

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4864**

BY DELEGATES HARDY, HOUSEHOLDER, MALLOW, HITE,  
HECKERT, JENNINGS, HORST, ESPINOSA, HORNBY, AND  
SUMMERS

[Originating in the Committee on the Judiciary;

Reported on February 21, 2024]



1 A BILL to amend and reenact §16-13-16 of the Code of West Virginia, 1931, as amended, and to  
2 amend said code by adding thereto a new section designated §16-13-16a, all relating to  
3 prohibiting municipalities from shutting off a user's water for nonpayment of stormwater  
4 fees without notice; creating a board to hear appeals for assessment of estimated usage  
5 units; and allowing for municipalities to impose a lien to obtain payment without shutting  
6 off or disconnecting service.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.**

**§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit;  
reconnecting deposit; tenant's deposit; change or readjustment; hearing; ~~lien and  
recovery; discontinuance of services~~ appeals board.**

1 (a) A governing body has the power and duty, by ordinance, to establish and maintain just  
2 and equitable rates, fees, or charges for the use of and the service rendered by:

3 ~~(a)~~(1) Sewerage works, to be paid by the owner of each lot, parcel of real estate or building  
4 that is connected with and uses the works by or through any part of the sewerage system of the  
5 municipality or that in any way uses or is served by the works; and

6 ~~(b)~~(2) Stormwater works, to be paid by the owner of each lot, parcel of real estate or  
7 building that in any way uses or is served by the stormwater works or whose property is improved  
8 or protected by the stormwater works or any user of such stormwater works.

9 ~~(c)~~ (b) The governing body may change and readjust the rates, fees, or charges from time  
10 to time. However, no rates, fees, or charges for stormwater services may be assessed against  
11 highways, road and drainage easements or stormwater facilities constructed, owned or operated  
12 by the West Virginia Division of Highways.

13 ~~(d)~~ (c) All new applicants for service shall indicate to the governing body whether they are  
14 an owner or tenant with respect to the service location. An entity providing stormwater service  
15 shall provide a ~~tenant~~ new applicant for service a report of the stormwater fee charged for the

16 entire property and, if appropriate the new applicant is a tenant, that portion of the fee to be  
17 assessed to the tenant. Any municipality that provides stormwater utilities shall form a municipal  
18 stormwater appeals board. The board shall consist of a member of the stormwater utility board, a  
19 municipal council member, and a rate payer. New applicants for service may appeal the estimated  
20 residential usage or equivalent dwelling usage to the board. Any such appeal must be brought  
21 within 60 days of receiving the report of the stormwater fee.

22 (e)(d) The governing body may collect from all new applicants for service a deposit of \$50  
23 or two twelfths of the average annual usage of the applicant's specific customer class, whichever  
24 is greater, to secure the payment of service rates, fees, and charges in the event they he or she  
25 ~~become~~ becomes delinquent as provided in this section. In any case where a deposit is forfeited  
26 to pay service rates, fees, and charges which were delinquent at the time of disconnection or  
27 termination of service, service may not be reconnected or reinstated by the governing body until  
28 another deposit equal to \$50 or a sum equal to two twelfths of the average usage for the  
29 applicant's specific customer class, whichever is greater, is remitted to the governing body. After  
30 12 months of prompt payment history, the governing body shall return the deposit to the customer  
31 or credit the customer's account with interest at a rate as the Public Service Commission may  
32 prescribe: *Provided*, That where the customer is a tenant, the governing body is not required to  
33 return the deposit until the time the tenant discontinues service with the governing body.  
34 ~~Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid~~  
35 ~~for a period of 20 days after they become due, the user of the services and facilities provided is~~  
36 ~~delinquent. The user is liable until all rates, fees, and charges are fully paid. The governing body~~  
37 ~~may, under reasonable rules promulgated by the Public Service Commission, shut off and~~  
38 ~~discontinue water services to a delinquent user of sewer facilities 10 days after the sewer services~~  
39 ~~become delinquent regardless of whether the governing body utilizes the security deposit to~~  
40 ~~satisfy any delinquent payments: *Provided, however*, That nothing contained within the rules of~~

41 ~~the Public Service Commission may require agents or employees of the governing body to accept~~  
42 ~~payment at the customer's premises in lieu of discontinuing service for a delinquent bill.~~

43 (f) (e) The rates, fees, or charges shall be sufficient in each year for the payment of the  
44 proper and reasonable expense of operation, repair, replacements and maintenance of the works  
45 and for the payment of the sums herein required to be paid into the sinking fund. Revenues  
46 collected pursuant to this section shall be considered the revenues of the works.

47 (g) (f) No such rates, fees, or charges may be established until after a public hearing, at  
48 which all the users of the works and owners of property served or to be served thereby and others  
49 interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

50 (h) (g) After introduction of the ordinance fixing the rates, fees or charges, and before the  
51 same is finally enacted, notice of the hearing, setting forth the proposed schedule of rates, fees  
52 or charges, shall be given by publication as a Class I legal advertisement in compliance with §59-  
53 3-1 *et seq.* of this code and the publication area for the publication shall be the municipality. The  
54 first publication shall be made at least five days before the date fixed in the notice for the hearing.

55 (i) (h) After the hearing, which may be adjourned, from time to time, the ordinance  
56 establishing rates, fees or charges, either as originally introduced or as modified and amended,  
57 shall be passed and put into effect. A copy of the schedule of the rates, fees, and charges shall  
58 be kept on file in the office of the board having charge of the operation of the works, and also in  
59 the office of the clerk of the municipality, and shall be open to inspection by all parties interested.  
60 The rates, fees, or charges established for any class of users or property served shall be extended  
61 to cover any additional premises thereafter served which fall within the same class, without the  
62 necessity of any hearing or notice.

63 (j) (i) Any change or readjustment of the rates, fees, or charges may be made in the same  
64 manner as the rates, fees, or charges were originally established as hereinbefore provided:  
65 *Provided*, That if a change or readjustment be made substantially pro rata, as to all classes of  
66 service, no hearing or notice shall be required. ~~The aggregate of the rates, fees, or charges shall~~

67 always be sufficient for the expense of operation, repair and maintenance and for the sinking fund  
68 payments.

69 (k) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the  
70 premises served by the works. If any service rate, fee, or charge is not paid within 20 days after  
71 it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's  
72 fee, may be recovered by the board in a civil action in the name of the municipality. The lien may  
73 be foreclosed against the lot, parcel of land or building in accordance with the laws relating  
74 thereto. Where both water and sewer services are furnished by any municipality to any premises,  
75 the schedule of charges may be billed as a single amount or individually itemized and billed for  
76 the aggregate thereof.

77 (l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall  
78 remain unpaid for a period of 20 days after they become due, the property and the owner thereof,  
79 as well as the user of the services and facilities shall be delinquent until such time as all rates,  
80 fees, and charges are fully paid. When any payment for rates, rentals, fees or charges becomes  
81 delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

82 (m) The board collecting the rates, fees, or charges shall be obligated under reasonable  
83 rules to shut off and discontinue both water and sewer services to all delinquent users of water  
84 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any  
85 delinquent user of any such facilities until all delinquent rates, fees, or charges for water sewer,  
86 and stormwater facilities, including reasonable interest and penalty charges, have been paid in  
87 full, as long as the actions are not contrary to any rules or orders of the Public Service  
88 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission  
89 may be considered to require any agents or employees of the municipality or governing body to  
90 accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

**§16-13-16a. Discontinuance of services; lien and recovery.**

1           (a) Whenever any rates, fees, rentals, or charges for services or facilities furnished remain  
2 unpaid for a period of 20 days after they become due, the user of the services and facilities  
3 provided is delinquent. The user is liable until all rates, fees, and charges are fully paid. When  
4 any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use  
5 the security deposit collected in accordance with §16-13-16 to satisfy the delinquent payment.

6           (b) The governing body may, under reasonable rules promulgated by the Public Service  
7 Commission, shut off and discontinue water services to a delinquent user of sewer facilities 10  
8 days after the sewer services become delinquent regardless of whether the governing body  
9 utilizes the security deposit to satisfy any delinquent payments: *Provided, however,* That nothing  
10 contained within the rules of the Public Service Commission may require agents or employees of  
11 the governing body to accept payment at the customer's premises in lieu of discontinuing service  
12 for a delinquent bill.

13           (c) The board collecting the rates, fees, or charges shall be obligated under reasonable  
14 rules to shut off and discontinue both water and sewer services to all delinquent users of water or  
15 sewer facilities and shall not restore either water facilities or sewer facilities to any delinquent user  
16 of any such facilities until all delinquent rates, fees, or charges for water and sewer facilities,  
17 including reasonable interest and penalty charges, have been paid in full, as long as the actions  
18 are not contrary to any rules or orders of the Public Service Commission: *Provided,* That nothing  
19 contained within the rules of the Public Service Commission may be considered to require any  
20 agents or employees of the municipality or governing body to accept payment at the customer's  
21 premises in lieu of discontinuing service for a delinquent bill.

22           (d) The governing body or the board collecting the rates, fees, or charges may shut off  
23 and discontinue water services to users with delinquent stormwater fees, provided that:

24           (1) The water service and stormwater fee are in the name of the same user;

25           (2) The rates, fees, or charges incurred by the user are 90 days past due;

26           (3) The provider has given the user written notice of termination of water service for  
27 nonpayment. Such notice must be given to the user at least 10 days before the termination of  
28 service and must notify the user of their right to enter into a deferred payment plan;

29           (4) The provider has attempted to make personal contact with the user at least two times  
30 in the 24 hours immediately before the termination of the service. If the provider makes personal  
31 contact with the user, the provider must inform the user of their right to enter into a deferred  
32 payment plan.

33           (5) The water service for a user who has entered into a deferred payment plan under this  
34 subsection may not be shut off or discontinued as long as the user in in conformance with the  
35 agreed to payment plan. In the event the user falls out of compliance with the deferred payment  
36 plan, no sooner than five days after the missed payment, the provider may terminate service:  
37 Provided, That the provider must make one attempt to make personal contact with the user in the  
38 24 hours immediately before the termination of the service.

39           (e) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the  
40 premises served by the works. If any service rate, fee, or charge is not paid within 20 days after  
41 it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's  
42 fee, may be recovered by the board in a civil action in the name of the municipality. The lien may  
43 be foreclosed against the lot, parcel of land or building in accordance with the laws relating  
44 thereto. Where both water and sewer services are furnished by any municipality to any premises,  
45 the schedule of charges may be billed as a single amount or individually itemized and billed for  
46 the aggregate thereof.

NOTE: The purpose of this bill is to prohibit municipalities from shutting off a user's water for nonpayment of a stormwater fee. The bill allows for municipalities to impose a lien to obtain payment but prohibits municipalities from shutting off services for nonpayment.

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