

SB 672

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 672

(SENATOR TOMBLIN, MR. PRESIDENT,
original sponsor, BY REQUEST)

[Passed March 12, 2004; in effect ninety 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:

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.

1 Regardless of whether a lot or parcel is within any
2 municipality's geographical limits, the owner or owners of
3 any lot or parcel of land abutting on any street, alley,
4 public way or easement on which a municipal sewer is now
5 located or may hereafter be constructed and laid (whether
6 constructed and laid under the provisions of this article or
7 any other provisions of law) upon which lot or parcel of
8 land any business or residence building is now located or
9 may hereafter be erected, not connected with a public
10 sewer, may be required and compelled by the municipality
11 or by the board of health to connect any such building
12 with such sewer. Notice so to connect shall be given by the
13 municipality or by the board of health to the owner and to
14 the lessee or occupant of such building. The owner or
15 owners shall connect to the municipal sewer within thirty
16 days after notice to connect has been sent by the municipi-
17 pality. Regardless of whether the owner or owners connect
18 to such sewer, the municipality may bill the owner or
19 owners of the lot or parcel and the owner or owners shall
20 pay the municipality's charge based on the actual water
21 consumption on the lot or parcel. If the lot or parcel is not
22 metered, the municipality's charge shall be based on the

23 municipality's good faith estimate of the consumption on
24 the lot or parcel.

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.

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 fifty dollars or two twelfths of the average
17 annual usage of the applicant's specific customer class,
18 whichever is greater, to secure the payment of water
19 service rates, fees and charges in the event they become
20 delinquent as provided in this section. In any case where
21 a deposit is forfeited to pay service rates, fees and charges
22 which were delinquent and the user's service is discon-
23 nected or terminated, no reconnection or reinstatement of
24 service may be made by the municipality or governing

25 body until another deposit equal to fifty dollars or a sum
26 equal to two twelfths of the average usage for the appli-
27 cant's specific customer class, whichever is greater, is
28 remitted to the municipality or governing body. After
29 twelve months of prompt payment history, the municipal-
30 ity or governing body shall return the deposit to the
31 customer or credit the customer's account with interest at
32 a rate as the public service commission may prescribe:
33 *Provided*, That where the customer is a tenant, the municipi-
34 pality or governing body is not required to return the
35 deposit until the time the tenant discontinues service with
36 the municipality or governing body. Whenever any rates,
37 fees, rentals or charges for services or facilities furnished
38 remain unpaid for a period of twenty days after the same
39 become due and payable, the user of the services and
40 facilities provided is delinquent and the user is liable at
41 law until all rates, fees and charges are fully paid. The
42 municipality or governing body may, under reasonable
43 rules promulgated by the public service commission, shut
44 off and discontinue water services to a delinquent user of
45 water facilities ten days after the water services become
46 delinquent regardless of whether the municipality or
47 governing body utilizes the security deposit to satisfy any
48 delinquent payments.

49 (b) All rates or charges for water service whenever
50 delinquent shall be liens of equal dignity, rank and
51 priority with the lien on such premises of state, county,
52 school and municipal taxes for the amount thereof upon
53 the real property served, and the municipality shall have
54 plenary power and authority from time to time to enforce
55 such lien in a civil action to recover the money due for
56 such services rendered plus court fees and costs and a
57 reasonable attorney's fee: *Provided*, That an owner of real
58 property may not be held liable for the delinquent rates or
59 charges for services or facilities of a tenant, nor shall any
60 lien attach to real property for the reason of delinquent
61 rates or charges for services or facilities of a tenant of such
62 real property, unless the owner has contracted directly

63 with the municipality to purchase such services or facili-
64 ties.

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

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

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.

1 (a) (1) The governing body of any municipality availing
2 itself of the provisions of this article shall have plenary
3 power and authority to make, enact and enforce all
4 needful rules for the repair, maintenance and operation
5 and management of the combined system of such municipi-
6 pality and for the use thereof, and shall also have plenary
7 power and authority to make, enact and enforce all
8 needful rules and ordinances for the care and protection of
9 any such system, which may be conducive to the preserva-
10 tion of the public health, comfort and convenience and to
11 rendering the water supply of such municipality pure, the
12 sewerage harmless insofar as it is reasonably possible so to
13 do, and if applicable properly collecting and controlling
14 the stormwater as is reasonably possible so to do: *Pro-*
15 *vided*, That no municipality may make, enact or enforce
16 any rule, regulation or ordinance regulating any highways,
17 road or drainage easements or stormwater facilities
18 constructed, owned or operated by the West Virginia
19 division of highways except in accordance with chapter
20 twenty-nine-a of this code.

21 (2) Any municipality shall have plenary power and
22 authority to charge the users for the use and service of
23 combined system and to establish required deposits, rates,
24 fees or charges for such purpose. Separate deposits, rates,
25 fees or charges may be fixed for the water and sewer
26 services respectively, and, if applicable, the stormwater
27 services, or combined rates, fees or for the combined water
28 and sewer services, and, if applicable, the stormwater
29 services. Such deposits, rates, fees or charges, whether
30 separate or combined, shall be sufficient at all times to pay
31 the cost of repair, maintenance and operation of the
32 combined system, provide an adequate reserve fund and
33 adequate depreciation fund and pay the principal of and
34 interest upon all revenue bonds issued under this article.
35 Deposits, rates, fees or charges shall be established, revised

36 and maintained by ordinance and become payable as the
37 governing body may determine by ordinance, and such
38 rates, fees or charges shall be changed from time to time as
39 needful, consistent with the provisions of this article.

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

43 (4) The municipality or governing body, but only one of
44 them, may collect from all new applicants for service a
45 deposit of one hundred dollars or two twelfths of the
46 average annual usage of the applicant's specific customer
47 class, whichever is greater, to secure the payment of water
48 and sewage service rates, fees and charges in the event
49 they become delinquent as provided in this section. In any
50 case where a deposit is forfeited to pay service rates, fees
51 and charges which were delinquent and the user's service
52 is disconnected or terminated, no reconnecting or rein-
53 statement of service may be made by the municipality or
54 governing body until another deposit equal to one hundred
55 dollars or a sum equal to two twelfths of the average usage
56 for the applicant's specific customer class, whichever is
57 greater, is remitted to the municipality or governing body.
58 After twelve months of prompt payment history, the
59 municipality or governing body shall return the deposit to
60 the customer or credit the customer's account with interest
61 at a rate as the public service commission may prescribe:
62 *Provided*, That where the customer is a tenant, the muni-
63 cipality or governing body is not required to return the
64 deposit until the time the tenant discontinues service with
65 the municipality or governing body. Whenever any rates,
66 fees, rentals or charges for services or facilities furnished
67 remain unpaid for a period of twenty days after the same
68 become due and payable, the user of the services and
69 facilities provided is delinquent and the user is liable at
70 law until all rates, fees and charges are fully paid. The
71 municipality or governing body may, under reasonable
72 rules promulgated by the public service commission, shut

73 off and discontinue water services to a delinquent user of
74 either water or sewage facilities, or both, ten days after the
75 water or sewage services become delinquent regardless of
76 whether the governing body utilizes the security deposit to
77 satisfy any delinquent payments.

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

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

103 (d) Municipalities are hereby granted a deferral of filing
104 fees or other fees and costs incidental to the bringing and
105 maintenance of an action in magistrate court for the
106 collection of the delinquent rates and charges. If the
107 municipality collects the delinquent account, plus fees and
108 costs, from its customer or other responsible party, the
109 municipality shall pay to the magistrate court the filing

110 fees or other fees and costs which were previously de-
111 ferred.

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

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

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

10 (b) Stormwater works, to be paid by the owner of each
11 and every lot, parcel of real estate, or building that in any

12 way uses or is served by such stormwater works or whose
13 property is improved or protected by the stormwater
14 works or any user of such stormwater works.

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

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

24 (e) The governing body may collect from all new appli-
25 cants for service a deposit of fifty dollars or two twelfths
26 of the average annual usage of the applicant's specific
27 customer class, whichever is greater, to secure the payment
28 of service rates, fees and charges in the event they become
29 delinquent as provided in this section. In any case where
30 a deposit is forfeited to pay service rates, fees and charges
31 which were delinquent at the time of disconnection or
32 termination of service, no reconnecting or reinstatement of
33 service may be made by the governing body until another
34 deposit equal to fifty dollars or a sum equal to two
35 twelfths of the average usage for the applicant's specific
36 customer class, whichever is greater, is remitted to the
37 governing body. After twelve months of prompt payment
38 history, the governing body shall return the deposit to the
39 customer or credit the customer's account with interest at
40 a rate as the public service commission may prescribe:
41 *Provided*, That where the customer is a tenant, the govern
42 ing body is not required to return the deposit until the
43 time the tenant discontinues service with the governing
44 body. Whenever any rates, fees, rentals or charges for
45 services or facilities furnished remain unpaid for a period
46 of twenty days after the same become due and payable, the
47 user of the services and facilities provided is delinquent
48 and the user is liable at law until all rates, fees and

49 charges are fully paid. The governing body may, under
50 reasonable rules promulgated by the public service
51 commission, shut off and discontinue water services to a
52 delinquent user of sewer facilities ten days after the sewer
53 services become delinquent regardless of whether the
54 governing body utilizes the security deposit to satisfy any
55 delinquent payments.

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

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

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

78 (i) After such hearing, which may be adjourned from
79 time to time, the ordinance establishing rates, fees or
80 charges, either as originally introduced or as modified and
81 amended, shall be passed and put into effect. A copy of
82 the schedule of such rates, fees and charges so established
83 shall be kept on file in the office of the board having
84 charge of the operation of such works, and also in the

85 office of the clerk of the municipality, and shall be open to
86 inspection by all parties interested. The rates, fees or
87 charges so established for any class of users or property
88 served shall be extended to cover any additional premises
89 thereafter served which fall within the same class, without
90 the necessity of any hearing or notice.

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

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

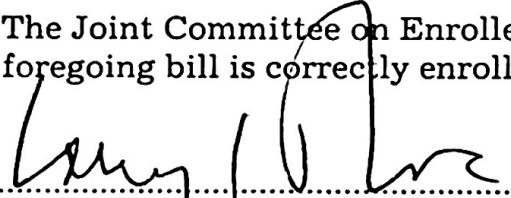
114 (l) Whenever any rates, rentals, fees or charges for
115 services or facilities furnished shall remain unpaid for a
116 period of twenty days after the same shall become due and
117 payable, the property and the owner thereof, as well as the
118 user of the services and facilities shall be delinquent until
119 such time as all rates, fees and charges are fully paid.
120 When any payment for rates, rentals, fees or charges

121 becomes delinquent, the governing body may use the
122 security deposit to satisfy the delinquent payment.

123 (m) The board collecting such rates, fees or charges shall
124 be obligated under reasonable rules to shut off and
125 discontinue both water and sewer services to all delin-
126 quent users of either water facilities, or sewer facilities or
127 both, and shall not restore either water facilities or sewer
128 facilities, to any delinquent user of either until all delin-
129 quent rates, fees or charges for both water facilities, and
130 sewer facilities, including reasonable interest and penalty
131 charges, have been paid in full.

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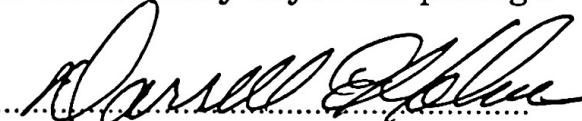
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



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Chairman Senate Committee

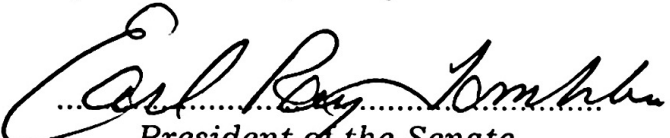

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

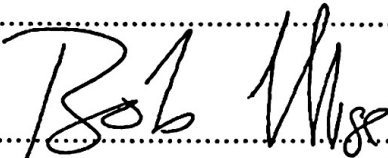

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

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


.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/25/04

TIME 10:20 A