

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4802

By Delegates Kump, Horst, Linville, Phillips, Ridenour,

Mallow, Maynor, Foster, Marple, and Heckert

[Introduced January 16, 2024; Referred
to the Committee on Government Organization]

1 A BILL to a to amend and reenact §16-13A-9, of the Code of West Virginia, 1931, as amended,
 2 relating to prohibiting mandatory hook-ups and installation fees for new or expanding
 3 sewer systems.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. RULES; SERVICE RATES AND CHARGES; DISCONTINUANCE OF SERVICE; REQUIRED WATER AND SEWER CONNECTIONS; LIEN FOR DELINQUENT FEES.

§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, in accordance with this article, rates, fees, and charges for the services and
 5 facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any
 6 other law or laws, to pay the cost of maintenance, operation, and depreciation of the public service
 7 properties and principal of and interest on all bonds issued, other obligations incurred under the
 8 provisions of this article, and all reserve or other payments provided for in the proceedings which
 9 authorized the issuance of any bonds under this article. The schedule of the rates, fees, and
 10 charges may be based upon:

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

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

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

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

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

22 (2) The board of a public service district with at least 4,500 customers and annual
23 combined gross revenue of \$3 million providing water or sewer service separately or in
24 combination may make, enact, and enforce all needful rules in connection with the enactment or
25 amendment of rates, fees, and charges of the district. At a minimum, these rules shall provide for:

26 (A) Adequate prior public notice of the contemplated rates, fees, and charges by causing a
27 notice of intent to effect such a change to be provided to the customers of the district for the month
28 immediately preceding the month in which the contemplated change is to be considered at a
29 hearing by the board. The notice shall include a statement that a change in rates, fees, and
30 charges is being considered, the time, date, and location of the hearing of the board at which the
31 change will be considered and that the proposed rates, fees, and charges are on file at the office of
32 the district for review during regular business hours. The notice shall be printed on, or mailed with,
33 the monthly billing statement, or provided in a separate mailing.

34 (B) Adequate prior public notice of the contemplated rates, fees, and charges by causing to
35 be published, after the first reading and approval of a resolution of the board considering the
36 revised rates, fees, and charges but not less than one week prior to the public hearing of the board
37 on the resolution, as a Class I legal advertisement, of the proposed action, in compliance with the
38 provisions of §59-3-1 *et seq.* of this code. The publication area for publication shall be all territory
39 served by the district. If the district provides service in more than one county, publication shall be
40 made in a newspaper of general circulation in each county that the district provides service.

41 (C) The public notice of the proposed action shall summarize the current rates, fees, and
42 charges and the proposed changes to said rates, fees, and charges; the date, time, and place of

43 the public hearing on the resolution approving the revised rates, fees, and charges and the place
44 or places within the district where the proposed resolution approving the revised rates, fees, and
45 charges may be inspected by the public. A reasonable number of copies of the proposed
46 resolution shall be kept at the place or places and be made available for public inspection. The
47 notice shall also advise that interested parties may appear at the public hearing before the board
48 and be heard with respect to the proposed revised rates, fees, and charges.

49 (D) The resolution proposing the revised rates, fees, and charges shall be read at two
50 meetings of the board with at least two weeks intervening between each meeting. The public
51 hearing may be conducted by the board prior to, or at, the meeting at which the resolution is
52 considered for adoption on the second reading.

53 (E) Rates, fees, and charges approved by resolution of the board shall be forwarded in
54 writing to the county commission with the authority to appoint the members of the board. The
55 county commission shall publish notice of the proposed revised rates, fees, and charges by a
56 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.
57 Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall
58 take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole
59 discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or
60 reject the proposed rates, fees, and charges, as presented to the county commission, shall be
61 effective with no further action by the board or county commission. In any event, this 45-day period
62 shall be mandatory unless extended by the official action of both the board proposing the rates,
63 fees, and charges, and the appointing county commission.

64 (F) Enactment of the proposed or modified rates, fees, and charges shall follow an
65 affirmative vote by the county commission and shall be effective no sooner than 45 days following
66 action. The 45-day waiting period may be waived by public vote of the county commission only if
67 the commission finds and declares the district to be in financial distress such that the 45-day
68 waiting period would be detrimental to the ability of the district to deliver continued and compliant

69 public services.

70 (G) The public service district, or a customer aggrieved by the changed rates or charges
71 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the
72 customers served by the public service district, whichever is fewer, when dissatisfied by the
73 approval, modification, or rejection by the county commission of the proposed rates, fees, and
74 charges under the provisions of this subdivision may file a complaint regarding the rates, fees, and
75 charges resulting from the action of, or failure to act by, the county commission in the circuit court
76 of the county in which the county commission sits: *Provided*, That any complaint or petition filed
77 hereunder shall be filed within 30 days of the county commission's final action approving,
78 modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the
79 receipt by the county commission, in writing, of the rates, fees, and charges approved by
80 resolution of the board, without final action by the county commission to approve, modify, or reject
81 the rates, fees, and charges, and the circuit court shall resolve the complaint: *Provided, however*,
82 That the rates, fees, and charges so fixed by the county commission, or those adopted by the
83 district upon which the county commission failed to act, shall remain in full force and effect, until set
84 aside, altered, or amended by the circuit court in an order to be followed in the future.

85 (3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all
86 furnished to any premises, the schedule of charges may be billed as a single amount for the
87 aggregate of the charges. The board shall require all users of services and facilities furnished by
88 the district to designate on every application for service whether the applicant is a tenant or an
89 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and
90 address of the owner or owners of the premises to be served by the district. Notwithstanding the
91 provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the
92 greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
93 customer class or \$50 with the district to secure the payment of service rates, fees, and charges in
94 the event they become delinquent as provided in this section. If a district provides both water and

95 sewer service, all new applicants for service shall deposit the greater of a sum equal to two
96 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two
97 twelfths of the average annual usage for wastewater service of the applicant's specific customer
98 class or \$50. In any case where a deposit is forfeited to pay service rates, fees, and charges which
99 were delinquent at the time of disconnection or termination of service, no reconnection or
100 reinstatement of service may be made by the district until another deposit equal to the greater of a
101 sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50
102 has been remitted to the district. After 12 months of prompt payment history, the district shall return
103 the deposit to the customer or credit the customer's account at a rate as the Public Service
104 Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not
105 required to return the deposit until the time the tenant discontinues service with the district.
106 Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for
107 a period of 20 days after the same become due and payable, the user of the services and facilities
108 provided is delinquent and the user is liable at law until all rates, fees, and charges are fully paid.
109 The board may, under reasonable rules promulgated by the Public Service Commission, shut off
110 and discontinue water or gas services to all delinquent users of either water or gas facilities, or
111 both, 10 days after the water or gas services become delinquent: *Provided, however*, That nothing
112 contained within the rules of the Public Service Commission may be considered to require any
113 agents or employees of the board to accept payment at the customer's premises in lieu of
114 discontinuing service for a delinquent bill.

115 (b) If any publicly or privately owned utility, city, incorporated town, other municipal
116 corporation or other public service district included within the district owns and operates separate
117 water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another
118 kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly
119 or privately owned utility, city, incorporated town or other municipal corporation or other public
120 service district shall covenant and contract with each other to shut off and discontinue the

121 supplying of water service for the nonpayment of sewer or stormwater service fees and
122 charges: *Provided*, That any contracts entered into by a public service district pursuant to this
123 section shall be submitted to the Public Service Commission for approval. Any public service
124 district which provides water and sewer service, water and stormwater service or water, sewer,
125 and stormwater service has the right to terminate water service for delinquency in payment of
126 water, sewer, or stormwater bills. Where one public service district is providing sewer service and
127 another public service district or a municipality included within the boundaries of the sewer or
128 stormwater district is providing water service and the district providing sewer or stormwater
129 service experiences a delinquency in payment, the district or the municipality included within the
130 boundaries of the sewer or stormwater district that is providing water service, upon the request of
131 the district providing sewer or stormwater service to the delinquent account, shall terminate its
132 water service to the customer having the delinquent sewer or stormwater account: *Provided*,
133 *however*, That any termination of water service must comply with all rules and orders of the Public
134 Service Commission: *Provided further*, That nothing contained within the rules of the Public
135 Service Commission shall be deemed to require any agents or employees of the public service
136 districts to accept payment at the customer's premises in lieu of discontinuing service for a
137 delinquent bill.

138 ~~(c) Any district furnishing sewer facilities within the district may require or may, by petition~~
139 ~~to the circuit court of the county in which the property is located, compel or may require the Bureau~~
140 ~~for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and~~
141 ~~buildings located near any sewer facilities where sewage will flow by gravity or be transported by~~
142 ~~other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and~~
143 ~~pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,~~
144 ~~dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to~~
145 ~~cease the use of all other means for the collection, treatment, and disposal of sewage and waste~~
146 ~~matters from the houses, dwellings, and buildings where there is gravity flow or transportation by~~

147 ~~any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum~~
148 ~~and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,~~
149 ~~dwelling, and buildings can be adequately served by the sewer facilities of the district and it is~~
150 ~~declared that the mandatory use of the sewer facilities provided for in this subsection is necessary~~
151 ~~and essential for the health and welfare of the inhabitants and residents of the districts and of the~~
152 ~~state. If the public service district requires the property owner to connect with the sewer facilities~~
153 ~~even when sewage from dwellings may not flow to the main line by gravity and the property owner~~
154 ~~incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the~~
155 ~~main sewer line, the public service district board shall authorize the district to pay all reasonable~~
156 ~~costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,~~
157 ~~maintenance, and purchase of a pump or any other method approved by the Bureau for Public~~
158 ~~Health. Maintenance and operation costs for the extra installation should be reflected in the users~~
159 ~~charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits~~
160 ~~of the petition by summary hearing to be held not later than 30 days after service of petition to the~~
161 ~~appropriate owners, tenants, or occupants~~

162 (c)~~(d)~~ Whenever any district has made available sewer facilities to any owner, tenant, or
163 occupant of any house, dwelling, or building located near the sewer facility and the engineer for
164 the district has certified that the sewer facilities are available to and are adequate to serve the
165 owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods
166 approved by the Bureau for Public Health from the house, dwelling, or building into the sewer
167 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
168 charges for services established under this article only after 30 days' notice of the availability of the
169 facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
170 services shall be based upon actual water consumption or the average monthly water
171 consumption based upon the owner's, tenant's, or occupant's specific customer class.

172 (d)~~(e)~~ The owner, tenant, or occupant of any real property may be determined and declared

173 to be served by a stormwater system only after each of the following conditions is met: (1) The
174 district has been designated by the Environmental Protection Agency as an entity to serve a West
175 Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the
176 district's authority has been properly expanded to operate and maintain a stormwater system; (3)
177 the district has made available a stormwater system where stormwater from the real property
178 affects or drains into the stormwater system; and (4) the real property is located in the Municipal
179 Separate Storm Sewer System's designated service area. It is further hereby found, determined,
180 and declared that the mandatory use of the stormwater system is necessary and essential for the
181 health and welfare of the inhabitants and residents of the district and of the state. The district may
182 charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater
183 services established under this article only after 30 days' notice of the availability of the stormwater
184 system has been received by the owner. An entity providing stormwater service shall provide a
185 tenant a report of the stormwater fee charged for the entire property and, if appropriate, that
186 portion of the fee to be assessed to the tenant.

187 ~~(e)~~(f) All delinquent fees, rates, and charges of the district for either water facilities, sewer
188 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
189 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
190 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
191 Commission may require agents or employees of the public service districts to accept payment at
192 the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other
193 remedies provided in this section, public service districts are granted a deferral of filing fees or
194 other fees and costs incidental to the bringing and maintenance of an action in magistrate court for
195 the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the
196 delinquent account, plus reasonable costs, from its customer or other responsible party, the district
197 shall pay to the magistrate the normal filing fee and reasonable costs which were previously
198 deferred. In addition, each public service district may exchange with other public service districts a

199 list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
200 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
201 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real
202 property unless the owner has contracted directly with the public service district to purchase the
203 services or facilities.

204 ~~(f)~~(g) Anything in this section to the contrary notwithstanding, any establishment, as
205 defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system
206 pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-
207 11-11 of this code, is exempt from the provisions of this section.

208 ~~(g)~~(h) Notwithstanding any code provision to the contrary, a public service district may
209 accept payment for all fees and charges due, in the form of a payment by a credit or check card
210 transaction or a direct withdrawal from a bank account. The public service district may set a fee to
211 be added to each transaction equal to the charge paid by the public service district for use of the
212 credit or check card or direct withdrawal by the payor. The amount of the fee shall be disclosed to
213 the payor prior to the transaction and no other fees for the use of a credit or check card or direct
214 withdrawal may be imposed upon the payor and the whole of the charge or convenience fee shall
215 be borne by the payor: *Provided*, That to the extent a public service district desires to accept
216 payments in the forms described in this subsection and does not have access to the equipment or
217 receive the services necessary to do so, the public service district shall first obtain three bids for
218 services and equipment necessary to affect the forms of transactions described in this subsection
219 and use the lowest qualified bid received. Acceptance of a credit or check card or direct withdrawal
220 as a form of payment shall comport with the rules and requirements set forth by the credit or check
221 card provider or banking institution.

NOTE: The purpose of this bill is to prohibit mandatory hook-ups and installation fees for
new or expanding sewer systems.

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