

No. 169

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989



ENROLLED

Committee Substitute for
SENATE BILL NO. 169

(By Senator J. Manchin)



PASSED April 8, 1989

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 169

(SENATOR J. MANCHIN, *original sponsor*)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-three; to amend article nineteen of said chapter eight by adding thereto a new section, designated section twelve-a; to amend and reenact section ten, article twenty of said chapter; and to amend and reenact section three, article thirteen, chapter sixteen of said code, all relating to municipal sewer, water and electric power facilities; authority to require connection to sewers; authority to require discontinuance of water service by provider other than municipality where only sewer service is provided by municipality and user is delinquent in payment for service rates and charges; notice of delinquency; lien for delinquent sewer, water and electric power service rates and charges; failure of user to cure delinquency; suits to collect delinquent charges; deferral of filing fees and costs of magistrate court action for delinquent rates and charges; and limitation on foreclo-

sure of liens; powers of sanitary board; contract; employees; compensation thereof; extension and improvements; replacement of damaged public works.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-three; that article nineteen of said chapter eight be amended by adding thereto a new section, designated section twelve-a; that section ten, article twenty of said chapter be amended and reenacted; and that section three, article thirteen, chapter sixteen of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

1 The owner or owners of any lot or parcel of land
2 abutting on any street, alley, public way or easement
3 in any municipality on which a public sewer is now
4 located or may hereafter be constructed and laid
5 (whether constructed and laid under the provisions of
6 this article or any other provisions of law) upon which
7 lot or parcel of land any business or residence building
8 is now located or may hereafter be erected, not
9 connected with a public sewer, may be required and
10 compelled by the municipality, or by the board of
11 health to connect any such building with such sewer.
12 Notice so to connect shall be given by the municipality
13 or by the board of health to the owner and to the
14 lessee or occupant of such building. Each day's failure
15 to comply with such notice and connect with such
16 sewer by such owner or owners, after thirty days from

17 the receipt of such notice, shall be a misdemeanor and
18 a separate and new offense under this section, and
19 each such offense shall be punishable by a fine of not
20 less than five nor more than twenty-five dollars.
21 Jurisdiction to hear, try, determine and sentence for
22 any violation of this section is hereby vested in the
23 police or municipal court thereof, or, where no police
24 court exists, in the mayor thereof.

**§8-18-23. Authority to require discontinuance of water
service by provider utility for nonpayment
of sewer service rates and charges; notice of
delinquency; lien for delinquent service rates
and charges; failure to cure delinquency;
civil actions; deferral of filing fees and costs
in magistrate court action; limitations with
respect to foreclosure.**

1 (a) When any municipality owns, maintains, oper-
2 ates or provides sewer facilities to its residents and
3 customers and does not own, maintain, operate or
4 provide water facilities to them when the same is
5 provided by any other publicly or privately owned
6 utility, municipality or public service district, the
7 municipality providing sewer facilities may require
8 the provider of water facilities to discontinue water
9 service to any of its users who are delinquent in the
10 payment of sewer service rates and charges to the
11 municipality. The provider of water facilities is
12 empowered and authorized hereby to discontinue
13 water service upon demand of the municipality for
14 this purpose; however, prior to discontinuance of any
15 water service, the municipality shall contract with the
16 provider of water facilities which contract shall
17 provide that the municipality shall reimburse the
18 provider of water facilities for all costs and expenses
19 incurred in both the termination of water service to
20 the delinquent user of sewer facilities and the subse-
21 quent resumption of water service to such user. The
22 contract shall provide for reasonable methods and
23 assurances so that the provider of water facilities will
24 be protected and held harmless from claims and
25 damages when water service is discontinued in error

26 or in violation of the rights of the user through the
27 fault of the municipality providing sewer facilities and
28 making the demand for discontinuance of water
29 service to the user of such sewer facilities. Any
30 contract made for this purpose shall have the approval
31 of the public service commission prior to its execution
32 and performance. Any disconnection of water service
33 must comply with all rules, regulations and orders of
34 the public service commission.

35 (b) Whenever any rates and charges for services or
36 facilities furnished remain unpaid for a period of
37 thirty days after the same become due and payable,
38 the property and the owner thereof, as well as the
39 user of the services and facilities provided shall be
40 delinquent and the owner, user and property shall be
41 held liable at law until such time as all such rates and
42 charges are fully paid: *Provided*, That in the event the
43 user is a tenant, the property owner shall be given
44 notice of any said delinquency by certified mail,
45 return receipt requested, and the user shall be given
46 such notice by first-class mail: *Provided, however*,
47 That failure of the user to cure the delinquency within
48 a thirty day period after receipt of such notice shall
49 constitute grounds to terminate the user's lease of the
50 premises concerned.

51 (c) All rates and charges whenever delinquent, as
52 provided by ordinance of the municipality, shall be
53 liens of equal dignity, rank and priority with the lien
54 on such premises of state, county, school and munic-
55 ipal taxes for the amount thereof upon the real
56 property served, and the municipality shall have
57 plenary power and authority from time to time to
58 enforce such lien in a civil action to recover the
59 money due for such services rendered plus court fees
60 and costs and a reasonable attorney's fee: *Provided*,
61 That a municipality shall have exhausted all remedies
62 available in magistrate courts against such delinquent
63 users before it may proceed in a civil action against
64 the owner.

65 (d) Municipalities are hereby granted a deferral of
66 filing fees or other fees and costs incidental to the

67 bringing and maintenance of an action in magistrate
68 court for the collection of the delinquent rates and
69 charges. If the municipality collects the delinquent
70 account, plus fees and costs, from its customer or other
71 responsible party, the municipality shall pay to the
72 magistrate court the filing fees or other fees and costs
73 which were previously deferred.

74 (e) No municipality may foreclose upon the premises
75 served by it for delinquent rates and charges for
76 which a lien is authorized by this section except
77 through the bringing and maintenance of a civil action
78 for such purpose brought in the circuit court of the
79 county wherein the municipality lies. In every such
80 action, the court shall be required to make a finding
81 based upon the evidence and facts presented that the
82 municipality had exhausted all other remedies for the
83 collection of debts with respect to such delinquencies
84 prior to the bringing of such action. In no event shall
85 foreclosure procedures be instituted by any municipal-
86 ity or on its behalf unless such delinquency has been
87 in existence or continued for a period of two years
88 from the date of the first such delinquency for which
89 foreclosure is being instituted.

**ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER
SYSTEMS.**

**§8-19-12a. Lien for delinquent service rates and charges;
notice of delinquency; failure to cure delin-
quency; civil actions; deferral of filing fees
and costs in magistrate court action; limita-
tions with respect to foreclosure.**

1 (a) Whenever any rates and charges for water
2 services or facilities furnished remain unpaid for a
3 period of thirty days after the same become due and
4 payable, the property and the owner thereof, as well
5 as the user of the services and facilities provided shall
6 be delinquent and the owner, user and property shall
7 be held liable at law until such time as all such rates
8 and charges are fully paid: *Provided*, That in the event
9 the user is a tenant, the property owner shall be given
10 notice of any said delinquency by certified mail,

11 return receipt requested, and the user shall be given
12 such notice by first-class mail: *Provided, however,*
13 That failure of the user to cure the delinquency within
14 a thirty day period after receipt of such notice shall
15 constitute grounds to terminate the user's lease of the
16 premises concerned.

17 (b) All rates or charges for water service whenever
18 delinquent, as provided by ordinance of the municipal-
19 ity, shall be liens of equal dignity, rank and priority
20 with the lien on such premises of state, county, school
21 and municipal taxes for the amount thereof upon the
22 real property served, and the municipality shall have
23 plenary power and authority from time to time to
24 enforce such lien in a civil action to recover the
25 money due for such services rendered plus court fees
26 and costs and a reasonable attorney's fee: *Provided,*
27 That a municipality shall have exhausted all remedies
28 available against such delinquent users before it may
29 proceed in a civil action against the owner.

30 (c) Municipalities are hereby granted a deferral of
31 filing fees or other fees and costs incidental to the
32 bringing and maintenance of an action in magistrate
33 court for the collection of the delinquent rates and
34 charges. If the municipality collects the delinquent
35 account, plus fees and costs, from its customer or other
36 responsible party, the municipality shall pay to the
37 magistrate court the filing fees or other fees and costs
38 which were previously deferred.

39 (d) No municipality may foreclose upon the premises
40 served by it for delinquent rates or charges for which
41 a lien is authorized by this section except through the
42 bringing and maintenance of a civil action for such
43 purpose brought in the circuit court of the county
44 wherein the municipality lies. In every such action,
45 the court shall be required to make a finding based
46 upon the evidence and facts presented that the munic-
47 ipality had exhausted all other remedies for the
48 collection of debts with respect to such delinquencies
49 prior to the bringing of such action. In no event shall
50 foreclosure procedures be instituted by any municipal-
51 ity or on its behalf unless such delinquency had been

52 in existence or continued for a period of two years
53 from the date of the first such delinquency for which
54 foreclosure is being sought.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a) The governing body of any municipality availing
2 itself of the provisions of this article shall have plenary
3 power and authority to make, enact and enforce all
4 needful rules and regulations for the repair, mainte-
5 nance and operation and management of the combined
6 waterworks and sewerage system of such municipality
7 and for the use thereof, and shall also have plenary
8 power and authority to make, enact and enforce all
9 needful rules and regulations and ordinances for the
10 care and protection of any such system, which may be
11 conducive to the preservation of the public health,
12 comfort and convenience and to rendering the water
13 supply of such municipality pure and the sewerage
14 harmless insofar as it is reasonably possible so to do,
15 and any such municipality shall have plenary power
16 and authority to charge the users for the use and
17 service of such combined waterworks and sewerage
18 system and to establish rates or charges for such
19 purpose. Separate rates or charges may be fixed for
20 the water and sewer services respectively or combined
21 rates or charges for the combined water and sewer
22 services. Such rates or charges, whether separate or
23 combined, shall be sufficient at all times to pay the
24 cost of repair, maintenance and operation of the
25 combined waterworks and sewerage system, provide
26 an adequate reserve fund and adequate depreciation
27 fund and pay the principal of and interest upon all
28 revenue bonds issued under this article. Rates or

29 charges shall be established, revised and maintained
30 by ordinance and become payable as the governing
31 body may determine by ordinance, and such rates or
32 charges shall be changed from time to time as needful,
33 consistent with the provisions of this article.

34 (b) Whenever any rates and charges for services or
35 facilities furnished remain unpaid for a period of
36 thirty days after the same become due and payable,
37 the property and the owner thereof, as well as the
38 user of the services and facilities provided shall be
39 delinquent and the owner, user and property shall be
40 held liable at law until such time as all such rates and
41 charges are fully paid: *Provided*, That in the event the
42 user is a tenant, the property owner shall be given
43 notice of any said delinquency by certified mail,
44 return receipt requested, and the user shall be given
45 such notice by first-class mail: *Provided, however*,
46 That failure of the user to cure the delinquency within
47 a thirty day period after receipt of such notice shall
48 constitute grounds to terminate user's lease of the
49 premises concerned.

50 (c) All rates or charges for water service and sewer
51 service whenever delinquent, as provided by ordi-
52 nance of the municipality, shall be liens of equal
53 dignity, rank and priority with the lien on such
54 premises of state, county, school and municipal taxes
55 for the amount thereof upon the real property served,
56 and the municipality shall have plenary power and
57 authority from time to time to enforce such lien in a
58 civil action to recover the money due for such services
59 rendered plus court fees and costs and a reasonable
60 attorney's fee: *Provided*, That a municipality shall
61 have exhausted all remedies available in magistrate
62 courts against such delinquent users before it may
63 proceed in a civil action against the owner.

64 (d) Municipalities are hereby granted a deferral of
65 filing fees or other fees and costs incidental to the
66 bringing and maintenance of an action in magistrate
67 court for the collection of the delinquent rates and
68 charges. If the municipality collects the delinquent
69 account, plus fees and costs, from its customer or other

70 responsible party, the municipality shall pay to the
71 magistrate court the filing fees or other fees and costs
72 which were previously deferred.

73 (e) No municipality may foreclose upon the premises
74 served by it for delinquent rates, fees or charges for
75 which a lien is authorized by this section except
76 through the bringing and maintenance of a civil action
77 for such purpose brought in the circuit court of the
78 county wherein the municipality lies. In every such
79 action, the court shall be required to make a finding
80 based upon the evidence and facts presented that the
81 municipality had exhausted all other remedies for the
82 collection of debts with respect to such delinquencies
83 prior to the bringing of such action. In no event shall
84 foreclosure procedures be instituted by any municipal-
85 ity or on its behalf unless such delinquency had been
86 in existence or continued for a period of two years
87 from the date of the first such delinquency for which
88 foreclosure is being sought.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

1 The board shall have power to take all steps and
2 proceedings and to make and enter into all contracts
3 or agreements necessary or incidental to the perfor-
4 mance of its duties and the execution of its powers
5 under this article: *Provided*, That any contract relating
6 to the financing of the acquisition or construction of
7 any such works, or any trust indenture as hereinafter
8 provided for, shall be approved by the governing body
9 of such municipality before the same shall be effec-
10 tive. The board may employ engineers, architects,
11 inspectors, superintendents, managers, collectors,
12 attorneys, and such other employees as in its judg-
13 ment may be necessary in the execution of its powers
14 and duties, and may fix their compensation, all of

15 whom shall do such work as the board shall direct. All
16 such compensation and all expenses incurred in
17 carrying out the provisions of this article shall be paid
18 solely from funds provided under the authority of this
19 article, and the board shall not exercise or carry out
20 any authority or power herein given it so as to bind
21 said board of said municipality beyond the extent to
22 which money shall have been or may be provided
23 under the authority of this article. No contract or
24 agreement with any contractor or contractors for labor
25 and/or material, exceeding in amount the sum of five
26 thousand dollars, shall be made without advertising
27 for bids, which bids shall be publicly opened and
28 award made to the best bidder, with power in the
29 board to reject any or all bids. After the construction,
30 installation, and completion of the works, or the
31 acquisition thereof, the board shall operate, manage
32 and control the same and may order and complete any
33 extensions, betterments and improvements of and to
34 the works that the board may deem expedient, if
35 funds therefor be available or are made available as
36 provided in this article, and shall establish rules and
37 regulations for the use and operation of the works, and
38 of other sewers and drains connected therewith so far
39 as they may affect the operation of such works, and do
40 all things necessary or expedient for the successful
41 operation thereof. The sanitary board may declare an
42 emergency situation in the event of collector line
43 breaks or vital treatment plant equipment failure and
44 shall be exempted from competitive bidding require-
45 ments and enter into direct purchase agreements or
46 contracts for such expenses. All public ways or public
47 works damaged or destroyed by the board in carrying
48 out its authority under this article shall be restored or
49 repaired by the board and placed in their original
50 condition, as nearly as practicable, if requested so to do
51 by proper authority, out of the funds provided by this
52 article.

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

Frederick L. Peres
.....
Chairman Senate Committee

J. L. Sutto
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jodd C. Willis
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

J. Perry W. Funchess
.....
President of the Senate

B. B. Caldwell
.....
Speaker House of Delegates

The within... *is approved* ... this the *27th* ...
day of *April*, 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/89

Time 10:43