

FILED

2008 MAR 17 PM 4: 23

WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 323

(SENATORS BOWMAN AND OLIVERIO, *original sponsors*)

[Passed March 8, 2008; in effect ^{90 days} from passage.]

2008 MAR 17 PM 4: 23

CLERK OF THE SENATE
SECURITY COPY

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 323

(SENATORS BOWMAN AND OLIVERIO, *original sponsors*)

[Passed March 8, 2008; in effect ^{90 days} from passage.]

AN ACT to amend and reenact §8-20-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13-16 and §16-13-23a of said code; and to amend and reenact §16-13A-9 of said code, all relating to the establishment and operation of stormwater systems; authorizing municipalities to set rates, charges and fees for stormwater services; providing that water service may be terminated for nonpayment of stormwater service fees; authorizing municipalities to adopt ordinances or regulations to allow

issuance of orders, entry on property, setting fines and penalties for violation of stormwater law; establishing requirements for notice of violations; authorizing municipality to correct violations and collect cost from violator; and providing that the owner, occupant or tenant of real property is deemed to be served by a stormwater system under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §8-20-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13-16 and §16-13-23a of said code be amended and reenacted; and that §16-13A-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances 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 magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing
2 itself of the provisions of this article shall have plenary
3 power and authority to make, enact and enforce all
4 necessary rules for the repair, maintenance, operation
5 and management of the combined system of the

6 municipality and for the use thereof. The governing
7 body of a municipality also has the plenary power and
8 authority to make, enact and enforce all necessary rules
9 and ordinances for the care and protection of any such
10 system for the health, comfort and convenience of the
11 public, to provide a clean water supply, to provide
12 properly treated sewage insofar as it is reasonably
13 possible to do and, if applicable, to properly collecting
14 and controlling the stormwater as is reasonably
15 possible to do: *Provided*, That no municipality may
16 make, enact or enforce any rule, regulation or
17 ordinance regulating any highways, road or drainage
18 easements or storm water facilities constructed, owned
19 or operated by the West Virginia Division of Highways.

20 (2) A municipality has the plenary power and
21 authority to charge the users for the use and service of
22 a combined system and to establish required deposits,
23 rates, fees or charges for such purpose. Separate
24 deposits, rates, fees or charges may be fixed for the
25 water and sewer services respectively and, if applicable,
26 the stormwater services, or combined rates, fees or for
27 the combined water and sewer services, and, if
28 applicable, the storm water services. Such deposits,
29 rates, fees or charges, whether separate or combined,
30 shall be sufficient at all times to pay the cost of repair,
31 maintenance and operation of the combined system,
32 provide an adequate reserve fund, an adequate
33 depreciation fund and pay the principal and interest
34 upon all revenue bonds issued under this article.
35 Deposits, rates, fees or charges shall be established,
36 revised and maintained by ordinance and become
37 payable as the governing body may determine by
38 ordinance. The rates, fees or charges shall be changed,
39 from time to time, as necessary, consistent with the

40 provisions of this article.

41 (3) All new applicants for service shall indicate to the
42 municipality or governing body whether they are an
43 owner or tenant with respect to the service location. An
44 entity providing stormwater service shall provide a
45 tenant a report of the stormwater fee charged for the
46 entire property and, if appropriate, that portion of the
47 fee to be assessed to the tenant.

48 (4) The municipality or governing body, but only one
49 of them, may collect from all new applicants for service
50 a deposit of one hundred dollars or two twelfths of the
51 average annual usage of the applicant's specific
52 customer class, whichever is greater, to secure the
53 payment of water and sewage service rates, fees and
54 charges in the event they become delinquent as
55 provided in this section. In any case where a deposit is
56 forfeited to pay service rates, fees and charges which
57 were delinquent and the user's service is disconnected
58 or terminated, service may not be reconnected or
59 reinstated by the municipality or governing body until
60 another deposit equal to one hundred dollars or a sum
61 equal to two twelfths of the average usage for the
62 applicant's specific customer class, whichever is
63 greater, is remitted to the municipality or governing
64 body. After twelve months of prompt payment history,
65 the municipality or governing body shall return the
66 deposit to the customer or credit the customer's account
67 with interest at a rate to be set by the Public Service
68 Commission: *Provided*, That where the customer is a
69 tenant, the municipality governing body is not required
70 to return the deposit until the time the tenant
71 discontinues service with the municipality or governing
72 body. Whenever any rates, fees, rentals or charges for

73 services or facilities furnished remain unpaid for a
74 period of twenty days after they become due, the user of
75 the services and facilities provided is delinquent and
76 the user is liable at law until all rates, fees and charges
77 are fully paid. The municipality or governing body may
78 terminate water services to a delinquent user of either
79 water or sewage facilities, or both, ten days after the
80 water or sewage services become delinquent regardless
81 of whether the governing body utilizes the security
82 deposit to satisfy any delinquent payments: *Provided,*
83 That any termination of water service must comply
84 with all rules and orders of the Public Service
85 Commission.

86 (b) Whenever any rates, fees or charges for services or
87 facilities furnished remain unpaid for a period of
88 twenty days after they become due, the user of the
89 services and facilities provided shall be delinquent and
90 the municipality or governing body may apply any
91 deposit against any delinquent fee. The user is liable
92 until such time as all rates, fees and charges are fully
93 paid.

94 (c) All rates, fees or charges for water service, sewer
95 service and, if applicable, stormwater service, whenever
96 delinquent, as provided by ordinance of the
97 municipality, shall be liens of equal dignity, rank and
98 priority with the lien on such premises of state, county,
99 school and municipal taxes for the amount thereof upon
100 the real property served. The municipality has the
101 plenary power and authority to enforce such lien in a
102 civil action to recover the money due for services
103 rendered plus court fees and costs and reasonable
104 attorney's fees: *Provided,* That an owner of real
105 property may not be held liable for the delinquent rates,

106 fees or charges for services or facilities of a tenant, nor
107 shall any lien attach to real property for the reason of
108 delinquent rates, fees or charges for services or facilities
109 of a tenant of the real property, unless the owner has
110 contracted directly with the municipality to purchase
111 such services or facilities.

112 (d) Municipalities are hereby granted a deferral of
113 filing fees or other fees and costs incidental to filing an
114 action in magistrate court for collection of the
115 delinquent rates and charges. If the municipality
116 collects the delinquent account, plus fees and costs,
117 from its customer or other responsible party, the
118 municipality shall pay to the magistrate court the filing
119 fees or other fees and costs which were previously
120 deferred.

121 (e) No municipality may foreclose upon the premises
122 served by it for delinquent rates, fees or charges for
123 which a lien is authorized by this section except
124 through a civil action in the circuit court of the county
125 wherein the municipality lies. In every such action, the
126 court shall be required to make a finding based upon
127 the evidence and facts presented that the municipality
128 has exhausted all other remedies for collection of debts
129 with respect to such delinquencies prior to bringing the
130 action. In no event shall foreclosure procedures be
131 instituted by any municipality or on its behalf unless
132 the delinquency has been in existence or continued for
133 a period of two years from the date of the first
134 delinquency for which foreclosure is being sought.

135 (f) Notwithstanding any other provision contained in
136 this article, a municipality which has been designated
137 by the Environmental Protection Agency as an entity to

138 serve a West Virginia Separate Storm Sewer System
139 community, as defined in 40 C. F. R. §122.26, has the
140 authority to enact ordinances or regulations which
141 allow for the issuance of orders, the right to enter
142 properties and the right to impose reasonable fines and
143 penalties regarding correction of violations of
144 municipal stormwater ordinances or regulations within
145 the municipal watershed served by the municipal
146 stormwater system, as long as such rules, regulations,
147 fines or acts are not contrary to any rules or orders of
148 the Public Service Commission.

149 (g) Notice of a violation of a municipal stormwater
150 ordinance or regulation shall be served in person to the
151 alleged violator or by certified mail return receipt
152 requested. The notice shall state the nature of the
153 violation, the potential penalty, the action required to
154 correct the violation and the time limit for making the
155 correction. Should a person, after receipt of proper
156 notice, fail to correct violation of the municipal
157 stormwater ordinance or regulation, the municipality
158 may correct or have the corrections of the violation
159 made and bring the party into compliance with the
160 applicable stormwater ordinance or regulation. The
161 municipality may collect the costs of correcting the
162 violation from the person by instituting a civil action,
163 as long as such actions are not contrary to any rules or
164 orders of the Public Service Commission.

165 (h) A municipality which has been designated by the
166 Environmental Protection Agency as an entity to serve
167 a West Virginia Separate Storm Sewer System
168 community shall prepare an annual report detailing the
169 collection and expenditure of rates, fees or charges and
170 make it available for public review at the place of

171 business of the governing body and the stormwater
172 utility main office.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

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

1 A governing body has the power and duty, by
2 ordinance, to establish and maintain just and equitable
3 rates, fees or charges for the use of and the service
4 rendered by:

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

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

16 (c) The governing body may change and readjust such
17 rates, fees or charges from time to time. However, no
18 rates, fees or charges for stormwater services may be
19 assessed against highways, road and drainage
20 easements or stormwater facilities constructed, owned

21 or operated by the West Virginia Division of Highways.

22 (d) All new applicants for service shall indicate to the
23 governing body whether they are an owner or tenant
24 with respect to the service location. An entity
25 providing stormwater service shall provide a tenant a
26 report of the stormwater fee charged for the entire
27 property and, if appropriate, that portion of the fee to
28 be assessed to the tenant.

29 (e) The governing body may collect from all new
30 applicants for service a deposit of fifty dollars or two
31 twelfths of the average annual usage of the applicant's
32 specific customer class, whichever is greater, to secure
33 the payment of service rates, fees and charges in the
34 event they become delinquent as provided in this
35 section. In any case where a deposit is forfeited to pay
36 servicerrates, fees and charges which weredelinqunt at
37 the time of disconnection or termination of service,
38 service may not be reconnected or reinstated by the
39 governing body until another deposit equal to fifty
40 dollars or a sum equal to two twelfths of the average
41 usage for the applicant's specific customer class,
42 whichever is greater, is remitted to the governing body.
43 After twelve months of prompt payment history, the
44 governing body shall return the deposit to the customer
45 or credit the customer's account with interest at a rate
46 as the Public Service Commission may prescribe:
47 *Provided*, That where the customer is a tenant, the
48 governing body is not required to return the deposit
49 until the time the tenant discontinues service with the
50 governing body. Whenever any rates, fees, rentals or
51 charges for services or facilities furnished remain
52 unpaid for a period of twenty days after they become
53 due, the user of the services and facilities provided is

54 delinquent. The user is liable until all rates, fees and
55 charges are fully paid. The governing body may, under
56 reasonable rules promulgated by the Public Service
57 Commission, shut off and discontinue water services to
58 a delinquent user of sewer facilities ten days after the
59 sewer services become delinquent regardless of whether
60 the governing body utilizes the security deposit to
61 satisfy any delinquent payments.

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

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

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

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

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

107 (k) All rates, fees or charges, if not paid when due,
108 shall constitute a lien upon the premises served by such
109 works. If any service rate, fees or charge is not paid
110 within twenty days after it is due, the amount thereof,
111 together with a penalty of ten percent and a reasonable
112 attorney's fee, may be recovered by the board in a civil
113 action in the name of the municipality. The lien may be
114 foreclosed against such lot, parcel of land or building in
115 accordance with the laws relating thereto. Where both
116 water and sewer services are furnished by any
117 municipality to any premises the schedule of charges

118 may be billed as a single amount or individually
119 itemized and billed for the aggregate thereof.

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

129 (m) The board collecting the rates, fees or charges
130 shall be obligated under reasonable rules to shut off
131 and discontinue both water and sewer services to all
132 delinquent users of water, sewer or stormwater
133 facilities and shall not restore either water facilities or
134 sewer facilities to any delinquent user of any such
135 facilities until all delinquent rates, fees or charges for
136 water, sewer and stormwater facilities, including
137 reasonable interest and penalty charges, have been paid
138 in full, as long as such actions are not contrary to any
139 rules or orders of the Public Service Commission.

**§16-13-23a. Additional powers of municipality to cease
pollution.**

1 (a) Notwithstanding any other provision contained in
2 this article, and in addition thereto, the governing body
3 of any municipality which has received or which
4 hereafter receives an order issued by the Secretary of
5 the Department of Environmental Protection or the
6 Environmental Quality Board requiring the
7 municipality to cease the pollution of any stream or

8 waters is hereby authorized to establish and maintain,
9 by ordinance, just and equitable rates, fees or charges
10 for the use of the services and facilities of the existing
11 municipal sewer system and/or stormwater system, or
12 for the use of the services and facilities to be rendered
13 upon completion of any works and system necessary by
14 virtue of said order, to be paid by the owner, tenant or
15 occupant of each and every lot or parcel of real estate or
16 building that is connected with and uses any part of
17 such sewer system or stormwater system, or that in any
18 way uses or is served thereby, and may change and
19 readjust such rates, fees or charges from time to time.

20 (b) The rates, fees or charges shall be sufficient to all
21 the proper and reasonable costs and expenses of the
22 acquisition and construction of plants, machinery and
23 works for the collection, treatment, purification and
24 disposal of sewage or stormwater and the repair,
25 alteration and extension of existing sewer facilities or
26 stormwater facilities, as may be necessary to comply
27 with such order of the Secretary of the Department of
28 Environmental Protection or the Environmental
29 Quality Board, and for the operation, maintenance and
30 repair of the entire works and system.

31 (c) The governing body shall create, by ordinance, a
32 sinking fund to accumulate and hold any part or all of
33 the proceeds derived from rates or charges until
34 completion of the construction, to be remitted to and
35 administered by the Municipal Bond Commission by
36 expending and paying the costs and expenses of
37 construction and operation in the manner as provided
38 by said ordinance.

39 (d) After the completion of the construction, the rates,

40 fees or charges shall be sufficient in each year for the
41 payment of the proper and reasonable costs and
42 expenses of operation, maintenance, repair,
43 replacement and extension, from time to time, of the
44 entire sewer and works or entire stormwater works.

45 (e) No such rates, fees or charges shall be established
46 until after a public hearing, at which all the potential
47 users of the works and owners of property served or to
48 be served thereby and others shall have had an
49 opportunity to be heard concerning the proposed rates
50 or charges.

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

61 (g) After such hearing, which may be adjourned from
62 time to time, the ordinance establishing the rates, fees
63 or charges, either as originally introduced or as
64 modified and amended, may be passed and put into
65 effect. A copy of the schedule of the rates, fees and
66 charges so established shall be kept on file in the office
67 of the sanitary board having charge of the construction
68 and operation of such works and in the office of the
69 clerk of the municipality. The schedule of rates, fees
70 and charges shall be open to inspection by all parties
71 interested. The rates, fees or charges established for

72 any class of users or property served shall be extended
73 to cover any additional premises thereafter served
74 which fall within the same class, without the necessity
75 of any hearing or notice.

76 (h) Any change or readjustment of rates, fees or
77 charges may be made in the same manner as rates, fees
78 or charges were originally established as hereinbefore
79 provided: *Provided*, That if such change or
80 readjustment be made substantially pro rata, as to all
81 classes of service, no hearing or notice is required.

82 (i) If any rate, fees or charge is not paid within thirty
83 days after it is due, the amount thereof, together with a
84 penalty of ten percent and a reasonable attorney's fee,
85 may be recovered by the sanitary board of the
86 municipality in a civil action in the name of the
87 municipality.

88 (j) Any municipality exercising the powers given
89 herein has the authority to construct, acquire, improve,
90 equip, operate, repair and maintain any plants,
91 machinery or works necessary to comply with the order
92 of the Secretary of the Department of Environmental
93 Protection or the Environmental Quality Board and the
94 authority provided herein to establish, maintain and
95 collect rates, fees or charges is an additional and
96 alternative method of financing such works and
97 matters, and is independent of any other provision of
98 this article insofar as the article provides for or requires
99 the issuance of revenue bonds or the imposition of rates,
100 fees and charges in connection with the bonds:
101 *Provided*, That except for the method of financing such
102 works and matters, the construction, acquisition,
103 improvement, equipment, custody, operation, repair

104 and maintenance of any plants, machinery or works in
105 compliance with an order of the Secretary of the
106 Department of Environmental Protection or the
107 Environmental Quality Board and the rights, powers
108 and duties of the municipality and the respective
109 officers and departments thereof, including the sanitary
110 board, are governed by the provisions of this article.

111 (k) The jurisdiction and authority provided by this
112 section does not extend to highways, road and drainage
113 easements and stormwater facilities constructed, owned
114 or operated by the West Virginia Division of Highways
115 and no rates, fees or charges for stormwater services or
116 costs of compliance may be assessed against highways,
117 road and drainage easements and/or stormwater
118 facilities constructed, owned and/or operated by the
119 West Virginia Division of Highways.

120 (l) A municipality which has been designated by the
121 Environmental Protection Agency as an entity to serve
122 a West Virginia Separate Storm Sewer System
123 community, as defined in 40 C. F. R. §122.26, has the
124 authority to enact ordinances or regulations which
125 allow for the issuance of orders, the right to enter
126 properties and the right to impose reasonable fines and
127 penalties regarding correction of violations of
128 municipal stormwater ordinances or regulations within
129 the municipal watershed served by the municipal
130 stormwater system, as long as such rules, regulations,
131 fines or actions are not contrary to any rules or orders
132 of the Public Service Commission.

133 (m) Notice of a violation of a municipal stormwater
134 ordinance or regulation shall be served in person to the
135 alleged violator or by certified mail return receipt

136 requested. The notice shall state the nature of the
137 violation, the potential penalty, the action required to
138 correct the violation and the time limit for making the
139 correction. Should a person, after receipt of proper
140 notice, fail to correct the violation of the municipal
141 stormwater ordinance or regulation, the municipality
142 may make or have made the corrections of the violation
143 and bring the party into compliance with the applicable
144 stormwater ordinance or regulation. The municipality
145 may collect the costs of correcting the violation from
146 the person by instituting a civil action, as long as such
147 actions are not contrary to any rules or orders of the
148 Public Service Commission.

149 (n) A municipality which has been designated by the
150 Environmental Protection Agency as an entity to serve
151 a West Virginia Separate Storm Sewer System
152 community shall prepare an annual report detailing the
153 collection and expenditure of rates, fees or charges and
154 make it available for public review at the place of
155 business of the governing body and the stormwater
156 utility main office.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

**§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,
3 construction, improvement, extension, management,
4 maintenance, operation, care, protection and the use of
5 any public service properties owned or controlled by
6 the district. The board shall establish rates, fees and
7 charges for the services and facilities it furnishes, which

8 shall be sufficient at all times, notwithstanding the
9 provisions of any other law or laws, to pay the cost of
10 maintenance, operation and depreciation of the public
11 service properties and principal of and interest on all
12 bonds issued, other obligations incurred under the
13 provisions of this article and all reserve or other
14 payments provided for in the proceedings which
15 authorized the issuance of any bonds under this article.
16 The schedule of the rates, fees and charges may be
17 based upon:

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

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

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

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

27 (E) May be determined on any other basis or
28 classification which the board may determine to be fair
29 and reasonable, taking into consideration the location
30 of the premises served and the nature and extent of the
31 services and facilities furnished. However, no rates,
32 fees or charges for stormwater services may be assessed
33 against highways, road and drainage easements or
34 stormwater facilities constructed, owned or operated by
35 the West Virginia Division of Highways.

36 (2) Where water, sewer, stormwater or gas services, or

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

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

86 (b) In the event that any publicly or privately owned
87 utility, city, incorporated town, other municipal
88 corporation or other public service district included
89 within the district owns and operates separately water
90 facilities, sewer facilities or stormwater facilities and
91 the district owns and operates another kind of facility
92 either water or sewer, or both, as the case may be, then
93 the district and the publicly or privately owned utility,
94 city, incorporated town or other municipal corporation
95 or other public service district shall covenant and
96 contract with each other to shut off and discontinue the
97 supplying of water service for the nonpayment of sewer
98 or stormwater service fees and charges: *Provided*, That
99 any contracts entered into by a public service district
100 pursuant to this section shall be submitted to the Public
101 Service Commission for approval. Any public service
102 district which provides water and sewer service, water
103 and stormwater service or water, sewer and stormwater
104 service has the right to terminate water service for
105 delinquency in payment of water, sewer or stormwater

106 bills. Where one public service district is providing
107 sewer service and another public service district or a
108 municipality included within the boundaries of the
109 sewer or stormwater district is providing water service
110 and the district providing sewer or stormwater service
111 experiences a delinquency in payment, the district or
112 the municipality included within the boundaries of the
113 sewer or stormwater district that is providing water
114 service, upon the request of the district providing sewer
115 or stormwater service to the delinquent account, shall
116 terminate its water service to the customer having the
117 delinquent sewer or stormwater account: *Provided,*
118 *however,* That any termination of water service must
119 comply with all rules and orders of the Public Service
120 Commission.

121 (c) Any district furnishing sewer facilities within the
122 district may require, or may by petition to the circuit
123 court of the county in which the property is located,
124 compel or may require the Division of Health to compel
125 all owners, tenants or occupants of any houses,
126 dwellings and buildings located near any sewer
127 facilities where sewage will flow by gravity or be
128 transported by other methods approved by the Division
129 of Health, including, but not limited to, vacuum and
130 pressure systems, approved under the provisions of
131 section nine, article one, chapter sixteen of this code,
132 from the houses, dwellings or buildings into the sewer
133 facilities, to connect with and use the sewer facilities
134 and to cease the use of all other means for the
135 collection, treatment and disposal of sewage and waste
136 matters from the houses, dwellings and buildings where
137 there is gravity flow or transportation by any other
138 methods approved by the Division of Health, including,
139 but not limited to, vacuum and pressure systems,

140 approved under the provisions of section nine, article
141 one, chapter sixteen of this code and the houses,
142 dwellings and buildings can be adequately served by
143 the sewer facilities of the district and it is declared that
144 the mandatory use of the sewer facilities provided for in
145 this paragraph is necessary and essential for the health
146 and welfare of the inhabitants and residents of the
147 districts and of the state. If the public service district
148 requires the property owner to connect with the sewer
149 facilities even when sewage from dwellings may not
150 flow to the main line by gravity and the property owner
151 incurs costs for any changes in the existing dwellings'
152 exterior plumbing in order to connect to the main sewer
153 line, the Public Service District Board shall authorize
154 the district to pay all reasonable costs for the changes
155 in the exterior plumbing, including, but not limited to,
156 installation, operation, maintenance and purchase of a
157 pump or any other method approved by the Division of
158 Health. Maintenance and operation costs for the extra
159 installation should be reflected in the users charge for
160 approval of the Public Service Commission. The circuit
161 court shall adjudicate the merits of the petition by
162 summary hearing to be held not later than thirty days
163 after service of petition to the appropriate owners,
164 tenants or occupants.

165 (d) Whenever any district has made available sewer
166 facilities to any owner, tenant or occupant of any house,
167 dwelling or building located near the sewer facility and
168 the engineer for the district has certified that the sewer
169 facilities are available to and are adequate to serve the
170 owner, tenant or occupant and sewage will flow by
171 gravity or be transported by other methods approved by
172 the Division of Health from the house, dwelling or
173 building into the sewer facilities, the district may

174 charge, and the owner, tenant or occupant shall pay,
175 the rates and charges for services established under this
176 article only after thirty-day notice of the availability of
177 the facilities has been received by the owner, tenant or
178 occupant. Rates and charges for sewage services shall
179 be based upon actual water consumption or the average
180 monthly water consumption based upon the owner's,
181 tenant's or occupant's specific customer class.

182 (e) The owner, tenant or occupant of any real property
183 may be determined and declared to be served by a
184 stormwater system only after each of the following
185 conditions is met: (1) the district has been designated by
186 the Environmental Protection Agency as an entity to
187 serve a West Virginia Separate Storm Sewer System
188 community, as defined in 40 C. F. R. §122.26; (2) the
189 district's authority has been properly expanded to
190 operate and maintain a stormwater system; (3) the
191 district has made available a stormwater system where
192 stormwater from the real property affects or drains into
193 the stormwater system; and (4) the real property is
194 located in the Municipal Separate Storm Sewer
195 System's designated service area. It is further hereby
196 found, determined and declared that the mandatory use
197 of the stormwater system is necessary and essential for
198 the health and welfare of the inhabitants and residents
199 of the district and of the state. The district may charge
200 and the owner, tenant or occupant shall pay the rates,
201 fees and charges for stormwater services established
202 under this article only after thirty-day notice of the
203 availability of the stormwater system has been received
204 by the owner. An entity providing stormwater service
205 shall provide a tenant a report of the stormwater fee
206 charged for the entire property and, if appropriate, that
207 portion of the fee to be assessed to the tenant.

208 (f) All delinquent fees, rates and charges of the
209 district for either water facilities, sewer facilities, gas
210 facilities or stormwater systems or stormwater
211 management programs are liens on the premises served
212 of equal dignity, rank and priority with the lien on the
213 premises of state, county, school and municipal taxes.
214 In addition to the other remedies provided in this
215 section, public service districts are granted a deferral of
216 filing fees or other fees and costs incidental to the
217 bringing and maintenance of an action in magistrate
218 court for the collection of delinquent water, sewer,
219 stormwater or gas bills. If the district collects the
220 delinquent account, plus reasonable costs, from its
221 customer or other responsible party, the district shall
222 pay to the magistrate the normal filing fee and
223 reasonable costs which were previously deferred. In
224 addition, each public service district may exchange
225 with other public service districts a list of delinquent
226 accounts: *Provided*, That an owner of real property may
227 not be held liable for the delinquent rates or charges for
228 services or facilities of a tenant, nor may any lien attach
229 to real property for the reason of delinquent rates or
230 charges for services or facilities of a tenant of the real
231 property, unless the owner has contracted directly with
232 the public service district to purchase the services or
233 facilities.

234 (g) Anything in this section to the contrary
235 notwithstanding, any establishment, as defined in
236 section three, article eleven, chapter twenty-two of this
237 code, now or hereafter operating its own sewage
238 disposal system pursuant to a permit issued by the
239 Department of Environmental Protection, as prescribed
240 by section eleven, article eleven, chapter twenty-two of
241 this code, is exempt from the provisions of this section.

242 (h) A public service district which has been
243 designated by the Environmental Protection Agency as
244 an entity to serve a West Virginia Separate Storm
245 Sewer System community shall prepare an annual
246 report detailing the collection and expenditure of rates,
247 fees or charges and make it available for public review
248 at the place of business of the governing body and the
249 stormwater utility main office.

A handwritten signature or scribble, possibly in ink, located at the bottom of the page. The signature is cursive and appears to be a name, though it is difficult to decipher due to the quality of the scan. It is positioned in the lower-left quadrant of the page.

Enr. Com. Sub. for S. B. No. 323] 26

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

Shirley Love
.....
~~Chairman~~ *Senate Committee*
Member

Jh
.....
Chairman House Committee

Originated in the Senate.

In effect from passage. ^{90 days}

Darsel Edwards
.....
Clerk of the Senate

Benny S. Ford
.....
Clerk of the House of Delegates

Carl Key Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is appended* this
the *17th* Day of *March* , 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 13 2008

Time 5:00 pm