

VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

CHAPTER 1025

An Act to amend and reenact § 3, as amended, of Chapter 161 of the Acts of Assembly of 1926, which chapter was continued in effect by § 21-120 of the Code of Virginia, relating to sanitary districts.

[H 2748]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 3, as amended, of Chapter 161 of the Acts of Assembly of 1926, which chapter was continued in effect by § 21-120 of the Code of Virginia, is amended and reenacted as follows:

§ 3. After the entry of such order creating a sanitary district of such county, the board of supervisors or other governing body hereinafter referred to as "board of supervisors" thereof shall have the following powers and duties, subject to the conditions and limitations hereinafter prescribed.

(a) To construct, reconstruct, maintain, alter, improve, add to and operate motor vehicle parking facilities, water supply, drainage, sewerage, garbage (including trash and refuse) disposal, heat, light, power, gas, sidewalk, curbs, gutters, streets, tunnels, bridges, street names, pedestrian bridges or tunnels, community buildings, recreational facilities, parks, playgrounds, open spaces, lighting and fire-fighting systems for the use and benefit of the public in such sanitary district. When the words "system," "systems," "project," "projects," "facility," or "facilities" or "public improvements" are used in this act, they shall include all of the foregoing unless the context clearly indicates otherwise.

(a-1) To provide for ~~undergrounding of existing and future utility wires, and such provision shall for purposes of this act relocating aboveground distribution lines for electricity, telephone, cable television and similar services and utilities to underground locations, and for the purposes of this act, the relocation of such lines shall be~~ considered to be construction of a "system."

(a-2) To construct, reconstruct, acquire, maintain, alter, improve, add to and operate a public transportation system of any kind except as otherwise provided herein, subject to the approval of the transportation district commission having jurisdiction of the physical area, if such a commission exists. Such approval shall be given if the commission finds that the proposed public transportation system is consistent with the commission's transportation plan for the area or with such other transportation plan for the area which has been adopted as provided in the Transportation District Act of 1964, as amended, or other appropriate legislation. "Public transportation system" shall not include "shared ride taxi system" as that phrase is used in § ~~15.1-37.3:3~~ 15.2-949 or taxicab-type vehicles or other motor vehicles which carry no more than six passengers.

(b) To acquire by gift, condemnation, purchase, lease or otherwise, such systems and the real property interests on which such systems are located or are to be located.

(c) To contract with any person, firm, corporation, municipality, county, authority or the federal government or the state government or any agency thereof to acquire, construct, reconstruct, maintain, alter, improve, add to and operate any such systems, and to accept the funds of, or to reimburse from any available source, such person, firm, corporation, municipality, county, authority or the federal government or the state government or any agency thereof for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, addition to and operation of any such system or systems.

In any such county having a county manager plan of government, such contracts relating to any garbage (including trash and refuse) disposal system located either within or outside the sanitary district may make provision among other things for (i) a person, firm, corporation or entity other than the sanitary district or the county of the sanitary district (the contractor) to own or control any property constituting all or a portion of any garbage (including trash and refuse) disposal system (the contractor's property) either within or outside the sanitary district and to provide any of the disposal services to the sanitary district, (ii) the use by the sanitary district of all or a portion of the disposal capacity owned or controlled by the contractor, (iii) the delivery by or for the account of the contracting sanitary district of specified quantities of garbage and refuse (whether or not such sanitary district collects such garbage and refuse) and the making of payments in respect of such quantities of garbage and refuse whether or not such garbage and refuse are delivered, including payments in respect of revenues lost if such garbage and refuse are not delivered, (iv) adjustments to payments to be made by the sanitary district in respect of inflation, changes in energy prices or residue disposal costs, taxes imposed upon the contractor or other events beyond the control of the contractor or in respect of the actual costs of maintaining, repairing or operating contractor's property, including debt service or capital lease payments, capital costs or other financing charges, and (v) the collection by the contractor of fees, rates or charges from persons using disposal capacity for which the sanitary district has contracted. The board of supervisors of the sanitary district shall have authority by majority vote to approve such contracts.

The board of supervisors of the contracting sanitary district may fix, charge and collect fees, rates and charges for services furnished or made available by the garbage (including trash and refuse) disposal system pursuant to a contract with the sanitary district so as to provide funds sufficient at all times during the term of the contract, together with other funds available to the sanitary district for such purposes, to pay all amounts due from time to time under such contract and to provide a margin of safety for such payment, and may covenant with the contractor as to the levels of fees, rates and charges during the term of the contract. Such fees, rates and charges shall not apply to garbage and refuse generated, purchased, or utilized by any facility located in the service area and engaged in the full-time business of manufacturing, mining, processing, refining or conversion which is not disposed at or through such garbage and refuse collection and disposal system. The rates, fees and charges may be imposed upon the owners, tenants or occupants of each occupied lot or parcel of land which the board of supervisors of the sanitary district determines, with the concurrence at the time of such determination of the local government, municipality or county in which such parcel is located, is in the service area of the system or portion thereof, whether or not garbage and refuse generated from such parcel are actually delivered to such system. The rates, fees and charges shall be fixed by the board of supervisors of the sanitary district in the manner and according to the procedures determined by the board of supervisors not inconsistent with the provisions of this act. Such rates, fees and charges may be allocated among the owners, tenants or occupants of each occupied lot or parcel of land which the board of supervisors of the sanitary district determines is in the service area of the system or portion thereof for which the sanitary district has contracted and such allocation may be based upon (i) waste generation estimates based on the estimated amount of garbage and refuse produced by premises of the type and character of the premises subject to the charge or (ii) the amount of garbage and refuse delivered to such system for disposal or (iii) a combination of the foregoing. There shall be a lien on real property for the amount of such fees, rates and charges in accordance with paragraph (e) of § 3, and the board of supervisors of the sanitary district is empowered by resolution or other lawful action to enforce the payment of the same by means of the actions described in such paragraph (e) and as otherwise permitted by law. The party contracting with the sanitary district may, except to the extent rights herein given may be restricted by the contract, either at law or in equity, by suit, mandamus or other proceedings, protect and enforce any and all rights granted under such contract and may force and compel the performance of all duties required by this act or by such contract to be performed by the sanitary district or by any officer thereof, including without limitation covenants or obligations made by the sanitary district with respect to the fixing, charging and collecting of rates, fees and charges in accordance with this act and such contract. Such contracts may, with the consent of the contractor, be made directly with the trustee for indebtedness issued to finance the contractor's property and provide for payment directly to such trustee. The contracting sanitary district may pledge fees, rates and charges made in respect of a contract to the contractor and such pledge shall be valid and binding from the time when it is made; fees, rates and charges so pledged and thereafter received by the sanitary district shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind, in tort, contract or otherwise irrespective of whether such parties have given notice thereof. Neither the contract or any assignment thereof need be filed or recorded except in the records of the sanitary district. Any garbage disposal system referred to in this act shall include, without limitation, a system, plant or facilities designed to (i) collect garbage, trash and refuse, (ii) dispose of such garbage and refuse (by incineration or otherwise), (iii) generate and transmit steam and electricity from such disposal or other useful materials, (iv) control pollutants resulting from such disposal, (v) dispose of and/or recover ash and other byproducts of such disposal, or (vi) any combination of the above, and all land, structures, vehicles and equipment related thereto.

(d) To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or tenants for such connections. In order to require owners or tenants of any property in the district to connect with any such system or systems, the board of supervisors shall have the power and authority to adopt ordinances so requiring owners or tenants to connect with such systems, and to use the same, and the board of supervisors shall have the power to provide for a punishment in the ordinance of not exceeding a fifty-dollar fine for each failure and refusal to so connect with such systems, or to use the same. Before adopting any such ordinance the board of supervisors shall give public notice of the intention to propose the same for passage by posting handbill notices of such proposal in three or more public places in the sanitary district at least ten days prior to the time the ordinances shall be proposed for passage. The ordinance shall not become effective after its passage until ten ~~days~~ *days'* like notice has been given by posting copies of such ordinance in three or more public places in the district. Violations of such ordinances shall be tried before the ~~county~~ *general district* court of the county as is provided for trial of misdemeanors, and with the like right of appeal.

(e) To fix and prescribe the rates of charge for the use of any such system or systems and to provide for the collection of such charges. ~~And~~ To enable the board to enforce the collection of charges for the use of any such system against the person or persons, firm or corporation using the same, the charges when made for the use of any such system shall be collectible by distress, levy, garnishment, attachment

or otherwise without recourse to court procedure, except so far as the selected procedure may require the same. ~~And~~ The board shall have the power to designate as its agent for the purpose of collection such officer or officers, person or persons as it may determine, and the officer or officers, person or persons shall be vested with the same power and authority as a sheriff or constable may have in like procedure.

Any unpaid charge shall become a lien superior to the interest of any owner, lessee or tenant, and next in succession to county taxes, on the real property on which the use of any such system was made and for which the charge was imposed, ~~provided;~~ however, such lien shall not bind or affect a subsequent bona fide purchaser of such real estate for valuable consideration without actual notice of such lien, except and until from the time that the amount of such charge is entered in the Judgment Lien Docket kept in the office where deeds may be recorded in the political subdivision wherein the real estate or a part thereof is located. It shall be the duty of the clerk in whose office deeds may be recorded to keep and preserve and hold available for public inspection such Judgment Lien Docket and to cause entries to be made and indexed therein from time to time upon certification by the board for which he shall be entitled to a fee of fifty cents per entry to be paid by the board and added to the amount of the lien.

Such lien on any real estate may be discharged by the payment of the board of the total amount of such lien, and interest at the *annual* rate of six percent ~~annually~~ to the date of such payment, and the entry fee of fifty cents, and it shall be the duty of the board to deliver a certificate thereof to the person paying the same, and upon presentation thereof and the payment of the further fee of twenty-five cents by such person, the clerk having the record of such lien shall mark the entry of such lien satisfied.

Jurisdiction to enforce any such lien shall be equity and the court may decree the real estate subject to the lien, or any part thereof, to be sold and the proceeds applied to the payment of such lien and the interest which may accrue to the date of such payment.

Nothing contained herein shall be construed to prejudice the right of the board to recover the amount of such lien, or of the charge, and the interest which may accrue, by action at law or otherwise.

(f) To employ and fix the compensation of any technical, clerical, or other force and help which from time to time, in their judgment, may be deemed necessary for the construction, operation or maintenance of any such system or systems.

(g) To negotiate and contract with any person, firm, corporation, county, authority or municipality with regard to the connection of any system or systems with any other system or systems now in operation or hereafter to be established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the sanitary district.

(h) To contract for the extension of any such system into the territory outside of the district, and for the use thereof, upon such terms and conditions as the board may from time to time determine upon.

(i) With respect to the maintenance and operation of said motor vehicle parking facilities, the board is authorized to purchase, install, maintain and operate, and to fix and charge parking meter fees for the use of, such parking facilities.