

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003



ENROLLED

Committee Substitute for

SENATE BILL NO. 412

(By Senator Love, et al)



PASSED March 8, 2003

In Effect 90 days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 412

(SENATORS LOVE, SHARPE, SPROUSE
AND MINEAR, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; public utility services; providing that unpaid charges for services do not become a lien against the owner of real property nor is the owner liable for the charges unless the owner contracted directly with the provider for the services; modifying deposit; and providing refund of deposit with interest.

Be it enacted by the Legislature of West Virginia:

That section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE,
STORMWATER AND GAS SERVICES.**

**§16-13A-9. Rules; service rates and charges; discontinuance of
service; required water and sewer connections;
lien for delinquent fees.**

1 (a) (1) The board may make, enact and enforce all
2 needful rules in connection with the acquisition, construc-
3 tion, improvement, extension, management, maintenance,
4 operation, care, protection and the use of any public
5 service properties owned or controlled by the district. The
6 board shall establish rates, fees and charges for the
7 services and facilities it furnishes, which shall be sufficient
8 at all times, notwithstanding the provisions of any other
9 law or laws, to pay the cost of maintenance, operation and
10 depreciation of the public service properties and principal
11 of and interest on all bonds issued, other obligations
12 incurred under the provisions of this article and all reserve
13 or other payments provided for in the proceedings which
14 authorized the issuance of any bonds under this article.
15 The schedule of the rates, fees and charges may be based
16 upon:

17 (A) The consumption of water or gas on premises con-
18 nected with the facilities, taking into consideration
19 domestic, commercial, industrial and public use of water
20 and gas;

21 (B) The number and kind of fixtures connected with the
22 facilities located on the various premises;

23 (C) The number of persons served by the facilities;

24 (D) Any combination of paragraphs (A), (B) and (C) of
25 this subdivision; or

26 (E) May be determined on any other basis or classifica-
27 tion which the board may determine to be fair and reason-
28 able, taking into consideration the location of the premises
29 served and the nature and extent of the services and
30 facilities furnished. However, no rates, fees or charges for

31 stormwater services may be assessed against highways,
32 road and drainage easements or stormwater facilities
33 constructed, owned or operated by the West Virginia
34 division of highways.

35 (2) Where water, sewer, stormwater or gas services, or
36 any combination thereof, are all furnished to any premises,
37 the schedule of charges may be billed as a single amount
38 for the aggregate of the charges. The board shall require
39 all users of services and facilities furnished by the district
40 to designate on every application for service whether the
41 applicant is a tenant or an owner of the premises to be
42 served. If the applicant is a tenant, he or she shall state
43 the name and address of the owner or owners of the
44 premises to be served by the district. Notwithstanding the
45 provisions of section eight, article three, chapter twenty-
46 four of this code to the contrary, all new applicants for
47 service shall deposit the greater of a sum equal to two
48 twelfths of the average annual usage of the applicant's
49 specific customer class or fifty dollars, with the district to
50 secure the payment of service rates, fees and charges in the
51 event they become delinquent as provided in this section.
52 If a district provides both water and sewer service, all new
53 applicants for service shall deposit the greater of a sum
54 equal to two twelfths of the average annual usage for
55 water service or fifty dollars and the greater of a sum
56 equal to two twelfths of the average annual usage for
57 wastewater service of the applicant's specific customer
58 class or fifty dollars. In any case where a deposit is
59 forfeited to pay service rates, fees and charges which were
60 delinquent at the time of disconnection or termination of
61 service, no reconnection or reinstatement of service may be
62 made by the district until another deposit equal to the
63 greater of a sum equal to two twelfths of the average usage
64 for the applicant's specific customer class or fifty dollars
65 has been remitted to the district. After twelve months of
66 prompt payment history, the district shall return the
67 deposit to the customer or credit the customer's account at
68 a rate as the public service commission may prescribe:

69 *Provided*, That where the customer is a tenant, the district
70 is not required to return the deposit until the time the
71 tenant discontinues service with the district. Whenever
72 any rates, fees, rentals or charges for services or facilities
73 furnished remain unpaid for a period of twenty days after
74 the same become due and payable, the user of the services
75 and facilities provided is delinquent and the user is liable
76 at law until all rates, fees and charges are fully paid. The
77 board may, under reasonable rules promulgated by the
78 public service commission, shut off and discontinue water
79 or gas services to all delinquent users of either water or
80 gas facilities, or both, ten days after the water or gas
81 services become delinquent.

82 (b) In the event that any publicly or privately owned
83 utility, city, incorporated town, other municipal corpora-
84 tion or other public service district included within the
85 district owns and operates separately either water facili-
86 ties or sewer facilities and the district owns and operates
87 the other kind of facilities, either water or sewer, as the
88 case may be, then the district and the publicly or privately
89 owned utility, city, incorporated town or other municipal
90 corporation or other public service district shall covenant
91 and contract with each other to shut off and discontinue
92 the supplying of water service for the nonpayment of
93 sewer service fees and charges: *Provided*, That any con-
94 tracts entered into by a public service district pursuant to
95 this section shall be submitted to the public service
96 commission for approval. Any public service district
97 providing water and sewer service to its customers has the
98 right to terminate water service for delinquency in pay-
99 ment of either water or sewer bills. Where one public
100 service district is providing sewer service and another
101 public service district or a municipality included within
102 the boundaries of the sewer district is providing water
103 service, and the district providing sewer service experi-
104 ences a delinquency in payment, the district or the munic-
105 ipality included within the boundaries of the sewer district
106 that is providing water service, upon the request of the

107 district providing sewer service to the delinquent account,
108 shall terminate its water service to the customer having
109 the delinquent sewer account: *Provided, however,* That
110 any termination of water service must comply with all
111 rules and orders of the public service commission.

112 (c) Any district furnishing sewer facilities within the
113 district may require, or may by petition to the circuit court
114 of the county in which the property is located, compel or
115 may require the division of health to compel all owners,
116 tenants or occupants of any houses, dwellings and build-
117 ings located near any sewer facilities where sewage will
118 flow by gravity or be transported by other methods
119 approved by the division of health, including, but not
120 limited to, vacuum and pressure systems, approved under
121 the provisions of section nine, article one, chapter sixteen
122 of this code, from the houses, dwellings or buildings into
123 the sewer facilities, to connect with and use the sewer
124 facilities and to cease the use of all other means for the
125 collection, treatment and disposal of sewage and waste
126 matters from the houses, dwellings and buildings where
127 there is gravity flow or transportation by any other
128 methods approved by the division of health, including, but
129 not limited to, vacuum and pressure systems approved
130 under the provisions of section nine, article one, chapter
131 sixteen of this code and the houses, dwellings and build-
132 ings can be adequately served by the sewer facilities of the
133 district and it is declared that the mandatory use of the
134 sewer facilities provided for in this paragraph is necessary
135 and essential for the health and welfare of the inhabitants
136 and residents of the districts and of the state. If the public
137 service district requires the property owner to connect
138 with the sewer facilities even when sewage from dwellings
139 may not flow to the main line by gravity and the property
140 owner incurs costs for any changes in the existing dwell-
141 ings' exterior plumbing in order to connect to the main
142 sewer line, the public service district board shall authorize
143 the district to pay all reasonable costs for the changes in
144 the exterior plumbing, including, but not limited to,

145 installation, operation, maintenance and purchase of a
146 pump or any other method approved by the division of
147 health. Maintenance and operation costs for the extra
148 installation should be reflected in the users charge for
149 approval of the public service commission. The circuit
150 court shall adjudicate the merits of the petition by sum-
151 mary hearing to be held not later than thirty days after
152 service of petition to the appropriate owners, tenants or
153 occupants.

154 (d) Whenever any district has made available sewer
155 facilities to any owner, tenant or occupant of any house,
156 dwelling or building located near the sewer facility and
157 the engineer for the district has certified that the sewer
158 facilities are available to and are adequate to serve the
159 owner, tenant or occupant and sewage will flow by gravity
160 or be transported by other methods approved by the
161 division of health from the house, dwelling or building into
162 the sewer facilities, the district may charge, and the owner,
163 tenant or occupant shall pay the rates and charges for
164 services established under this article only after thirty-day
165 notice of the availability of the facilities has been received
166 by the owner, tenant or occupant. Rates and charges for
167 sewage services shall be based upon actual water con-
168 sumption or the average monthly water consumption
169 based upon the owner's, tenant's or occupant's specific
170 customer class.

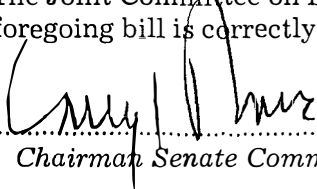
171 (e) Whenever any district has made available a storm-
172 water system to any owner, tenant or occupant of any real
173 property located near the stormwater system and where
174 stormwater from real property affects or drains into the
175 stormwater system, it is hereby found, determined and
176 declared that the owner, tenant or occupant is being
177 served by the stormwater system and it is further hereby
178 found, determined and declared that the mandatory use of
179 the stormwater system is necessary and essential for the
180 health and welfare of the inhabitants and residents of the
181 district and of the state. The district may charge, and the

182 owner, tenant or occupant shall pay the rates, fees and
183 charges for stormwater services established under this
184 article only after thirty-day notice of the availability of
185 the stormwater system has been received by the owner.

186 (f) All delinquent fees, rates and charges of the district
187 for either water facilities, sewer facilities, gas facilities or
188 stormwater systems or stormwater management programs
189 are liens on the premises served of equal dignity, rank and
190 priority with the lien on the premises of state, county,
191 school and municipal taxes. In addition to the other
192 remedies provided in this section, public service districts
193 are granted a deferral of filing fees or other fees and costs
194 incidental to the bringing and maintenance of an action in
195 magistrate court for the collection of delinquent water,
196 sewer, stormwater or gas bills. If the district collects the
197 delinquent account, plus reasonable costs, from its cus-
198 tomer or other responsible party, the district shall pay to
199 the magistrate the normal filing fee and reasonable costs
200 which were previously deferred. In addition, each public
201 service district may exchange with other public service
202 districts a list of delinquent accounts: *Provided*, That an
203 owner of real property may not be held liable for the
204 delinquent rates or charges for services or facilities of a
205 tenant, nor may any lien attach to real property for the
206 reason of delinquent rates or charges for services or
207 facilities of a tenant of the real property, unless the owner
208 has contracted directly with the public service district to
209 purchase the services or facilities.

210 (g) Anything in this section to the contrary notwith-
211 standing, any establishment, as defined in section three,
212 article eleven, chapter twenty-two, now or hereafter
213 operating its own sewage disposal system pursuant to a
214 permit issued by the division of environmental protection,
215 as prescribed by section eleven, article eleven, chapter
216 twenty-two of this code, is exempt from the provisions of
217 this section.

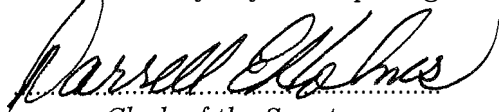
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

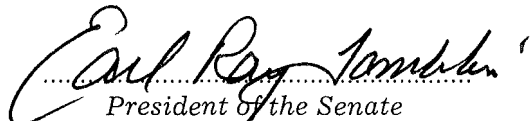

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Chairman House Committee


Originated in the Senate.

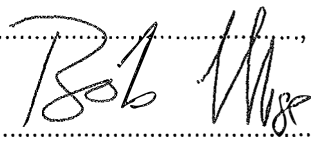
In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 27th
Day of March, 2003.

.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/03

Time 9:50 am