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REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 465

(SENATORS KESSLER, EDGELL
AND CHAFIN, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 465

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CLARENCE M. GUNDA
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
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(SENATORS KESSLER, EDGELL AND CHAFIN, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §8-19-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-3-10 of said code, all relating to the discontinuation of water and sewer utility service for a delinquent bill; and eliminating the requirement that a water utility's employee or agent be required to accept payment at the customer's premises in lieu of discontinuing service for a delinquent water or sewer bill.

Be it enacted by the Legislature of West Virginia:

That §8-19-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-20-10 of said code be amended and reenacted; that §16-13-16 of said code be amended and reenacted; that §16-13A-9 of said code be amended and reenacted; and that §24-3-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

§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.

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

14 (2) The municipality or governing body, but only one of
15 them, may collect from all new applicants for service a
16 deposit of \$50 or two twelfths of the average annual usage
17 of the applicant's specific customer class, whichever is
18 greater, to secure the payment of water service rates, fees
19 and charges in the event they become delinquent as
20 provided in this section. In any case where a deposit is
21 forfeited to pay service rates, fees and charges which were
22 delinquent and the user's service is disconnected or
23 terminated, no reconnection or reinstatement of service
24 may be made by the municipality or governing body until
25 another deposit equal to \$50 or a sum equal to two

26 twelfths of the average usage for the applicant's specific
27 customer class, whichever is greater, is remitted to the
28 municipality or governing body. After twelve months of
29 prompt payment history, the municipality or governing
30 body shall return the deposit to the customer or credit the
31 customer's account with interest at a rate as the Public
32 Service Commission may prescribe: *Provided*, That where
33 the customer is a tenant, the municipality or governing
34 body is not required to return the deposit until the time
35 the tenant discontinues service with the municipality or
36 governing body. Whenever any rates, fees, rentals or
37 charges for services or facilities furnished remain unpaid
38 for a period of twenty days after the same become due and
39 payable, the user of the services and facilities provided is
40 delinquent and the user is liable at law until all rates, fees
41 and charges are fully paid. The municipality or governing
42 body may, under reasonable rules promulgated by the
43 Public Service Commission, shut off and discontinue water
44 services to a delinquent user of water facilities ten days
45 after the water services become delinquent regardless of
46 whether the municipality or governing body utilizes the
47 security deposit to satisfy any delinquent payments:
48 *Provided further*, That nothing contained within the rules
49 of the Public Service Commission shall be deemed to
50 require any agents or employees of the municipality or
51 governing body to accept payment at the customer's
52 premises in lieu of discontinuing service for a delinquent
53 bill.

54 (b) All rates or charges for water service whenever
55 delinquent shall be liens of equal dignity, rank and
56 priority with the lien on such premises of state, county,
57 school and municipal taxes for the amount thereof upon
58 the real property served, and the municipality shall have
59 plenary power and authority from time to time to enforce
60 such lien in a civil action to recover the money due for
61 such services rendered plus court fees and costs and a

62 reasonable attorney's fee: *Provided*, That an owner of real
63 property may not be held liable for the delinquent rates or
64 charges for services or facilities of a tenant, nor shall any
65 lien attach to real property for the reason of delinquent
66 rates or charges for services or facilities of a tenant of such
67 real property, unless the owner has contracted directly
68 with the municipality to purchase such services or facili-
69 ties.

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

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

ARTICLE 20. COMBINED SYSTEMS.

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

19 (2) A municipality has the plenary power and authority
20 to charge the users for the use and service of a combined
21 system and to establish required deposits, rates, fees or
22 charges for such purpose. Separate deposits, rates, fees or
23 charges may be fixed for the water and sewer services
24 respectively and, if applicable, the stormwater services, or
25 combined rates, fees or for the combined water and sewer
26 services, and, if applicable, the storm water services. Such
27 deposits, rates, fees or charges, whether separate or
28 combined, shall be sufficient at all times to pay the cost of

29 repair, maintenance and operation of the combined
30 system, provide an adequate reserve fund, an adequate
31 depreciation fund and pay the principal and interest upon
32 all revenue bonds issued under this article. Deposits,
33 rates, fees or charges shall be established, revised and
34 maintained by ordinance and become payable as the
35 governing body may determine by ordinance. The rates,
36 fees or charges shall be changed, from time to time, as
37 necessary, consistent with the provisions of this article.

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

45 (4) The municipality or governing body, but only one of
46 them, may collect from all new applicants for service a
47 deposit of \$100 or two twelfths of the average annual
48 usage of the applicant's specific customer class, whichever
49 is greater, to secure the payment of water and sewage
50 service rates, fees and charges in the event they become
51 delinquent as provided in this section. In any case where
52 a deposit is forfeited to pay service rates, fees and charges
53 which were delinquent and the user's service is discon-
54 nected or terminated, service may not be reconnected or
55 reinstated by the municipality or governing body until
56 another deposit equal to \$100 or a sum equal to two
57 twelfths of the average usage for the applicant's specific
58 customer class, whichever is greater, is remitted to the
59 municipality or governing body. After twelve months of
60 prompt payment history, the municipality or governing
61 body shall return the deposit to the customer or credit the
62 customer's account with interest at a rate to be set by the
63 Public Service Commission: *Provided*, That where the
64 customer is a tenant, the municipality or governing body

65 is not required to return the deposit until the time the
66 tenant discontinues service with the municipality govern-
67 ing body. Whenever any rates, fees, rentals or charges for
68 services or facilities furnished remain unpaid for a period
69 of twenty days after they become due, the user of the
70 services and facilities provided is delinquent and the user
71 is liable at law until all rates, fees and charges are fully
72 paid. The municipality or governing body may terminate
73 water services to a delinquent user of either water or
74 sewage facilities, or both, ten days after the water or
75 sewage services become delinquent regardless of whether
76 the governing body utilizes the security deposit to satisfy
77 any delinquent payments: *Provided further*, That any
78 termination of water service must comply with all rules
79 and orders of the Public Service Commission: *Provided*
80 *however*, That nothing contained within the rules of the
81 Public Service Commission shall be deemed to require any
82 agents or employees of the municipality or governing body
83 to accept payment at the customer's premises in lieu of
84 discontinuing service for a delinquent bill.

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

92 (c) All rates, fees or charges for water service, sewer
93 service and, if applicable, stormwater service, whenever
94 delinquent, as provided by ordinance of the municipality,
95 shall be liens of equal dignity, rank and priority with the
96 lien on such premises of state, county, school and municip-
97 al taxes for the amount thereof upon the real property
98 served. The municipality has the plenary power and
99 authority to enforce such lien in a civil action to recover
100 the money due for services rendered plus court fees and

101 costs and reasonable attorney's fees: *Provided*, That an
102 owner of real property may not be held liable for the
103 delinquent rates, fees or charges for services or facilities of
104 a tenant, nor shall any lien attach to real property for the
105 reason of delinquent rates, fees or charges for services or
106 facilities of a tenant of the real property, unless the owner
107 has contracted directly with the municipality to purchase
108 such services or facilities.

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

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

131 (f) Notwithstanding any other provision contained in
132 this article, a municipality which has been designated by
133 the Environmental Protection Agency as an entity to serve
134 a West Virginia Separate Storm Sewer System community,
135 as defined in 40 C.F.R. §122.26, has the authority to enact

136 ordinances or regulations which allow for the issuance of
137 orders, the right to enter properties and the right to
138 impose reasonable fines and penalties regarding correction
139 of violations of municipal stormwater ordinances or
140 regulations within the municipal watershed served by the
141 municipal stormwater system, as long as such rules,
142 regulations, fines or acts are not contrary to any rules or
143 orders of the Public Service Commission.

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

159 (h) A municipality which has been designated by the
160 Environmental Protection Agency as an entity to serve a
161 West Virginia Separate Storm Sewer System community
162 shall prepare an annual report detailing the collection and
163 expenditure of rates, fees or charges and make it available
164 for public review at the place of business of the governing
165 body and the stormwater 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 ordinance,
2 to establish and maintain just and equitable rates, fees or
3 charges for the use of and the service rendered by:

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

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

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

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

27 (e) The governing body may collect from all new appli-
28 cants for service a deposit of \$50 or two twelfths of the
29 average annual usage of the applicant's specific customer
30 class, whichever is greater, to secure the payment of
31 service rates, fees and charges in the event they become

32 delinquent as provided in this section. In any case where
33 a deposit is forfeited to pay service rates, fees and charges
34 which were delinquent at the time of disconnection or
35 termination of service, service may not be reconnected or
36 reinstated by the governing body until another deposit
37 equal to \$50 or a sum equal to two twelfths of the average
38 usage for the applicant's specific customer class, which-
39 ever is greater, is remitted to the governing body. After
40 twelve months of prompt payment history, the governing
41 body shall return the deposit to the customer or credit the
42 customer's account with interest at a rate as the Public
43 Service Commission may prescribe: *Provided*, That where
44 the customer is a tenant, the governing body is not re-
45 quired to return the deposit until the time the tenant
46 discontinues service with the governing body. Whenever
47 any rates, fees, rentals or charges for services or facilities
48 furnished remain unpaid for a period of twenty days after
49 they become due, the user of the services and facilities
50 provided is delinquent. The user is liable until all rates,
51 fees and charges are fully paid. The governing body may,
52 under reasonable rules promulgated by the Public Service
53 Commission, shut off and discontinue water services to a
54 delinquent user of sewer facilities ten days after the sewer
55 services become delinquent regardless of whether the
56 governing body utilizes the security deposit to satisfy any
57 delinquent payments: *Provided, however*, That nothing
58 contained within the rules of the Public Service Commis-
59 sion shall be deemed to require any agents or employees of
60 the governing body to accept payment at the customer's
61 premises in lieu of discontinuing service for a delinquent
62 bill.

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

68 ant to this section shall be considered the revenues of the
69 works.

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

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

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

97 (j) Any change or readjustment of such rates, fees or
98 charges may be made in the same manner as the rates, fees
99 or charges were originally established as hereinbefore
100 provided: *Provided*, That if a change or readjustment be
101 made substantially pro rata, as to all classes of service, no
102 hearing or notice shall be required. The aggregate of the

103 rates, fees or charges shall always be sufficient for the
104 expense of operation, repair and maintenance and for the
105 sinking fund payments.

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

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

127 (m) The board collecting the rates, fees or charges shall
128 be obligated under reasonable rules to shut off and
129 discontinue both water and sewer services to all delin-
130 quent users of water, sewer or stormwater facilities and
131 shall not restore either water facilities or sewer facilities
132 to any delinquent user of any such facilities until all
133 delinquent rates, fees or charges for water, sewer and
134 stormwater facilities, including reasonable interest and
135 penalty charges, have been paid in full, as long as such
136 actions are not contrary to any rules or orders of the
137 Public Service Commission: *Provided*, That nothing

138 contained within the rules of the Public Service Commis-
139 sion shall be deemed to require any agents or employees of
140 the municipality or governing body to accept payment at
141 the customer's premises in lieu of discontinuing service for
142 a delinquent bill.

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

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

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

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

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

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

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

62 another deposit equal to the greater of a sum equal to two
63 twelfths of the average usage for the applicant's specific
64 customer class or \$50 has been remitted to the district.
65 After twelve months of prompt payment history, the
66 district shall return the deposit to the customer or credit
67 the customer's account at a rate as the Public Service
68 Commission may prescribe: *Provided*, That where the
69 customer is a tenant, the district is not required to return
70 the deposit until the time the tenant discontinues service
71 with the district. Whenever any rates, fees, rentals or
72 charges for services or facilities furnished remain unpaid
73 for a period of twenty days after the same become due and
74 payable, the user of the services and facilities provided is
75 delinquent and the user is liable at law until all rates, fees
76 and charges are fully paid. The board may, under reason-
77 able rules promulgated by the Public Service Commission,
78 shut off and discontinue water or gas services to all
79 delinquent users of either water or gas facilities, or both,
80 ten days after the water or gas services become delinquent.
81 *Provided, however*, That nothing contained within the
82 rules of the Public Service Commission shall be deemed to
83 require any agents or employees of the board to accept
84 payment at the customer's premises in lieu of discontinu-
85 ing service for a delinquent bill.

86 (b) In the event that any publicly or privately owned
87 utility, city, incorporated town, other municipal corpora-
88 tion or other public service district included within the
89 district owns and operates separately water facilities,
90 sewer facilities or stormwater facilities and the district
91 owns and operates another kind of facility either water or
92 sewer, or both, as the case may be, then the district and
93 the publicly or privately owned utility, city, incorporated
94 town or other municipal corporation or other public
95 service district shall covenant and contract with each
96 other to shut off and discontinue the supplying of water
97 service for the nonpayment of sewer or stormwater service

98 fees and charges: *Provided*, That any contracts entered
99 into by a public service district pursuant to this section
100 shall be submitted to the Public Service Commission for
101 approval. Any public service district which provides
102 water and sewer service, water and stormwater service or
103 water, sewer and stormwater service has the right to
104 terminate water service for delinquency in payment of
105 water, sewer or stormwater bills. Where one public
106 service district is providing sewer service and another
107 public service district or a municipality included within
108 the boundaries of the sewer or stormwater district is
109 providing water service and the district providing sewer or
110 stormwater service experiences a delinquency in payment,
111 the district or the municipality included within the
112 boundaries of the sewer or stormwater district that is
113 providing water service, upon the request of the district
114 providing sewer or stormwater service to the delinquent
115 account, shall terminate its water service to the customer
116 having the delinquent sewer or stormwater account:
117 *Provided, however*, That any termination of water service
118 must comply with all rules and orders of the Public
119 Service Commission. *Provided further*, That nothing
120 contained within the rules of the Public Service Commis-
121 sion shall be deemed to require any agents or employees of
122 the Public Service Districts to accept payment at the
123 customer's premises in lieu of discontinuing service for a
124 delinquent bill.

125 (c) Any district furnishing sewer facilities within the
126 district may require, or may by petition to the circuit court
127 of the county in which the property is located, compel or
128 may require the Division of Health to compel all owners,
129 tenants or occupants of any houses, dwellings and build-
130 ings located near any sewer facilities where sewage will
131 flow by gravity or be transported by other methods
132 approved by the Division of Health, including, but not
133 limited to, vacuum and pressure systems, approved under

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

167 (d) Whenever any district has made available sewer
168 facilities to any owner, tenant or occupant of any house,
169 dwelling or building located near the sewer facility and

170 the engineer for the district has certified that the sewer
171 facilities are available to and are adequate to serve the
172 owner, tenant or occupant and sewage will flow by gravity
173 or be transported by other methods approved by the
174 Division of Health from the house, dwelling or building
175 into the sewer facilities, the district may charge, and the
176 owner, tenant or occupant shall pay, the rates and charges
177 for services established under this article only after thirty-
178 day notice of the availability of the facilities has been
179 received by the owner, tenant or occupant. Rates and
180 charges for sewage services shall be based upon actual
181 water consumption or the average monthly water con-
182 sumption based upon the owner's, tenant's or occupant's
183 specific customer class.

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

206 provide a tenant a report of the stormwater fee charged
207 for the entire property and, if appropriate, that portion of
208 the fee to be assessed to the tenant.

209 (f) All delinquent fees, rates and charges of the district
210 for either water facilities, sewer facilities, gas facilities or
211 stormwater systems or stormwater management programs
212 are liens on the premises served of equal dignity, rank and
213 priority with the lien on the premises of state, county,
214 school and municipal taxes. Nothing contained within the
215 rules of the Public Service Commission shall be deemed to
216 require any agents or employees of the Public Service
217 Districts to accept payment at the customer's premises in
218 lieu of discontinuing service for a delinquent bill. In
219 addition to the other remedies provided in this section,
220 public service districts are granted a deferral of filing fees
221 or other fees and costs incidental to the bringing and
222 maintenance of an action in magistrate court for the
223 collection of delinquent water, sewer, stormwater or gas
224 bills. If the district collects the delinquent account, plus
225 reasonable costs, from its customer or other responsible
226 party, the district shall pay to the magistrate the normal
227 filing fee and reasonable costs which were previously
228 deferred. In addition, each public service district may
229 exchange with other public service districts a list of
230 delinquent accounts: *Provided*, That an owner of real
231 property may not be held liable for the delinquent rates or
232 charges for services or facilities of a tenant, nor may any
233 lien attach to real property for the reason of delinquent
234 rates or charges for services or facilities of a tenant of the
235 real property, unless the owner has contracted directly
236 with the public service district to purchase the services or
237 facilities.

238 (g) Anything in this section to the contrary notwith-
239 standing, any establishment, as defined in section three,
240 article eleven, chapter twenty-two of this code, now or
241 hereafter operating its own sewage disposal system

242 pursuant to a permit issued by the Department of Envi-
243 ronmental Protection, as prescribed by section eleven of
244 said article, is exempt from the provisions of this section.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT
TO REGULATIONS OF COMMISSION.**

**§24-3-10. Termination of water service for delinquent sewer
bills.**

1 (a) In the event that any publicly or privately owned
2 utility, city, incorporated town, municipal corporation or
3 public service district owns and operates either water
4 facilities or sewer facilities, and a privately owned public
5 utility or a public utility that is owned and operated by a
6 homeowners' association owns and operates the other kind
7 of facilities, either water or sewer, then the privately
8 owned public utility or the homeowners' association may
9 contract with the publicly or privately owned utility, city,
10 incorporated town, or public service district which
11 provides the other services to shutoff and discontinue the
12 supplying of water service for the nonpayment of sewer
13 service fees and charges.

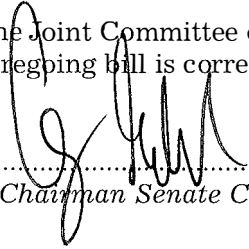
14 (b) Any contracts entered into by a privately owned
15 public utility or by a public utility that is owned and
16 operated by a homeowners' association pursuant to this
17 section must be submitted to the Public Service Commis-
18 sion for approval.

19 (c) Any privately owned public utility or any public
20 utility that is owned and operated by a homeowners'
21 association which provides water and sewer service to its
22 customers may terminate water service for delinquency in
23 payment of either water or sewer bills.

24 (d) Where a privately owned public utility or a public
25 utility that is owned and operated by a homeowners'
26 association is providing sewer service and another utility
27 is providing water service, and the privately owned public
28 utility or the homeowners' association providing sewer
29 service experiences a delinquency in payment, the utility
30 providing water service, upon the request of the homeown-
31 ers' association or the privately owned public utility
32 providing sewer service to the delinquent account, shall
33 terminate its water service to the customer having the
34 delinquent sewer account.

35 (e) Any termination of water service must comply with
36 all rules and orders of the Public Service Commission:
37 Nothing contained within the rules of the Public Service
38 Commission shall be deemed to require any agents or
39 employees of the water or sewer utility to accept payment
40 at the customer's premises in lieu of discontinuing water
41 service for a delinquent water or sewer bill.


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


.....
Chairman Senate Committee

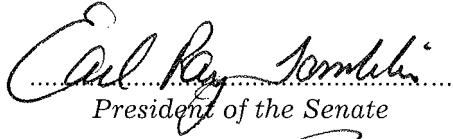

.....
Chairman House Committee

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 2nd
Day of April, 2010.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:30am