

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2605**

BY DELEGATES MALLOW, CONLEY, FORSHT, BRUCE AND

MILLER

[Introduced February 19, 2021; Referred to the  
Committee on Political Subdivisions then Government  
Organization]

1 A BILL to amend and reenact §16-13A-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to providing that if a public service board represents more than one community, there shall  
 3 be one member from each such community on the service district board.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

**§16-13A-3. District to be a public corporation and political subdivision; powers thereof;  
 public service boards.**

1 From and after the date of the adoption of the order creating any public service district, it  
 2 is a public corporation and political subdivision of the state, but without any power to levy or collect  
 3 ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its  
 4 corporate name, and may sue, may be sued, may adopt an official seal, and may enter into  
 5 contracts necessary or incidental to its purposes, including contracts with any city, incorporated  
 6 town or other municipal corporation located within or without its boundaries for furnishing  
 7 wholesale supply of water for the distribution system of the city, town or other municipal  
 8 corporation, or for furnishing storm water services for the city, town or other municipal corporation,  
 9 and contract for the operation, maintenance, servicing, repair and extension of any properties  
 10 owned by it or for the operation and improvement or extension by the district of all or any part of  
 11 the existing municipally owned public service properties of any city, incorporated town or other  
 12 municipal corporation included within the district: *Provided*, That no contract shall may extend  
 13 beyond a maximum of 40 years, but provisions may be included therein for a renewal or  
 14 successive renewals thereof and shall conform to and comply with the rights of the holders of any  
 15 outstanding bonds issued by the municipalities for the public service properties.

16 The powers of each public service district shall be vested in and exercised by a public  
 17 service board consisting of not less than three members who shall be persons residing within the  
 18 district, who possess certain educational, business or work experience which will be conducive to  
 19 operating a public service district: *Provided*, That if a public service board represents more than

20 one community, there shall be one member from each such community on the service district  
21 board. ~~In the event~~ If the public service district is providing any utility service and billing rates and  
22 charges to its customers, at least one board member shall be a rate-paying residential customer  
23 of the public service district: *Provided, however,* That if an existing public service board does not  
24 have a member who is a rate-paying residential customer of the public service district on July 1,  
25 ~~2013~~ 2021, the next following appointment to the board shall be a rate-paying residential customer  
26 of that public service district. For purposes of this section, "rate-paying residential customer"  
27 means a person who:

28 (1) In the case of a water or sewer public service district, is physically connected to and  
29 actively receiving residential public service district utility services; or

30 (2) In the case of a storm water public service district, has storm water conveyed away  
31 from the residential property by a utility owned system; and

32 (3) Has an active account in good standing and is the occupier of the residential property  
33 which is on the public service district utility service account.

34 Each board member shall, within six months of taking office, successfully complete the  
35 training program to be established and administered by the Public Service Commission in  
36 conjunction with the Department of Environmental Protection and the Bureau for Public Health.  
37 Board members ~~shall~~ may not be or become pecuniarily interested, directly or indirectly, in the  
38 proceeds of any contract or service, or in furnishing any supplies or materials to the district nor  
39 ~~shall~~ may a former board member be hired by the district in any capacity within a minimum of 12  
40 months after board member's term has expired or ~~such~~ the board member has resigned from the  
41 district board. The members shall be appointed in the following manner:

42 Each city, incorporated town or other municipal corporation having a population of more  
43 than 3,000 but less than 18,000 is entitled to appoint one member of the board, and each city,  
44 incorporated town or other municipal corporation having a population in excess of 18,000 shall be  
45 entitled to appoint one additional member of the board for each additional 18,000 population. The

46 members of the board representing such cities, incorporated towns or other municipal  
47 corporations shall be residents thereof and shall be appointed by a resolution of the governing  
48 bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in  
49 the office of the clerk of the county commission which entered the order creating the district, the  
50 persons so appointed become members of the board without any further act or proceedings. If  
51 the number of members of the board so appointed by the governing bodies of cities, incorporated  
52 towns or other municipal corporations included in the district equals or exceeds three, then no  
53 further members shall be appointed to the board and the members so appointed are the board of  
54 the district except in cases of merger or consolidation where the number of board members may  
55 equal five.

56         If no city, incorporated town or other municipal corporation having a population of more  
57 than 3,000 is included within the district, then the county commission which entered the order  
58 creating the district shall appoint three members of the board, who are persons residing within  
59 the district and residing within the State of West Virginia, which three members become members  
60 of the board of the district without any further act or proceedings except in cases of merger or  
61 consolidation where the number of board members may equal five.

62         If the number of members of the board appointed by the governing bodies of cities,  
63 incorporated towns or other municipal corporations included within the district is less than three,  
64 then the county commission which entered the order creating the district shall appoint such  
65 additional member or members of the board, who are persons residing within the district, as is  
66 necessary to make the number of members of the board equal three except in cases of merger  
67 or consolidation where the number of board members may equal five, and the member or  
68 members appointed by the governing bodies of the cities, incorporated towns or other municipal  
69 corporations included within the district and the additional member or members appointed by the  
70 county commission as aforesaid, are the board of the district. A person may serve as a member  
71 of the board in one or more public service districts.

72           The population of any city, incorporated town, or other municipal corporation, for the  
73 purpose of determining the number of members of the board, if any, to be appointed by the  
74 governing body or bodies thereof, is the population stated for such city, incorporated town or other  
75 municipal corporation in the last official federal census.

76           Notwithstanding any provision of this code to the contrary, whenever a district is  
77 consolidated or merged pursuant to ~~section two of this article~~ §16-13A-2 of this code, the terms  
78 of office of the existing board members shall end on the effective date of the merger or  
79 consolidation. The county commission shall appoint a new board according to rules promulgated  
80 by the Public Service Commission. Whenever districts are consolidated or merged no provision  
81 of this code prohibits the expansion of membership on the new board to five.

82           The respective terms of office of the members of the first board shall be fixed by the county  
83 commission and shall be as equally divided as may be, that is approximately one third of the  
84 members for a term of two years, a like number for a term of four years, the term of the remaining  
85 member or members for six years, from the first day of the month during which the appointments  
86 are made. The first members of the board appointed as aforesaid shall meet at the office of the  
87 clerk of the county commission which entered the order creating the district as soon as practicable  
88 after the appointments and shall qualify by taking an oath of office: *Provided*, That any member  
89 or members of the board may be removed from their respective office as provided in ~~section three-~~  
90 ~~a of this article~~ §16-13A-3a of this code.

91           Any vacancy shall be filled for the unexpired term within ~~thirty~~ 30 days; otherwise  
92 successor members of the board shall be appointed for terms of six years and the terms of office  
93 shall continue until successors have been appointed and qualified. All successor members shall  
94 be appointed in the same manner as the member succeeded was appointed. The district shall  
95 provide to the Public Service Commission, within 30 days of the appointment, the following  
96 information: The new board member's name, home address, home and office phone numbers,  
97 date of appointment, length of term, who the new member replaces and if the new appointee has

98 previously served on the board. The Public Service Commission shall notify each new board  
99 member of the legal obligation to attend training as prescribed in this section.

100 The board shall organize within 30 days following the first appointments and annually  
101 thereafter at its first meeting after January 1 of each year by selecting one of its members to serve  
102 as chair and by appointing a secretary and a treasurer who need not be members of the board.  
103 The secretary shall keep a record of all proceedings of the board which shall be available for  
104 inspection as other public records. Duplicate records shall be filed with the county commission  
105 and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds  
106 of the public service district and shall pay same out on orders authorized or approved by the  
107 board. The secretary and treasurer shall perform other duties appertaining to the affairs of the  
108 district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish  
109 bond in an amount to be fixed by the board for the use and benefit of the district.

110 The members of the board, and the chair, secretary, and treasurer thereof, shall make  
111 available to the county commission, at all times, all of its books and records pertaining to the  
112 district's operation, finances, and affairs, for inspection and audit. The board shall meet at least  
113 monthly.

NOTE: The purpose of this bill is to provide that if a public service board represents more than one community, there shall be one member from each such community on the service district board. The bill also includes updated technical changes.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.