



SPONSOR: Sen. Lopez & Rep. Schwartzkopf  
Sens. Pettyjohn, Townsend; Rep. Smyk

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 194

AN ACT TO AMEND THE CHARTER OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES RELATING TO UTILITY SERVICE EXTENSION AND THE POWER TO SUE AND BE SUED.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Section 4.20 of the Charter of the Board of Public Works of the City of Lewes by making deletions as shown by strike through and insertions as shown by underline as follows:

4.20 The BPW is hereby authorized and permitted to supply utility services of any utility system to those properties which are located within two (2) miles of the corporate limits of the City as presently constituted or hereafter extended under such terms and conditions as the Board shall deem proper. The BPW, however, may not extend any utility services of any utility system to any property located outside of the municipal limits of the City of Lewes without obtaining the prior consent of the Mayor and City Council of the City of Lewes. The Board is hereby authorized and permitted to enact and adopt such rules and regulations as the said Board may deem proper in order to supply said utility services.

Section 2. Amend Section 4 of the Charter of the Board of Public Works of the City of Lewes by making deletions as shown by strike through and insertions as shown by underline as follows:

4.22 The BPW may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts and administrative proceedings whatsoever by the corporate name of "The Board of Public Works of the City of Lewes". The BPW, however, cannot sue, or be sued by, the City of Lewes, a municipal corporation of the State of Delaware, until July 1, 2026.

SYNOPSIS

The Delaware General Assembly incorporated the Board of Public Works of the City of Lewes (the "BPW") in 1901 when it, separate from the Charter adopted for the City of Lewes, enacted the Charter of the BPW and empowered it to establish, control, and regulate the utility system for the City of Lewes.

The BPW is a public body under the Delaware Freedom of Information Act and is subject to the obligations and requirements of a public body under Delaware's Sunshine Laws. The BPW reviews and approves budgets, contracts, and utility policies, including concerning rates, in meetings that are open to the public. The BPW Directors are directly accountable to the ratepayers who elect them to handle matters concerning utility policy.

This Act seeks to address the City's concern that it have a codified role in the extension of the Lewes utility system to property located outside of the City of Lewes municipal limits by amending the Charter of the BPW to specifically require going forward the Mayor and City Council's prior consent for the BPW to expand utility service to any territory outside of the City of Lewes municipal limits. Through this change, the Mayor and City Council will have an

important role in any future expansion of the utility system, while still preserving, consistent with the Charter of the BPW, the BPW Directors' responsibility over utility policy concerning said utility system for the benefit of the ratepayers.

This Act also resolves uncertainty created by a recent Delaware Superior Court decision concluding that the BPW may only sue and be sued where specifically noted within the Charter of the BPW. The Superior Court's recent decision, for example, creates a cloud of uncertainty over whether the BPW can sue and be sued under contracts it lawfully executes in its own corporate name. This Act removes this uncertainty by expressly giving the BPW the general power to sue and be sued. To promote collaboration and dialogue between the BPW Board of Directors and the City of Lewes Mayor and City Council, this Act also prohibits each incorporated entity from suing the other entity for a period of five years.

Author: Senator Lopez