WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute for
SENATE BILL NO. 672

(By Senator Tomblin, Mr. President)

PASSED March 12, 2004
In Effect 90 days from Passage
AN ACT to amend and reenact §8-18-22 of the code of West Virginia, 1931, as amended; to amend and reenact §8-19-12a of said code; to amend and reenact §8-20-10 of said code; and to amend and reenact §16-13-16 of said code, all relating to municipalities; public utility services; deposit required for new customers; payment for delinquency from deposit; reconnecting deposit; liens; discontinuance of service for delinquency; tenants; providing refund of deposit with interest; and requiring owners of property abutting municipal sewer to pay municipal sewer fees regardless of connection.

Be it enacted by the Legislature of West Virginia:
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That §8-18-22 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §8-19-12a of said code be amended and reenacted; that §8-20-10 of said code be amended and reenacted; and that §16-13-16 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.

Regardless of whether a lot or parcel is within any municipality’s geographical limits, the owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement on which a municipal sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of law) upon which lot or parcel of land any business or residence building is now located or may hereafter be erected, not connected with a public sewer, may be required and compelled by the municipality or by the board of health to connect any such building with such sewer. Notice so to connect shall be given by the municipality or by the board of health to the owner and to the lessee or occupant of such building. The owner or owners shall connect to the municipal sewer within thirty days after notice to connect has been sent by the municipality. Regardless of whether the owner or owners connect to such sewer, the municipality may bill the owner or owners of the lot or parcel and the owner or owners shall pay the municipality’s charge based on the actual water consumption on the lot or parcel. If the lot or parcel is not metered, the municipality’s charge shall be based on the
ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRICAL POWER SYSTEMS.

PART IV - REVENUE BOND FINANCING.

§8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) (1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing
(b) All rates or charges for water service whenever delinquent shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly
with the municipality to purchase such services or facili-
ties.

(c) Municipalities are hereby granted a deferral of filing
fees or other fees and costs incidental to the bringing and
maintenance of an action in magistrate court for the
collection of the delinquent rates and charges. If the
municipality collects the delinquent account, plus fees and
costs, from its customer or other responsible party, the
municipality shall pay to the magistrate court the filing
fees or other fees and costs which were previously de-
ferred.

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

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

PART III - REVENUE BOND FINANCING.

§8-20-10. Power and authority of municipality to enact ordi-
nances and make rules and fix rates, fees or charges; deposit required for new customers;
change in rates, fees or charges; failure to cure
delinquency; delinquent rates, discontinuance of
service; reconnecting deposit; return of deposit;
fees or charges as liens; civil action for recovery
thereof; deferral of filing fees and costs in magis-
trate court action; limitations with respect to foreclosure.

(a) (1) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways except in accordance with chapter twenty-nine-a of this code.

(2) Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the stormwater services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised
and maintained by ordinance and become payable as the
governing body may determine by ordinance, and such
rates, fees or charges shall be changed from time to time as
needful, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the
municipality or governing body whether they are an owner
or tenant with respect to the service location.

(4) The municipality or governing body, but only one of
them, may collect from all new applicants for service a
deposit of one hundred dollars or two twelfths of the
average annual usage of the applicant's specific customer
class, whichever is greater, to secure the payment of water
and sewage service rates, fees and charges in the event
they become delinquent as provided in this section. In any
case where a deposit is forfeited to pay service rates, fees
and charges which were delinquent and the user's service
is disconnected or terminated, no reconnecting or rein-
statement of service may be made by the municipality or
governing body until another deposit equal to one hundred
dollars or a sum equal to two twelfths of the average usage
for the applicant's specific customer class, whichever is
greater, is remitted to the municipality or governing body.

Provided, That where the customer is a tenant, the munici-

pality or governing body is not required to return the
deposit until the time the tenant discontinues service with
the municipality or governing body. Whenever any rates,
fees, rentals or charges for services or facilities furnished
remain unpaid for a period of twenty days after the same
become due and payable, the user of the services and
facilities provided is delinquent and the user is liable at
law until all rates, fees and charges are fully paid. The
municipality or governing body may, under reasonable
rules promulgated by the public service commission, shut
off and discontinue water services to a delinquent user of
either water or sewage facilities, or both, ten days after the
water or sewage services become delinquent regardless of
whether the governing body utilizes the security deposit to
satisfy any delinquent payments.

(b) Whenever any rates, fees or charges for services or
facilities furnished remain unpaid for a period of twenty
days after the same become due and payable, the user of
the services and facilities provided shall be delinquent and
the municipality or governing body may apply any deposit
against any delinquent fee and the user shall be held liable
at law until such time as all rates, fees and charges are
fully paid.

(c) All rates, fees or charges for water service, sewer
service, and, if applicable, stormwater service, whenever
delinquent, as provided by ordinance of the municipality,
shall be liens of equal dignity, rank and priority with the
lien on such premises of state, county, school and munici-
pal taxes for the amount thereof upon the real property
served, and the municipality shall have plenary power and
authority from time to time to enforce such lien in a civil
action to recover the money due for services rendered plus
court fees and costs and a reasonable attorney's fee:
Provided, That an owner of real property may not be held
liable for the delinquent rates, fees or charges for services
or facilities of a tenant, nor shall any lien attach to real
property for the reason of delinquent rates, fees or charges
for services or facilities of a tenant of the real property,
unless the owner has contracted directly with the munici-
pality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing
fees or other fees and costs incidental to the bringing and
maintenance of an action in magistrate court for the
collection of the delinquent rates and charges. If the
municipality collects the delinquent account, plus fees and
costs, from its customer or other responsible party, the
municipality shall pay to the magistrate court the filing
fees or other fees and costs which were previously de-
ferred.

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

CHAPTER 16. PUBLIC HEALTH.

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

§16-13-16. Rates for service; deposit required for new custom-
ers; forfeiture of deposit; reconnecting deposit;
tenant's deposit; change or readjustment; hear-
ing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its
duty, by ordinance, to establish and maintain just and
equitable rates, fees or charges for the use of and the
service rendered by:

(a) Sewerage works, to be paid by the owner of each and
every lot, parcel of real estate or building that is connected
with and uses such works by or through any part of the
sewerage system of the municipality, or that in any way
uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each
and every lot, parcel of real estate, or building that in any
way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnecting or reinstatement of service may be made by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant’s specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer’s account with interest at a rate as the public service commission may prescribe:

Provided, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and
charges are fully paid. The governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the
office of the clerk of the municipality, and shall be open to
inspection by all parties interested. The rates, fees or
charges so established for any class of users or property
served shall be extended to cover any additional premises
thereafter served which fall within the same class, without
the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or
charges may be made in the same manner as such rates,
fees or charges were originally established as hereinbefore
provided: Provided, That if such change or readjustment
be made substantially pro rata, as to all classes of service,
no hearing or notice shall be required. The aggregate of
the rates, fees or charges shall always be sufficient for
such expense of operation, repair and maintenance and for
such sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall
constitute a lien upon the premises served by such works.
If any service rate, fees or charge so established is not paid
within twenty days after the same is due, the amount
thereof, together with a penalty of ten percent, and a
reasonable attorney's fee, may be recovered by the board
in a civil action in the name of the municipality, and in
connection with such action said lien may be foreclosed
against such lot, parcel of land or building, in accordance
with the laws relating thereto: Provided, That where both
water and sewer services are furnished by any municipal-
ity to any premises the schedule of charges may be billed
as a single amount or individually itemized and billed for
the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for
services or facilities furnished shall remain unpaid for a
period of twenty days after the same shall become due and
payable, the property and the owner thereof, as well as the
user of the services and facilities shall be delinquent until
such time as all rates, fees and charges are fully paid.
When any payment for rates, rentals, fees or charges
becomes delinquent, the governing body may use the
security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall
be obligated under reasonable rules to shut off and
discontinue both water and sewer services to all delin-
quent users of either water facilities, or sewer facilities or
both, and shall not restore either water facilities or sewer
facilities, to any delinquent user of either until all delin-
quent rates, fees or charges for both water facilities, and
sewer facilities, including reasonable interest and penalty
charges, have been paid in full.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 5th Day of April, 2004.

Governor
PRESENTED TO THE
GOVERNOR.
DATE 3/25/64
TIME 16:30 64