

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2410**

BY DELEGATE FOLK

[Introduced February 13, 2017; Referred  
to the Committee on Political Subdivisions then 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.**

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

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

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

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

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

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

23 (2) Where water, sewer, stormwater or gas services, or any combination thereof, are all  
24 furnished to any premises, the schedule of charges may be billed as a single amount for the  
25 aggregate of the charges. The board shall require all users of services and facilities furnished by  
26 the district to designate on every application for service whether the applicant is a tenant or an  
27 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name  
28 and address of the owner or owners of the premises to be served by the district. Notwithstanding  
29 the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all  
30 new applicants for service shall deposit the greater of a sum equal to two twelfths of the average  
31 annual usage of the applicant's specific customer class or \$50, with the district to secure the  
32 payment of service rates, fees and charges in the event they become delinquent as provided in  
33 this section. If a district provides both water and sewer service, all new applicants for service  
34 shall deposit the greater of a sum equal to two twelfths of the average annual usage for water  
35 service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for  
36 wastewater service of the applicant's specific customer class or \$50. In any case where a deposit  
37 is forfeited to pay service rates, fees and charges which were delinquent at the time of  
38 disconnection or termination of service, no reconnection or reinstatement of service may be made  
39 by the district until another deposit equal to the greater of a sum equal to two twelfths of the  
40 average usage for the applicant's specific customer class or \$50 has been remitted to the district.  
41 After twelve months of prompt payment history, the district shall return the deposit to the customer  
42 or credit the customer's account at a rate as the Public Service Commission may prescribe:  
43 *Provided*, That where the customer is a tenant, the district is not required to return the deposit

44 until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals  
45 or charges for services or facilities furnished remain unpaid for a period of twenty days after the  
46 same become due and payable, the user of the services and facilities provided is delinquent and  
47 the user is liable at law until all rates, fees and charges are fully paid. The board may, under  
48 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water  
49 or gas services to all delinquent users of either water or gas facilities, or both, ten days after the  
50 water or gas services become delinquent: *Provided, however,* That nothing contained within the  
51 rules of the Public Service Commission shall be deemed to require any agents or employees of  
52 the board to accept payment at the customer's premises in lieu of discontinuing service for a  
53 delinquent bill.

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

70 the district providing sewer or stormwater service to the delinquent account, shall terminate its  
71 water service to the customer having the delinquent sewer or stormwater account: *Provided,*  
72 *however,* That any termination of water service must comply with all rules and orders of the Public  
73 Service Commission: *Provided further,* That nothing contained within the rules of the Public  
74 Service Commission shall be deemed to require any agents or employees of the Public Service  
75 Districts to accept payment at the customer's premises in lieu of discontinuing service for a  
76 delinquent bill.

77 (c) Any district furnishing sewer facilities within the district may require, or may by petition  
78 to the circuit court of the county in which the property is located, compel or may require the  
79 Division of Health to compel all owners, tenants or occupants of any houses, dwellings and  
80 buildings located near any sewer facilities where sewage will flow by gravity or be transported by  
81 other methods approved by the Division of Health, including, but not limited to, vacuum and  
82 pressure systems, approved under the provisions of section nine, article one, chapter sixteen of  
83 this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use  
84 the sewer facilities and to cease the use of all other means for the collection, treatment and  
85 disposal of sewage and waste matters from the houses, dwellings and buildings where there is  
86 gravity flow or transportation by any other methods approved by the Division of Health, including,  
87 but not limited to, vacuum and pressure systems, approved under the provisions of section nine,  
88 article one, chapter sixteen of this code and the houses, dwellings and buildings can be  
89 adequately served by the sewer facilities of the district and it is declared that the mandatory use  
90 of the sewer facilities provided in this paragraph is necessary and essential for the health and  
91 welfare of the inhabitants and residents of the districts and of the state. If the public service district  
92 requires the property owner to connect with the sewer facilities even when sewage from dwellings  
93 may not flow to the main line by gravity and the property owner incurs costs for any changes in  
94 the existing dwellings' exterior plumbing in order to connect to the main sewer line, the Public  
95 Service District Board shall authorize the district to pay all reasonable costs for the changes in

96 the exterior plumbing, including, but not limited to, installation, operation, maintenance and  
97 purchase of a pump or any other method approved by the Division of Health. Maintenance and  
98 operation costs for the extra installation should be reflected in the users charge for approval of  
99 the Public Service Commission. The circuit court shall adjudicate the merits of the petition by  
100 summary hearing to be held not later than thirty days after service of petition to the appropriate  
101 owners, tenants or occupants.

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

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

122 health and welfare of the inhabitants and residents of the district and of the state. The district  
123 may charge and the owner, tenant or occupant shall pay the rates, fees and charges for  
124 stormwater services established under this article only after thirty-day notice of the availability of  
125 the stormwater system has been received by the owner. An entity providing stormwater service  
126 shall provide a tenant a report of the stormwater fee charged for the entire property and, if  
127 appropriate, that portion of the fee to be assessed to the tenant.

128 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer  
129 facilities, gas facilities or stormwater systems or stormwater management programs are liens on  
130 the premises served of equal dignity, rank and priority with the lien on the premises of state,  
131 county, school and municipal taxes. Nothing contained within the rules of the Public Service  
132 Commission shall be deemed to require any agents or employees of the Public Service Districts  
133 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.  
134 In addition to the other remedies provided in this section, public service districts are granted a  
135 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an  
136 action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If  
137 the district collects the delinquent account, plus reasonable costs, from its customer or other  
138 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable  
139 costs which were previously deferred. In addition, each public service district may exchange with  
140 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property  
141 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor  
142 may any lien attach to real property for the reason of delinquent rates or charges for services or  
143 facilities of a tenant of the real property, unless the owner has contracted directly with the public  
144 service district to purchase the services or facilities.

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

148 Protection, as prescribed by section eleven of said article, is exempt from the provisions of this  
149 section.

150 (h) A public service district which has been designated by the Environmental Protection  
151 Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall  
152 prepare an annual report detailing the collection and expenditure of rates, fees or charges and  
153 make it available for public review at the place of business of the governing body and the  
154 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 a heading or the present law, and underscoring indicates new language that would be added.