a guarantee satisfactory to the planning
9 commission in an amount sufficient for and conditioned upon
10 the construction of any physical improvements required by the
11 conditions, or a contract for the construction of the improve-
12 ments and the contractor’s guarantee, in like amount and so

13 conditioned, which guarantee shall be reduced or released by
14 the planning commission upon the submission of satisfactory
15 evidence that construction of the improvements has been
16 completed in whole or in part.

17 (b) Failure to meet all conditions attached to the final plat
18 approved for a development project shall constitute cause to
19 deny the issuance of any of the required use, occupancy, or
20 building permits, as may be appropriate.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-1. Short title.

1 This article shall be known and may be cited as the “West
2 Virginia Community Enhancement Act”.

§16-13E-2. Definitions.

1 For purposes of this article:

2 (a) “Assessment bonds” means special obligation bonds or
3 notes issued by a community enhancement district which are
4 payable from the proceeds of assessments.

5 (b) “Assessment” means the fee, including interest, paid by
6 the owner of real property located within a community en-
7 hancement district to pay for the cost of a project or projects
8 constructed upon or benefitting or protecting such property and
9 administrative expenses related thereto, which fee is in addition
10 to all taxes and other fees levied on the property.

11 (c) “Board” means a community enhancement board
12 created pursuant to this article.

13 (d) “Code” means the code of West Virginia, one thousand
14 nine hundred thirty-one, as amended.

15 (e) “Community enhancement district” or “district” means
16 a community enhancement district created pursuant to this
17 article.

18 (f) “Cost” means the cost of: (1) Construction, reconstruc-
19 tion, renovation and acquisition of all lands, structures, real or
20 personal property, rights, rights-of-way, franchises, easements
21 and interests acquired or to be acquired by the district; (2) all
22 machinery and equipment, including machinery and equipment
23 needed to expand or enhance county or city services to the
24 district; (3) financing charges and interest prior to and during
25 construction and, if deemed advisable by the district or govern-
26 ing body, for a limited period after completion of the construc-
27 tion; (4) interest and reserves for principal and interest, includ-
28 ing costs of municipal bond insurance and any other type of
29 financial guaranty; (5) costs of issuance in connection with the
30 issuance of assessment bonds; (6) the design of extensions,
31 enlargements, additions and improvements to the facilities of
32 any district; (7) architectural, engineering, financial and legal
33 services; (8) plans, specifications, studies, surveys and esti-
34 mates of costs and revenues; (9) administrative expenses
35 necessary or incident to determining to proceed with any
36 project; and (10) other expenses as may be necessary or
37 incident to the construction, acquisition and financing of a
38 project.

39 (g) “County commission” means the governing body of a
40 county as defined in section one, article one, chapter seven of
41 this code.

42 (h) “Governing body” means, in the case of a county, the
43 county commission and in the case of a municipality, the mayor
44 and council together, the council or the board of directors, as

45 charged with the responsibility of enacting ordinances and
46 determining the public policy of such municipality.

47 (i) "Governmental agency" means the state government or
48 any agency, department, division or unit thereof; counties;
49 municipalities; any watershed enhancement districts, soil
50 conservation districts, sanitary districts, public service districts,
51 drainage districts, school districts, urban renewal authorities or
52 regional governmental authorities established pursuant to this
53 code.

54 (j) "Municipality" means a municipality as defined in
55 section two, article one, chapter eight of this code.

56 (k) "Person" means an individual, firm, partnership,
57 corporation, voluntary association or any other type of entity.

58 (l) "Project" means the design, construction, reconstruction,
59 establishment, acquisition, improvement, renovation, extension,
60 enlargement, equipping, maintenance, repair (including
61 replacements) and start-up operation of water transmission and
62 distribution facilities, sewage collection and transmission
63 facilities, stormwater systems, police stations, fire stations,
64 libraries, museums, schools, other public buildings, hospitals,
65 piers, docks, terminals, drainage systems, culverts, streets,
66 roads, bridges (including approaches, causeways, viaducts,
67 underpasses and connecting roadways), motor vehicle parking
68 facilities (including parking lots, buildings, ramps, curb-line
69 parking, meters and other facilities deemed necessary, appropri-
70 ate, useful, convenient or incidental to the regulation, control
71 and parking of motor vehicles), public transportation, public
72 recreation centers, public recreation parks, swimming pools,
73 tennis courts, golf courses, equine facilities, motor vehicle
74 competition and recreational facilities, flood protection or relief
75 projects, or the grading, regrading, paving, repaving, surfacing,
76 resurfacing, curbing, recurbing, widening, lighting or otherwise

77 improving any street, avenue, road, highway, alley or way, or
78 the building or renewing of sidewalks and flood protection; and
79 the terms shall mean and include any project as a whole, and all
80 integral parts thereof, including all necessary, appropriate,
81 useful, convenient or incidental appurtenances and equipment
82 in connection with any one or more of the above.

**§16-13E-3. Power and authority of counties and municipalities to
create and establish community enhancement
districts.**

1 (a) Every county and municipality is hereby empowered
2 and authorized, in addition to any other rights, powers and
3 authority conferred upon it elsewhere in this code, to create,
4 modify and expand community enhancement districts in the
5 manner hereinafter set forth in such county or municipality and
6 to assist in the development, construction, acquisition, exten-
7 sion or improvement of a project or projects located in such
8 county or municipality.

9 (b) Unless agreed to by a municipality, the power and
10 authority hereby conferred on a county shall not extend into
11 territory within the boundaries of any municipality: *Provided*,
12 That notwithstanding any provision in this code to the contrary,
13 the power and authority hereby conferred on counties may
14 extend within the territory of a public service district created
15 under section two, article thirteen-a of this chapter.

**§16-13E-4. Petition for creation or expansion of community
enhancement district; petition requirements.**

1 (a) The owners of at least sixty-one percent of the real
2 property, determined by acreage, located within the boundaries
3 of the area described in the petition, by metes and bounds or
4 otherwise in a manner sufficient to describe the area, may
5 petition a governing body to create or expand a community
6 enhancement district.

7 (b) The petition for the creation or expansion of a commu-
8 nity enhancement district shall include, where applicable, the
9 following:

10 (1) The proposed name and proposed boundaries of such
11 district and a list of the names and addresses of all owners of
12 real property within the proposed district;

13 (2) A detailed project description;

14 (3) A map showing the proposed project, including all
15 proposed improvements;

16 (4) A list of estimated project costs and the preliminary
17 plans and specifications for such improvements, if available;

18 (5) A list of nonproject costs and how they will be financed;

19 (6) A consultant study outlining the projected assessments,
20 setting forth the methodology for determining the assessments
21 and the methodology for allocating portions of an initial
22 assessment against a parcel expected to be subdivided in the
23 future to the various lots into which the parcel will be subdivi-
24 ded and demonstrating that such assessments will adequately
25 cover any debt service on bonds issued to finance the project
26 and ongoing administrative costs;

27 (7) A development schedule;

28 (8) A list of recommended members for the board;

29 (9) If the project includes water, wastewater or sewer
30 improvements, written evidence from the utility or utilities that
31 will provide service to the district that said utility or utilities:

32 (A) Currently has adequate capacity to provide service
33 without significant upgrades or modifications to its treatment,
34 storage or source of supply facilities;

35 (B) Will review and approve all plans and specifications for
36 the improvements to determine that the improvements conform
37 to the utility's reasonable requirements and, if the improvement
38 consists of water transmission or distribution facilities, that the
39 improvements provide for adequate fire protection for the
40 district; and

41 (C) If built in conformance with said plans and specifica-
42 tions, will accept the improvements following their completion,
43 unless such projects are to be owned by the district;

44 (10) If the project includes improvements other than as
45 set forth in subdivision (9) of this subsection that will be
46 transferred to another governmental agency, written evidence
47 that such agency will accept such transfer, unless such projects
48 are to be owned by the district;

49 (11) The benefits that can be expected from the creation of
50 the district and the project; and

51 (12) A certification from each owner of real property within
52 the proposed district who joins in the petition that he or she is
53 granting an assessment against his or her property in such an
54 amount as to pay for the costs of the project and granting a lien
55 for said amount upon said property enforceable in accordance
56 with the provision of this article.

57 (c) After reviewing the petition presented pursuant to this
58 section, the governing body may by order or ordinance deter-
59 mine the necessity and economic feasibility of creating a
60 community enhancement district and developing, constructing,
61 acquiring, improving or extending a project therein. If the
62 governing body determines that the creation of a community
63 enhancement district and construction of the project is neces-
64 sary and economically feasible, it shall set a date for the public
65 meeting required under section five of this article and shall
66 cause the petition to be filed with the clerk of the county

67 commission or the clerk or recorder of the municipality, as the
68 case may be, and be made available for inspection by interested
69 persons before the meeting.

70 (d) Notwithstanding any other provision of this article to
71 the contrary, nothing in this article shall modify:

72 (1) The jurisdiction of the public service commission to
73 determine the convenience and necessity of the construction of
74 utility facilities, to resolve disputes between utilities relating to
75 which utility should provide service to a district or otherwise to
76 regulate the orderly development of utility infrastructure in the
77 state; or

78 (2) The authority of the infrastructure and jobs development
79 council as to the funding of utility facilities to the extent that
80 loans, loan guarantees, grants or other funding assistance from
81 a state infrastructure agency are involved.

§16-13E-5. Notice to property owners before creation or expansion of community enhancement district and construction or acquisition of project; form of notice; affidavit of publication.

1 (a) Before the adoption or enactment of an order or ordi-
2 nance creating a community enhancement district, the govern-
3 ing body shall cause notice to be given to the owners of real
4 property located within the proposed community enhancement
5 district that such ordinance or order will be considered for
6 adoption or enactment, as the case may be, at a public meeting
7 of the governing body at a date, time and place named in the
8 notice and that all persons at that meeting, or any adjournment
9 thereof, shall be given an opportunity to protest or be heard
10 concerning the adoption, enactment or rejection of the order or
11 ordinance. At or after the meeting the governing body may
12 amend, revise or otherwise modify the information in the
13 petition for the community enhancement district or project as

14 it may deem appropriate after taking into account any com-
 15 ments received at such meeting.

16 (b) The notice required in this section shall be published at
 17 least thirty days prior to the date of the meeting as a Class II-0
 18 legal advertisement in compliance with the provisions of article
 19 three, chapter fifty-nine of this code and the publication area for
 20 such publication shall be the county or municipality in which
 21 the proposed community enhancement district is located. The
 22 notice shall be in the form of, or substantially in the form of, the
 23 following notice:

24 "NOTICE TO ALL PERSONS OWNING PROPERTY
 25 LOCATED WITHIN (here describe the boundaries
 26 of the proposed community enhancement district) IN THE
 27 (county or municipality) OF (name of
 28 county or municipality):

29 A petition has been presented to the
 30 (county commission, city council or other governing body) of
 31 the (county or municipality) of (name of
 32 county or municipality) requesting establishment of a commu-
 33 nity enhancement district under chapter sixteen, article thirteen-
 34 b of the code of West Virginia to (here describe the
 35 project both within and outside of the proposed community
 36 enhancement district to be financed, developed, constructed,
 37 acquired, extended or improved, or the lots or parcels of land
 38 which may be protected, in the case of a flood relief project) in
 39 (name of county or municipality) by (here
 40 provide general description of the project) as the
 41 (county commission, city council or other governing body) may
 42 deem proper and to assess the total cost (or, if the assessments
 43 are only necessary to pay for part of the total cost, the approxi-
 44 mate percentage of the total cost) of such improvement on the
 45 property. A copy of the petition is available in the office of the

46 (name of clerk or recorder) for review by the public
47 during regular office hours.

48 The petition to create a community enhancement district
49 and to make such improvements, and estimates therefor, will be
50 considered by the (county commission, city council
51 or other governing body) at a public meeting to be held on the
52 day of,, atm. at
53 Any owner of property whose property may
54 be affected by the creation of the above-described community
55 enhancement district, and any person whose property is not
56 located within said community enhancement district but wishes
57 his or her property to be included, will be given an opportunity,
58 under oath, to protest or be heard at said meeting or any
59 adjournment thereof:

60 (name of clerk or recorder)

61 (official position).”

62 (c) An affidavit of publication of the notice made by the
63 newspaper publisher, or a person authorized to do so on behalf
64 of such publisher, and a copy of the notice shall be made part of
65 the minutes of the governing body and spread on its records of
66 the meeting described in the notice. The service of said notice
67 upon all persons owning any interest in any property located
68 within the proposed community enhancement district shall
69 conclusively be deemed to have been given upon the comple-
70 tion of such newspaper publication.

71 (d) The petitioners shall bear the expense of publication of
72 the notice and the meeting, as requested by subsection (e) of
73 this section.

74 (e) After the public meeting and before the governing body
75 may adopt or enact an order or ordinance creating a community
76 enhancement district, the governing body shall mail a true copy

77 of the proposed order or ordinance creating the community
78 enhancement district to the owners of real property in said
79 district. Unless waived in writing, any petitioning owner of real
80 property shall have thirty days from mailing of the proposed
81 ordinance or order in which to withdraw his or her signature
82 from the petition in writing prior to the vote of the governing
83 body on such ordinance or order. If any signatures on the
84 petition are so withdrawn, the governing body may pass the
85 proposed ordinance or order only upon certification by the
86 petitioners that the petition otherwise continues to meet the
87 requirements of this article. If all petitioning owners of real
88 property waive the right to withdraw their signatures from the
89 petition, then the governing body may immediately adopt or
90 enact the ordinance or order.

§16-13E-6. Creation of community enhancement district; community enhancement district to be a public corporation and political subdivision; powers thereof; community enhancement boards.

1 (a) Each community enhancement district shall be created
2 by adoption or enactment of an order or ordinance.

3 (b) From and after the date of the adoption or enactment of
4 the order or ordinance creating a community enhancement
5 district, it shall thereafter be a public corporation and political
6 subdivision of this state, but without any power to levy or
7 collect ad valorem taxes. Each community enhancement district
8 is hereby empowered and authorized, in addition to any other
9 rights, powers and authorities conferred upon it in this article or
10 elsewhere in this code, to:

11 (1) Acquire, own and hold, in its corporate name, by
12 purchase, lease, right of eminent domain, gift or otherwise, such
13 property, both real and personal and other interests in real
14 estate, or any other property, whether tangible or intangible, as
15 may be necessary or incident to the planning, financing,

16 development, construction, acquisition, extension, improvement
17 and completion of a project;

18 (2) Design, plan, finance, develop, construct, acquire,
19 extend, improve and complete one or more projects and assess
20 the cost of all or any portion of a project on real property
21 located within the community enhancement district;

22 (3) Sue or be sued;

23 (4) Establish a bank account or accounts in its name;

24 (5) Enter into agreements or other transactions with any
25 person or governmental agency necessary or incident to the
26 development, planning, construction, acquisition or improve-
27 ment of a project or for the operation, maintenance or disposi-
28 tion of a project or for any other services required by a project;

29 (6) Annually, on or before the seventh day of June, certify
30 to the sheriff of the county in which the property is located the
31 assessments granted against all property in the district for
32 inclusion in the tax ticket;

33 (7) Expend funds to acquire, or construct part of a project
34 on property located outside of a community enhancement
35 district, and for any work undertaken thereon, as may be
36 necessary or incident to the completion of a project;

37 (8) Enter into agreements with one or more counties,
38 municipalities, public service districts or community enhance-
39 ment districts to plan, develop, construct, acquire or improve a
40 project jointly;

41 (9) Accept appropriations, gifts, grants, bequests and
42 devises and use or dispose of the same to carry out its corporate
43 purpose;

44 (10) Make and execute contracts, releases, assignments,
45 compromises and other instruments necessary or convenient for
46 the exercise of its powers, or to carry out its corporate purpose;

47 (11) Have a seal and alter the same;

48 (12) Raise funds by the issuance and sale of assessment
49 bonds;

50 (13) Obtain options to acquire real property, or any interest
51 therein, by purchase, lease or otherwise, which is found by the
52 board to be suitable as a site, or part of a site, for the construc-
53 tion of a project;

54 (14) Pledge funds generated by assessments in a district or
55 proceeds from the sale of assessment bonds to payment of debt
56 service on tax increment financing obligations issued under
57 article eleven-b, chapter seven of this code, for the period of
58 time determined by the community enhancement board; and

59 (15) Take any and all other actions consistent with the
60 purpose of this article and not in violation of the constitution of
61 this state as may be necessary or incident to the construction
62 and completion of a project.

63 (c) Notwithstanding the powers granted to community
64 enhancement districts in subsection (b) of this section or as
65 otherwise provided in this code, no community enhancement
66 district may expend funds to assist any utility to upgrade,
67 improve, modify, repair or replace the utility's existing storage,
68 treatment or source of supply facilities, whether such existing
69 facilities are located within or outside of the district.

70 (d) The powers of each community enhancement district
71 shall be vested in and exercised by a community enhancement
72 board which shall be composed of five members, four of whom
73 shall be appointed by the governing body of the county or

74 municipality in which the community enhancement district is
75 located and one of whom shall be the sheriff or his or her
76 designee of the county or the treasurer or his or her designee of
77 the municipality (or such other person serving in an equivalent
78 capacity if there is no treasurer), as the case may be, in which
79 the community enhancement district is located. At least three
80 members of the board shall be residents of the assessment
81 district: *Provided*, That should less than three persons reside
82 within the boundaries of the community enhancement district,
83 then at least three members of the board shall be residents of
84 the county or municipality, as the case may be: *Provided*,
85 *however*, That if no persons reside within the boundaries of the
86 community enhancement district then at least three members
87 must be approved by the owner or owners of the land. No more
88 than three initial members of the board may be from the same
89 political party.

90 (e) The four members appointed by the governing body
91 shall be appointed for overlapping terms of four years each and
92 thereafter until their respective successors have been appointed
93 and have qualified. For the purpose of initial appointments, one
94 member shall be appointed for a term of four years; one
95 member shall be appointed for a term of three years; one
96 member shall be appointed for a term of two years; and one
97 member shall be appointed for a term of one year. Members
98 may be reappointed for any number of terms. Before entering
99 upon the performance of his or her duties, each member shall
100 take and subscribe to the oath required by section five, article
101 IV of the constitution of this state. Vacancies shall be filled by
102 appointment by the governing body of the county or municipal-
103 ity creating the assessment district for the unexpired term of the
104 member whose office shall be vacant and such appointment
105 shall be made within thirty days of the occurrence of such
106 vacancy. Any such member may be removed by the governing
107 body which appointed such member in case of incompetency,
108 neglect of duty, gross immorality or malfeasance in office.

109 Members shall be entitled to no more than fifty dollars per
110 meeting and reasonable expenses associated with their services.

111 (f) The board shall organize within thirty days following the
112 first appointments and annually thereafter at its first meeting
113 after the first day of January of each year by selecting one of its
114 members to serve as chairman, one to serve as treasurer and one
115 to serve as secretary. The secretary, or his or her designee, shall
116 keep a record of all proceedings of the board which shall be
117 available for inspection as other public records, and the
118 treasurer or his or her designee shall maintain records of all
119 financial matters relating to the community enhancement
120 district, which shall also be available for inspection as other
121 public records. Duplicate records shall be filed with the clerk or
122 recorder, as the case may be, of the county or municipality
123 which created the community enhancement district and shall
124 include the minutes of all board meetings. The secretary and
125 treasurer shall perform such other duties pertaining to the
126 affairs of the community enhancement district as shall be
127 prescribed by the board.

128 (g) The members of the board, and the chairman, secretary
129 and treasurer thereof, shall make available to the governing
130 body responsible for appointing the board, at all times, all of its
131 books and records pertaining to the community enhancement
132 district's operation, finances and affairs for inspection and
133 audit. The board shall meet at least semiannually.

134 (h) A majority of the members of the board constitutes a
135 quorum and meetings shall be held at the call of the chairman.

136 (i) Staff, office facilities and costs of operation of the board
137 may be provided by the county or municipality which created
138 the community enhancement district or by contract and said
139 costs of operations shall be funded from assessments collected
140 within the district.

141 (j) The chairman shall preside at all meetings of the board
142 and shall vote as any other members of the board, but if he or
143 she should be absent from any meeting the remaining members
144 may select a temporary chairman, and if the member selected
145 as chairman resigns as such or ceases for any reason to be a
146 member of the board, the board shall select one of its members
147 as chairman to serve until the next annual organizational
148 meeting.

149 (k) The board shall, by resolution, determine its own rules
150 of procedure, fix the time and place of its meetings and the
151 manner in which special meetings may be called. The members
152 of the board shall not be personally liable or responsible for any
153 obligations of the assessment district or the board but are
154 answerable only for willful misconduct in the performance of
155 their duties.

156 (l) The official name of a community enhancement district
157 created under the provisions of this article may contain the
158 name of the county or municipality, as the case may be, in
159 which it is located.

160 (m) Notwithstanding any provision in this code to the
161 contrary, the power and authority hereby conferred on commu-
162 nity enhancement districts may extend within the territory of a
163 public service district created under section two, article
164 thirteen-a of this chapter.

§16-13E-7. Provisions for construction of a project.

1 (a) After the creation of a community enhancement district
2 and the appointment of the board thereof, the board shall
3 provide by resolution for the construction of the project and
4 shall also provide in the same or subsequent resolutions for the
5 supervision of such work by a professional engineer, govern-
6 mental agency or any other person designated by the board. The

7 board may provide for the construction of the project by one of
8 the two following methods or any combination thereof:

9 (1) If there exists a governmental agency with the experi-
10 ence, knowledge and authority to construct the project, the
11 board may elect to enter into a contract with such agency for the
12 construction of all or part of the project or for any other service
13 necessary or incident to the construction of the project, in which
14 case such governmental agency shall be responsible for entering
15 into contracts, subject to the board's approval, with such other
16 persons as may be necessary or incident to the construction of
17 the project; or

18 (2) The board may elect to enter into one or more contracts
19 with such contractors and other persons as may be necessary or
20 incident to the construction of the project, in which case it shall
21 solicit competitive bids. All contracts for work on any project,
22 the expense of which will exceed fifty thousand dollars, shall be
23 awarded to the lowest qualified responsible bidder who shall
24 furnish a sufficient performance and payment bond. The board
25 may reject any and all bids and if it rejects all bids, notices shall
26 be published as originally required before any other bids may
27 be received. The board may let portions of the work necessary
28 to complete a project under different contracts.

29 (b) The resolution described in subsection (a) of this section
30 shall also provide for payment of the cost of the project.

31 (c) Prior to the construction of the project, the board shall
32 obtain such permits and licenses required by law for the
33 construction and operation of the project.

34 (d) Prior to bidding a water, wastewater or storm water
35 component of a project, the board shall submit the final plans
36 and specifications to the utility or utilities who will provide the
37 water, wastewater or storm water service for review and written
38 approval.

§16-13E-8. Notice to property owners of assessments; correcting and laying assessments; report on project completion; credits.

1 (a) Prior to the issuance of assessment bonds or pledging
2 any amounts to payment of tax increment financing obligation
3 debt service, the board shall cause a report to be prepared
4 describing each lot or parcel of land located within the commu-
5 nity enhancement district and setting forth the total cost of the
6 project based on the contract with the governmental agency, the
7 accepted bid or bids, or a cost estimate certified by a profes-
8 sional engineer, and all other costs incurred prior to the
9 commencement of construction and the future administrative
10 costs, and the respective amounts chargeable upon each lot or
11 parcel of land and the proper amount to be assessed against the
12 respective lots or parcels of land with a description of the lots
13 and parcels of land as to ownership and location. If two or more
14 different kinds of projects are involved, the report shall set forth
15 the portion of the assessment attributable to each respective
16 project. The board shall thereupon give notice to the owners of
17 real property to be assessed that on or after a date specified in
18 the notice an assessment will be deemed granted against the
19 property. The notice shall state that the owner of assessed
20 property, or other interested party, may on said date appear
21 before the board to move the revision or correction of the
22 proposed assessment and shall show the total cost of the
23 project, whether the assessments will pay for all or part of the
24 total cost of the project and the lots or parcels of property to be
25 assessed and the respective amounts to be assessed against such
26 lots or parcels, with a description of the respective lots and
27 parcels of land as to ownership and location. The notice shall
28 also be published as a Class II-0 legal advertisement in compli-
29 ance with the provisions of article three, chapter fifty-nine of
30 the code, and the publication area for such publication is the
31 assessment district. On or after the date so advertised, the board
32 may revise, amend, correct and verify the report and proceed by

33 resolution to establish the assessments as corrected and verified
34 and shall certify the same to the governing body which created
35 the district.

36 (b) Upon completion of a project, the board shall prepare a
37 final report certifying the completion of the project and
38 showing the total cost of the project and whether the cost is
39 greater or less than the cost originally estimated. If the total cost
40 of the project is less or greater than the cost shown in the report
41 prepared prior to construction, the board may revise the
42 assessment charged on each lot or parcel of land pursuant to
43 subsection (a) of this section to reflect the total cost of the
44 project as completed, and in so doing shall, in the case of an
45 assessment increase only, follow the same procedure with
46 regard to notice and providing each owner of assessed property
47 the right to appear before the board to move for the revision or
48 correction of such proposed reassessment as required for the
49 original assessment. If an assessment is decreased, the board
50 shall, by resolution and written notice to the sheriff of the
51 county in which the community enhancement district is located,
52 cause the next installment or installments of assessments then
53 due and payable by each affected property owner to be reduced
54 pro rata, and shall provide written notice to such property
55 owners of the amount of such decrease by the deposit of such
56 notice in the United States mail, postage prepaid.

57 (c) The value of the projects financed with the assessments
58 shall be treated as a credit toward any impact fees related to the
59 service or services provided levied under chapter seven, article
60 twenty of this code.

§16-13E-9. Exemption of public property from assessments.

1 No lots or parcels of land owned or controlled by the
2 United States, this state, any municipality, county, board of
3 education or other public body shall be subject to any assess-
4 ments.

§16-13E-10. Assessment bonds; sinking fund for assessment bonds; tax exemption.

1 (a) For constructing or acquiring any project authorized by
2 this article, and also for reimbursing or paying the costs and
3 expenses of creating the district, the board of any such district
4 is hereby authorized to borrow money, from time to time, and
5 in evidence thereof issue the bonds of such district, payable
6 from the proceeds of the assessments granted under this article.
7 Such bonds shall be issued in one or more series, may bear such
8 date or dates, may mature at such time or times not exceeding
9 thirty-five years from their respective dates, shall be fully
10 registered as to principal and interest in the name of the
11 bondholder with a certificate of authentication attached thereto,
12 may bear interest at such rate or rates not exceeding eighteen
13 percent per annum, may be payable at such times, may be
14 executed in such manner, may be payable at such place or
15 places, may be subject to such terms of redemption with or
16 without premium, may be declared or become due before
17 maturity date thereof, may be authenticated in any manner, and,
18 upon compliance of such conditions, may contain such terms
19 and covenants as provided by the resolution or resolutions of
20 the board. All such bonds shall be, and shall be treated as,
21 negotiable instruments for all purposes. Bonds bearing the
22 signatures of officers and offices on the dates of the signing
23 thereof shall be valid and binding for all purposes notwithstand-
24 ing that before the delivery thereof any or all such persons
25 whose signatures appear thereon shall have ceased to be such
26 officers. Notwithstanding the requirements or provisions of any
27 other law, any such bonds may be negotiated or sold in such
28 manner at such time or times and at such prices or prices as is
29 found by the board to be most advantageous. Any resolution or
30 resolutions providing for the issuance of such bonds may
31 contain covenants and restrictions upon the issuance of addi-
32 tional bonds thereafter as may be deemed necessary or advis-

33 able for the assurance of the payment of the bonds thereby
34 authorized.

35 (b) At or before the time of issuance of any bonds under
36 this article, the board shall by resolution provide for the
37 creation of a sinking fund and for payments in succession fund
38 from the assessments granted pursuant to this article in such
39 amount as shall be sufficient to pay the accruing interest and
40 retire the bonds at or before the time each will respectively
41 become due and to establish or maintain reserves therefor. All
42 sums which are or should be, in accordance with such provi-
43 sions, paid into such sinking fund shall be used solely for
44 payment of interest and for the retirement of such bonds at or
45 prior to maturity as may be provided or required by such
46 resolution.

47 (c) The property, including leased property, of the commu-
48 nity enhancement district and bonds and any income or interest
49 thereon issued by the community enhancement district are
50 exempt from taxation by the state of West Virginia and other
51 taxing bodies of the state.

§16-13E-11. Indebtedness of assessment district.

1 No constitutional or statutory limitation with respect to the
2 nature or amount of or rate of interest on indebtedness which
3 may be incurred by municipalities, counties or other public or
4 governmental bodies shall apply to the indebtedness of a
5 community enhancement district. No indebtedness of any
6 nature of a community enhancement district shall constitute an
7 indebtedness of any municipality or county creating and
8 establishing such community enhancement district or a charge
9 against any property of said municipalities or counties but shall
10 be paid solely from the assessments which the community
11 enhancement district is authorized to impose on the owners of
12 the property within the district by this article. No indebtedness
13 or obligation incurred by any community enhancement district

14 shall give any right against any member of the governing body
15 of any municipality or any member of the county commission
16 of any county or any member of the community enhancement
17 board of any community enhancement district.

§16-13E-12. Payment of assessments to sheriff; report to community enhancement district; collection of delinquent assessments.

1 The assessments imposed pursuant to this article will not be
2 considered to be ad valorem taxes or the equivalent of ad
3 valorem taxes under any other provision of this code: *Provided,*
4 That for the exclusive purposes of collection of the assessments
5 imposed under section eight of this article and enforcement of
6 the assessment liens created by section thirteen of this article,
7 the provisions of chapter eleven-a of this code shall apply as if
8 the assessments were taxes as that term is defined in section
9 one, article one of that chapter. The sheriff shall promptly
10 deposit all assessments upon receipt thereof in a segregated
11 account established by the sheriff for such purpose and shall
12 maintain a record of the assessments so received. Each month,
13 the sheriff shall pay all moneys collected for the community
14 enhancement district into the district treasury or if the sheriff
15 consents to a trustee for the benefit of bondholders if assess-
16 ment bonds are issued by the community enhancement district.
17 Payments to the community enhancement district shall be made
18 in the time set forth in section fifteen, article one, chapter
19 eleven-a of this code and the sheriff shall be entitled to take a
20 commission for collection of the assessments on behalf of the
21 community enhancement district, as provided in section
22 seventeen of said article. For each tax year, the sheriff will
23 prepare and deliver to the board of each community enhance-
24 ment district located in the county, a statement setting forth the
25 aggregate amount of assessments received for such district and
26 the name of any property owner who failed to pay the assess-
27 ments due and payable for the period in question. This report

28 shall be due on or before the first day of August of the follow-
29 ing year. The sheriff is authorized to collect delinquent assess-
30 ments and enforce the liens created in section thirteen of this
31 article as if those assessments were delinquent real property
32 taxes and the liens are tax liens using the enforcement tools
33 provided in articles two and three, chapter eleven-a of this code.

**§16-13E-13. Liens; recording notice of liens; priority; release of
lien; notice to future property owners.**

1 (a) With the exception of property exempt from assessment
2 pursuant to section nine of this article, there shall be a lien on
3 all real property located within the community enhancement
4 district for the assessments imposed by section eight of this
5 article, which lien shall attach on the date specified in the notice
6 to property owners. A notice of the liens of said assessments
7 referring to the assessing resolution and setting forth a list of
8 the property assessed, described respectively as to amounts of
9 assessment, ownership and location of the property, shall be
10 certified, by the chairman and secretary of the board, to the
11 clerk of the county commission of the county wherein the
12 project is located. The county clerk shall record the notice of
13 such lien in the appropriate trust deed book or other appropriate
14 county lien book and index the same in the name of each owner
15 of property assessed. From the date of an assessment, the
16 trustee, for the benefit of bondholders if assessment bonds are
17 issued by the community enhancement district, and/or the
18 district shall have such lien and shall be entitled to enforce the
19 same in its, his or their name to the extent of the amount,
20 including principal and interest and any penalty due for any
21 failure to pay an installment when due, of such assessments and
22 against the property to which the assessment applies, as to any
23 assessment not paid as and when due. The trustee or the district,
24 as an alternative to the enforcement provision set forth in
25 section twelve of this article, are granted all legal remedies as
26 are necessary to collect the assessment. Such assessments shall

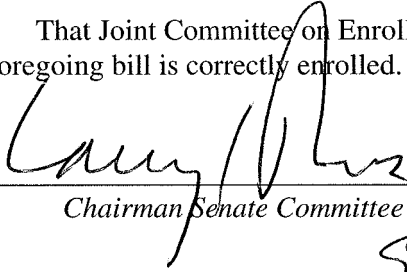
27 be and constitute liens for the benefit of the community
28 enhancement district or of the trustee, for the benefit of
29 bondholders if assessment bonds are issued by the community
30 enhancement district, upon the respective lots and parcels of
31 land assessed and shall have priority over all other liens except
32 those for land taxes due the state, county and municipality and
33 except any liens for preexisting special assessments provided
34 under this code. If any assessment is revised in accordance with
35 this article, the lien created by this section shall extend to the
36 assessment so revised and shall have the same priority as the
37 priority of the lien created upon the laying of the original
38 assessment. Such assessments and interest thereon shall be paid
39 by the owners of the property assessed as and when the install-
40 ments are due. Following the payment in full of any assessment
41 bonds including any interest thereon, the chairman and secre-
42 tary of the board shall execute a release of all liens and shall
43 certify the same to county clerk for recordation.


44 (b) Following the grant of an assessment on property as
45 provided in this article, the seller of such property shall provide
46 reasonable disclosure to the buyer in the real estate contract that
47 an assessment has been granted on the property, the amount of
48 the assessment and the duration of the assessment.

§16-13E-14. Liberal construction.

1 This article being necessary for the public health, safety and
2 welfare and economic development, it shall be liberally
3 construed to effectuate the purpose hereof.

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

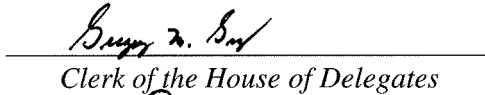

Chairman Senate Committee

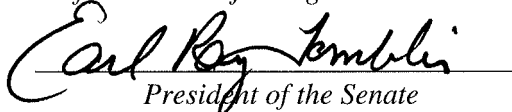

Chairman House Committee

Originating in the House.

In effect from passage.

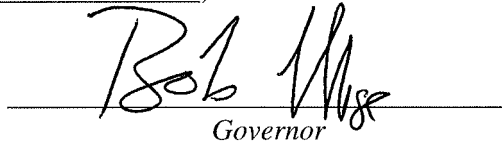

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 19th
day of June, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 6/16/03

Time 9:45am

FILED

2003 JUN 19 P 5:49

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**