

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2802

2015 Carryover

(BY DELEGATES FOLK, FAIRCLOTH, ROWE AND
REYNOLDS)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §16-13A-9 of the Code of West Virginia, 1931, as amended, be amended and
 2 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.

1 (a) (1) The board may make, enact and enforce all needful rules in connection with the
 2 acquisition, construction, improvement, extension, management, maintenance, operation, care,
 3 protection and the use of any public service properties owned or controlled by the district. The
 4 board shall establish rates, fees and charges for the services and facilities it furnishes, which shall
 5 be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost
 6 of maintenance, operation and depreciation of the public service properties and principal of and
 7 interest on all bonds issued, other obligations incurred under the provisions of this article and all
 8 reserve or other payments provided in the proceedings which authorized the issuance of any
 9 bonds under this article. The schedule of the rates, fees and charges may be based upon:

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

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

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

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

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

21 (2) Where water, sewer, stormwater or gas services, or any combination thereof, are all
22 furnished to any premises, the schedule of charges may be billed as a single amount for the
23 aggregate of the charges. The board shall require all users of services and facilities furnished
24 by the district to designate on every application for service whether the applicant is a tenant or an
25 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name
26 and address of the owner or owners of the premises to be served by the district. Notwithstanding
27 the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all
28 new applicants for service shall deposit the greater of a sum equal to two twelfths of the average
29 annual usage of the applicant's specific customer class or \$50, with the district to secure the
30 payment of service rates, fees and charges in the event they become delinquent as provided in
31 this section. If a district provides both water and sewer service, all new applicants for service
32 shall deposit the greater of a sum equal to two twelfths of the average annual usage for water
33 service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for
34 wastewater service of the applicant's specific customer class or \$50. In any case where a
35 deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of
36 disconnection or termination of service, no reconnection or reinstatement of service may be made
37 by the district until another deposit equal to the greater of a sum equal to two twelfths of the
38 average usage for the applicant's specific customer class or \$50 has been remitted to the district.

39 After twelve months of prompt payment history, the district shall return the deposit to the customer
40 or credit the customer's account at a rate as the Public Service Commission may prescribe:
41 *Provided, That* where the customer is a tenant, the district is not required to return the deposit
42 until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals
43 or charges for services or facilities furnished remain unpaid for a period of twenty days after the
44 same become due and payable, the user of the services and facilities provided is delinquent and
45 the user is liable at law until all rates, fees and charges are fully paid. The board may, under
46 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water
47 or gas services to all delinquent users of either water or gas facilities, or both, ten days after the
48 water or gas services become delinquent: *Provided, however, That* nothing contained within the
49 rules of the Public Service Commission shall be deemed to require any agents or employees of
50 the board to accept payment at the customer's premises in lieu of discontinuing service for a
51 delinquent bill.

52 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
53 municipal corporation or other public service district included within the district owns and operates
54 separately water facilities, sewer facilities or stormwater facilities and the district owns and
55 operates another kind of facility either water or sewer, or both, as the case may be, then the
56 district and the publicly or privately owned utility, city, incorporated town or other municipal
57 corporation or other public service district shall covenant and contract with each other to shut off
58 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
59 fees and charges: *Provided, That* any contracts entered into by a public service district pursuant
60 to this section shall be submitted to the Public Service Commission for approval. Any public
61 service district which provides water and sewer service, water and stormwater service or water,
62 sewer and stormwater service has the right to terminate water service for delinquency in payment

63 of water, sewer or stormwater bills. Where one public service district is providing sewer service
64 and another public service district or a municipality included within the boundaries of the sewer
65 or stormwater district is providing water service and the district providing sewer or stormwater
66 service experiences a delinquency in payment, the district or the municipality included within the
67 boundaries of the sewer or stormwater district that is providing water service, upon the request of
68 the district providing sewer or stormwater service to the delinquent account, shall terminate its
69 water service to the customer having the delinquent sewer or stormwater account: *Provided,*
70 *however,* That any termination of water service must comply with all rules and orders of the Public
71 Service Commission: *Provided further,* That nothing contained within the rules of the Public
72 Service Commission shall be deemed to require any agents or employees of the Public Service
73 Districts to accept payment at the customer's premises in lieu of discontinuing service for a
74 delinquent bill.

75 (c) Any district furnishing sewer facilities within the district may require, or may by petition
76 to the circuit court of the county in which the property is located, compel or may require the
77 Division of Health to compel all owners, tenants or occupants of any houses, dwellings and
78 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
79 other methods approved by the Division of Health, including, but not limited to, vacuum and
80 pressure systems, approved under the provisions of section nine, article one, chapter sixteen of
81 this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use
82 the sewer facilities and to cease the use of all other means for the collection, treatment and
83 disposal of sewage and waste matters from the houses, dwellings and buildings where there is
84 gravity flow or transportation by any other methods approved by the Division of Health, including,
85 but not limited to, vacuum and pressure systems, approved under the provisions of section nine,
86 article one, chapter sixteen of this code and the houses, dwellings and buildings can be

87 adequately served by the sewer facilities of the district and it is declared that the mandatory use
88 of the sewer facilities provided in this paragraph is necessary and essential for the health and
89 welfare of the inhabitants and residents of the districts and of the state. If the public service
90 district requires the property owner to connect with the sewer facilities even when sewage from
91 dwellings may not flow to the main line by gravity and the property owner incurs costs for any
92 changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line,
93 the Public Service District Board shall authorize the district to pay all reasonable costs for the
94 changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance
95 and purchase of a pump or any other method approved by the Division of Health. Maintenance
96 and operation costs for the extra installation should be reflected in the users charge for approval
97 of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by
98 summary hearing to be held not later than thirty days after service of petition to the appropriate
99 owners, tenants or occupants.

100 (d) Whenever any district has made available sewer facilities to any owner, tenant or
101 occupant of any house, dwelling or building located near the sewer facility and the engineer for
102 the district has certified that the sewer facilities are available to and are adequate to serve the
103 owner, tenant or occupant and sewage will flow by gravity or be transported by other methods
104 approved by the Division of Health from the house, dwelling or building into the sewer facilities,
105 the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for
106 services established under this article only after thirty-day notice of the availability of the facilities
107 has been received by the owner, tenant or occupant. Rates and charges for sewage services
108 shall be based upon actual water consumption or the ~~average~~ mean or median monthly water
109 consumption, whichever is lower, based upon the owner's, tenant's or occupant's specific
110 customer class.

111 (e) The owner, tenant or occupant of any real property may be determined and declared
112 to be served by a stormwater system only after each of the following conditions is met: (1) The
113 district has been designated by the Environmental Protection Agency as an entity to serve a West
114 Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26; (2) the
115 district's authority has been properly expanded to operate and maintain a stormwater system; (3)
116 the district has made available a stormwater system where stormwater from the real property
117 affects or drains into the stormwater system; and (4) the real property is located in the Municipal
118 Separate Storm Sewer System's designated service area. It is further hereby found, determined
119 and declared that the mandatory use of the stormwater system is necessary and essential for the
120 health and welfare of the inhabitants and residents of the district and of the state. The district
121 may charge and the owner, tenant or occupant shall pay the rates, fees and charges for
122 stormwater services established under this article only after thirty-day notice of the availability of
123 the stormwater system has been received by the owner. An entity providing stormwater service
124 shall provide a tenant a report of the stormwater fee charged for the entire property and, if
125 appropriate, that portion of the fee to be assessed to the tenant.

126 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
127 facilities, gas facilities or stormwater systems or stormwater management programs are liens on
128 the premises served of equal dignity, rank and priority with the lien on the premises of state,
129 county, school and municipal taxes. Nothing contained within the rules of the Public Service
130 Commission shall be deemed to require any agents or employees of the Public Service Districts
131 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.
132 In addition to the other remedies provided in this section, public service districts are granted a
133 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an
134 action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills.

135 If the district collects the delinquent account, plus reasonable costs, from its customer or other
136 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable
137 costs which were previously deferred. In addition, each public service district may exchange
138 with other public service districts a list of delinquent accounts: *Provided*, That an owner of real
139 property may not be held liable for the delinquent rates or charges for services or facilities of a
140 tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for
141 services or facilities of a tenant of the real property, unless the owner has contracted directly with
142 the public service district to purchase the services or facilities.

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

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