

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

ENROLLED

Com. Sub. For
HOUSE BILL No. *4061*

(By Mr. *Del. Farley*)

— ● —

Passed *March 10,* 1990

In Effect *Ninety Days From* Passage

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FOR
H. B. 4061
(By DELEGATE FARLEY)

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MARCH 11 1990

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-three, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve-a, article nineteen of said chapter; and to amend and reenact section ten, article twenty of said chapter, all relating to liens for delinquent sewer, water or electric service rates and charges; failure of user to cure delinquency; providing that an owner of real property may not be liable for delinquent rates or charges of a tenant; suits to collect delinquent charges; deferral of filing fees and court costs; limitations on foreclosure.

Be it enacted by the Legislature of West Virginia:

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

§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; 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, operates
2 or provides sewer facilities to its residents and custo-
3 mers and does not own, maintain, operate or provide
4 water facilities to them when the same is provided by
5 any other publicly or privately owned utility, municipal-
6 ity or public service district, the municipality providing
7 sewer facilities may require the provider of water
8 facilities to discontinue water service to any of its users
9 who are delinquent in the payment of sewer service
10 rates and charges to the municipality. The provider of
11 water facilities is empowered and authorized hereby to
12 discontinue water service upon demand of the munic-
13 ipality for this purpose; however, prior to discontinuance
14 of any water service, the municipality shall contract
15 with the provider of water facilities which contract shall
16 provide that the municipality shall reimburse the
17 provider of water facilities for all costs and expenses
18 incurred in both the termination of water service to the
19 delinquent user of sewer facilities and the subsequent
20 resumption of water service to such user. The contract
21 shall provide for reasonable methods and assurances so
22 that the provider of water facilities will be protected
23 and held harmless from claims and damages when
24 water service is discontinued in error or in violation of
25 the rights of the user through the fault of the munic-
26 ipality providing sewer facilities and making the
27 demand for discontinuance of water service to the user
28 of such sewer facilities. Any contract made for this
29 purpose shall have the approval of the public service
30 commission prior to its execution and performance. Any
31 disconnection of water service must comply with all
32 rules, regulations and orders of the public service
33 commission.

34 (b) Whenever any rates and charges for services or
35 facilities furnished remain unpaid for a period of thirty
36 days after the same become due and payable, the user

37 of the services and facilities provided shall be delinquent
 38 and the user shall be held liable at law until such time
 39 as all such rates and charges are fully paid.

40 (c) All rates and charges whenever delinquent, as
 41 provided by ordinance of the municipality, shall, when
 42 notice thereof is duly recorded in the office of the clerk
 43 of the county commission wherein the subject real
 44 property is situate, be liens of equal dignity, rank and
 45 priority with the lien on such premises of state, county,
 46 school and municipal taxes for the amount thereof upon
 47 the real property served, and the municipality shall
 48 have plenary power and authority from time to time to
 49 enforce such lien in a civil action to recover the money
 50 due for such services rendered plus court fees and costs
 51 and a reasonable attorney's fee: *Provided*, That an owner
 52 of real property may not be held liable for the delin-
 53 quent rates or charges for services or facilities of a
 54 tenant, nor shall any lien attach to real property for the
 55 reason of delinquent rates or charges for services or
 56 facilities of a tenant of such real property, unless the
 57 owner has contracted directly with the municipality to
 58 purchase such services or facilities.

59 (d) Municipalities are hereby granted a deferral of
 60 filing fees or other fees and costs incidental to the
 61 bringing and maintenance of an action in magistrate
 62 court for the collection of the delinquent rates and
 63 charges. If the municipality collects the delinquent
 64 account, plus fees and costs, from its customer or other
 65 responsible party, the municipality shall pay to the
 66 magistrate court the filing fees or other fees and costs
 67 which were previously deferred.

68 (e) No municipality may foreclose upon the premises
 69 served by it for delinquent rates and charges for which
 70 a lien is authorized by this section except through the
 71 bringing and maintenance of a civil action for such
 72 purpose brought in the circuit court of the county
 73 wherein the municipality lies. In every such action, the
 74 court shall be required to make a finding based upon
 75 the evidence and facts presented that the municipality
 76 had exhausted all other remedies for the collection of
 77 debts with respect to such delinquencies prior to the

78 bringing of such action. In no event shall foreclosure
79 procedures be instituted by any municipality or on its
80 behalf unless such delinquency has been in existence or
81 continued for a period of two years from the date of the
82 first such delinquency for which foreclosure is being
83 instituted.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC
POWER SYSTEMS.

**§8-19-12a. Lien for delinquent service rates and charges;
failure to cure delinquency; civil actions;
deferral of filing fees and costs in magis-
trate court action; limitations with respect to
foreclosure.**

1 (a) Whenever any rates and charges for water servi-
2 ces or facilities furnished remain unpaid for a period of
3 thirty days after the same become due and payable, the
4 user of the services and facilities provided shall be
5 delinquent and the user shall be held liable at law until
6 such time as all such rates and charges are fully paid.

7 (b) All rates or charges for water service whenever
8 delinquent, as provided by ordinance of the municipal-
9 ity, shall be liens of equal dignity, rank and priority
10 with the lien on such premises of state, county, school
11 and municipal taxes for the amount thereof upon the
12 real property served, and the municipality shall have
13 plenary power and authority from time to time to
14 enforce such lien in a civil action to recover the money
15 due for such services rendered plus court fees and costs
16 and a reasonable attorney's fee: *Provided*, That an owner
17 of real property may not be held liable for the delin-
18 quent rates or charges for services or facilities of a
19 tenant, nor shall any lien attach to real property for the
20 reason of delinquent rates or charges for services or
21 facilities of a tenant of such real property, unless the
22 owner has contracted directly with the municipality to
23 purchase such services or facilities.

24 (c) Municipalities are hereby granted a deferral of
25 filing fees or other fees and costs incidental to the
26 bringing and maintenance of an action in magistrate
27 court for the collection of the delinquent rates and

28 charges. If the municipality collects the delinquent
29 account, plus fees and costs, from its customer or other
30 responsible party, the municipality shall pay to the
31 magistrate court the filing fees or other fees and costs
32 which were previously deferred.

33 (d) No municipality may foreclose upon the premises
34 served by it for delinquent rates or charges for which
35 a lien is authorized by this section except through the
36 bringing and maintenance of a civil action for such
37 purpose brought in the circuit court of the county
38 wherein the municipality lies. In every such action, the
39 court shall be required to make a finding based upon
40 the evidence and facts presented that the municipality
41 had exhausted all other remedies for the collection of
42 debts with respect to such delinquencies prior to the
43 bringing of such action. In no event shall foreclosure
44 procedures be instituted by any municipality or on its
45 behalf unless such delinquency had been in existence or
46 continued for a period of two years from the date of the
47 first such delinquency for which foreclosure is being
48 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; failure to cure delinquency; delin-
quent 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, and
15 any such municipality shall have plenary power and
16 authority to charge the users for the use and service of
17 such combined waterworks and sewerage system and to
18 establish rates or charges for such purpose. Separate
19 rates or charges may be fixed for the water and sewer
20 services respectively or combined rates or charges for
21 the combined water and sewer services. Such rates or
22 charges, whether separate or combined, shall be
23 sufficient at all times to pay the cost of repair,
24 maintenance and operation of the combined waterworks
25 and sewerage system, provide an adequate reserve fund
26 and adequate depreciation fund and pay the principal
27 of and interest upon all revenue bonds issued under this
28 article. Rates or charges shall be established, revised
29 and maintained by ordinance and become payable as the
30 governing body may determine by ordinance, and such
31 rates or charges shall be changed from time to time as
32 needful, consistent with the provisions of this article.

33 (b) Whenever any rates and charges for services or
34 facilities furnished remain unpaid for a period of thirty
35 days after the same become due and payable, the user
36 of the services and facilities provided shall be delinquent
37 and the user shall be held liable at law until such time
38 as all such rates and charges are fully paid.

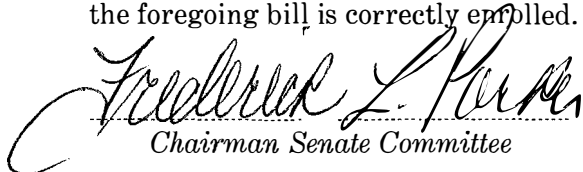
39 (c) All rates or charges for water service and sewer
40 service whenever delinquent, as provided by ordinance
41 of the municipality, shall be liens of equal dignity, rank
42 and priority with the lien on such premises of state,
43 county, school and municipal taxes for the amount
44 thereof upon the real property served, and the munic-
45 ipality shall have plenary power and authority from
46 time to time to enforce such lien in a civil action to
47 recover the money due for such services rendered plus
48 court fees and costs and a reasonable attorney's fee:
49 *Provided*, That an owner of real property may not be
50 held liable for the delinquent rates or charges for
51 services or facilities of a tenant, nor shall any lien attach

52 to real property for the reason of delinquent rates or
 53 charges for services or facilities of a tenant of such real
 54 property, unless the owner has contracted directly with
 55 the municipality to purchase such services or facilities.

56 (d) Municipalities are hereby granted a deferral of
 57 filing fees or other fees and costs incidental to the
 58 bringing and maintenance of an action in magistrate
 59 court for the collection of the delinquent rates and
 60 charges. If the municipality collects the delinquent
 61 account, plus fees and costs, from its customer or other
 62 responsible party, the municipality shall pay to the
 63 magistrate court the filing fees or other fees and costs
 64 which were previously deferred.

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

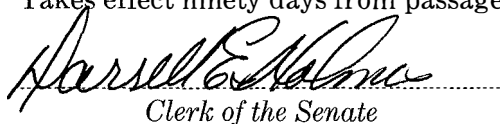
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

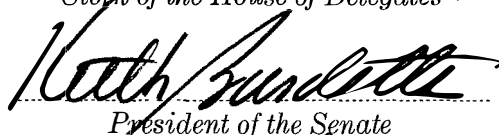

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

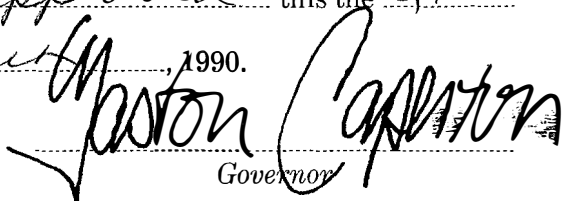

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 31st
day of March, 1990.


Governor

PROCEEDING TO THE

GOVERNOR

Date

5/20/90

Time

3:11 pm