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H. B. 2802

(By Delegates Folk, Howell, McGeehan, Faircloth, Rowe
and Reynolds)

[Introduced February 18, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §16-13A-9 of the Code of West Virginia, 1931, as amended, relating to public sewage services; requiring that individuals receiving public sewage services who do not also receive public water services are charged based on the mean or median of monthly water consumption in their customer class, whichever is lower.

Be it enacted by the Legislature of West Virginia:

That §16-13A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be

1 sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of
2 maintenance, operation and depreciation of the public service properties and principal of and interest
3 on all bonds issued, other obligations incurred under the provisions of this article and all reserve or
4 other payments provided in the proceedings which authorized the issuance of any bonds under this
5 article. The schedule of the rates, fees and charges may be based upon:

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

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

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

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

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

17 (2) Where water, sewer, stormwater or gas services, or any combination thereof, are all
18 furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate
19 of the charges. The board shall require all users of services and facilities furnished by the district
20 to designate on every application for service whether the applicant is a tenant or an owner of the
21 premises to be served. If the applicant is a tenant, he or she shall state the name and address of the
22 owner or owners of the premises to be served by the district. Notwithstanding the provisions of

1 section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for
2 service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the
3 applicant's specific customer class or \$50, with the district to secure the payment of service rates,
4 fees and charges in the event they become delinquent as provided in this section. If a district
5 provides both water and sewer service, all new applicants for service shall deposit the greater of a
6 sum equal to two twelfths of the average annual usage for water service or \$50 and the greater of a
7 sum equal to two twelfths of the average annual usage for wastewater service of the applicant's
8 specific customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and
9 charges which were delinquent at the time of disconnection or termination of service, no
10 reconnection or reinstatement of service may be made by the district until another deposit equal to
11 the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer
12 class or \$50 has been remitted to the district. After twelve months of prompt payment history, the
13 district shall return the deposit to the customer or credit the customer's account at a rate as the Public
14 Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is
15 not required to return the deposit until the time the tenant discontinues service with the district.
16 Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a
17 period of twenty days after the same become due and payable, the user of the services and facilities
18 provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The
19 board may, under reasonable rules promulgated by the Public Service Commission, shut off and
20 discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten
21 days after the water or gas services become delinquent: *Provided, however*, That nothing contained
22 within the rules of the Public Service Commission shall be deemed to require any agents or

1 employees of the board to accept payment at the customer's premises in lieu of discontinuing service
2 for a delinquent bill.

3 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
4 municipal corporation or other public service district included within the district owns and operates
5 separately water facilities, sewer facilities or stormwater facilities and the district owns and operates
6 another kind of facility either water or sewer, or both, as the case may be, then the district and the
7 publicly or privately owned utility, city, incorporated town or other municipal corporation or other
8 public service district shall covenant and contract with each other to shut off and discontinue the
9 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
10 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
11 be submitted to the Public Service Commission for approval. Any public service district which
12 provides water and sewer service, water and stormwater service or water, sewer and stormwater
13 service has the right to terminate water service for delinquency in payment of water, sewer or
14 stormwater bills. Where one public service district is providing sewer service and another public
15 service district or a municipality included within the boundaries of the sewer or stormwater district
16 is providing water service and the district providing sewer or stormwater service experiences a
17 delinquency in payment, the district or the municipality included within the boundaries of the sewer
18 or stormwater district that is providing water service, upon the request of the district providing sewer
19 or stormwater service to the delinquent account, shall terminate its water service to the customer
20 having the delinquent sewer or stormwater account: *Provided, however*, That any termination of
21 water service must comply with all rules and orders of the Public Service Commission: *Provided*
22 *further*, That nothing contained within the rules of the Public Service Commission shall be deemed

1 to require any agents or employees of the Public Service Districts to accept payment at the
2 customer's premises in lieu of discontinuing service for a delinquent bill.

3 (c) Any district furnishing sewer facilities within the district may require, or may by petition
4 to the circuit court of the county in which the property is located, compel or may require the Division
5 of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located
6 near any sewer facilities where sewage will flow by gravity or be transported by other methods
7 approved by the Division of Health, including, but not limited to, vacuum and pressure systems,
8 approved under the provisions of section nine, article one, chapter sixteen of this code, from the
9 houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities
10 and to cease the use of all other means for the collection, treatment and disposal of sewage and waste
11 matters from the houses, dwellings and buildings where there is gravity flow or transportation by any
12 other methods approved by the Division of Health, including, but not limited to, vacuum and
13 pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this
14 code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the
15 district and it is declared that the mandatory use of the sewer facilities provided in this paragraph is
16 necessary and essential for the health and welfare of the inhabitants and residents of the districts and
17 of the state. If the public service district requires the property owner to connect with the sewer
18 facilities even when sewage from dwellings may not flow to the main line by gravity and the
19 property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to
20 connect to the main sewer line, the Public Service District Board shall authorize the district to pay
21 all reasonable costs for the changes in the exterior plumbing, including, but not limited to,
22 installation, operation, maintenance and purchase of a pump or any other method approved by the

1 Division of Health. Maintenance and operation costs for the extra installation should be reflected
2 in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate
3 the merits of the petition by summary hearing to be held not later than thirty days after service of
4 petition to the appropriate owners, tenants or occupants.

5 (d) Whenever any district has made available sewer facilities to any owner, tenant or
6 occupant of any house, dwelling or building located near the sewer facility and the engineer for the
7 district has certified that the sewer facilities are available to and are adequate to serve the owner,
8 tenant or occupant and sewage will flow by gravity or be transported by other methods approved by
9 the Division of Health from the house, dwelling or building into the sewer facilities, the district may
10 charge, and the owner, tenant or occupant shall pay, the rates and charges for services established
11 under this article only after thirty-day notice of the availability of the facilities has been received by
12 the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual
13 water consumption or the average mean or median monthly water consumption, whichever is lower,
14 based upon the owner's, tenant's or occupant's specific customer class.

15 (e) The owner, tenant or occupant of any real property may be determined and declared to
16 be served by a stormwater system only after each of the following conditions is met: (1) The district
17 has been designated by the Environmental Protection Agency as an entity to serve a West Virginia
18 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26; (2) the district's
19 authority has been properly expanded to operate and maintain a stormwater system; (3) the district
20 has made available a stormwater system where stormwater from the real property affects or drains
21 into the stormwater system; and (4) the real property is located in the Municipal Separate Storm
22 Sewer System's designated service area. It is further hereby found, determined and declared that the

1 mandatory use of the stormwater system is necessary and essential for the health and welfare of the
2 inhabitants and residents of the district and of the state. The district may charge and the owner,
3 tenant or occupant shall pay the rates, fees and charges for stormwater services established under this
4 article only after thirty-day notice of the availability of the stormwater system has been received by
5 the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater
6 fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the
7 tenant.

8 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
9 facilities, gas facilities or stormwater systems or stormwater management programs are liens on the
10 premises served of equal dignity, rank and priority with the lien on the premises of state, county,
11 school and municipal taxes. Nothing contained within the rules of the Public Service Commission
12 shall be deemed to require any agents or employees of the Public Service Districts to accept payment
13 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
14 other remedies provided in this section, public service districts are granted a deferral of filing fees
15 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
16 for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the
17 delinquent account, plus reasonable costs, from its customer or other responsible party, the district
18 shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred.
19 In addition, each public service district may exchange with other public service districts a list of
20 delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
21 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
22 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real

1 property, unless the owner has contracted directly with the public service district to purchase the
2 services or facilities.

3 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined
4 in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own
5 sewage disposal system pursuant to a permit issued by the Department of Environmental Protection,
6 as prescribed by section eleven of said article, is exempt from the provisions of this section.

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

NOTE: The purpose of this bill is to require that individuals receiving public sewage services who do not also receive public water services are charged based on the mean or median of monthly water consumption in their customer class, whichever is lower.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.