WEST virginia legislature

2024 regular session

Committee Substitute

for

Senate Bill 631

By Senators Barrett and Martin

[Originating in the Committee on Government Organization; reported February 14, 2024]

A BILL to amend and reenact §16-13-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-3-10 of said code, all relating to prohibiting utilities from shutting off a user's water service for nonpayment of stormwater fees; prohibiting municipal utilities from discontinuing water service to user delinquent in stormwater services fees and charges but allowing lien on premises served; prohibiting public service districts from discontinuing water service to user delinquent in stormwater service fees and charges but imposing lien on premises served; and prohibiting privately or publicly owned utility from discontinuing water service, or contracting with other utilities to discontinue water service, for delinquency in stormwater services fees and charges but allowing lien on premises served.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

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.

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

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

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

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

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) (1) The governing body may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of service rates, fees, and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees, and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to $50 or a sum equal to two twelfths of the average usage for the applicant’s specific customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer’s account with interest at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20 days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees, and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities 10 days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however,* That nothing contained within the rules of the Public Service Commission may require agents or employees of the governing body to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(2) The water service for a user may not be shut off or discontinued for the nonpayment of a stormwater fee, but the governing body may impose a lien pursuant to subsection (k) of this section.

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

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

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

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

(j) Any change or readjustment of the rates, fees, or charges may be made in the same manner as the rates, fees, or charges were originally established as hereinbefore provided: *Provided,* That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees, or charges shall always be sufficient for the expense of operation, repair and maintenance and for the sinking fund payments.

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

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

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

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

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

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

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

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

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

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

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

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

(C) The public notice of the proposed action shall summarize the current rates, fees, and charges and the proposed changes to said rates, fees, and charges; the date, time, and place of the public hearing on the resolution approving the revised rates, fees, and charges, and the place or places within the district where the proposed resolution approving the revised rates, fees, and charges may be inspected by the public. A reasonable number of copies of the proposed resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed revised rates, fees, and charges.

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

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

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

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

(3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant’s specific customer class or $50 with the district to secure the payment of service rates, fees, and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant’s specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees, and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant’s specific customer class or $50 has been remitted to the district. After 12 months of prompt payment history, the district shall return the deposit to the customer or credit the customer’s account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20 days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees, and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided, however*, That nothing contained within the rules of the Public Service Commission may be considered to require any agents or employees of the board to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill: *Provided further,* That the water service for a user may not be shut off or discontinued for nonpayment of a stormwater fee or charges but shall be a lien on the premises served pursuant to subsection (f) of this section.

(b) If any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separate water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation, or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer ~~or stormwater~~ service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer, and stormwater service has the right to terminate water service for delinquency in payment of water or sewer ~~or stormwater~~ bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer ~~or stormwater~~ account: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill: *And provided further,* That the water service for a user may not be shut off or discontinued for the nonpayment of a stormwater fee, but the delinquent stormwater charges shall be a lien on the premises served pursuant to subsection (f) of this section.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Bureau for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses, dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment, and disposal of sewage and waste matters from the houses, dwellings, and buildings where there is gravity flow or transportation by any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code and the houses, dwellings, and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings’ exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance, and purchase of a pump or any other method approved by the Bureau for Public Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than 30 days after service of petition to the appropriate owners, tenants, or occupants.

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

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

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

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

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-10. Termination of water service for delinquent sewer bills.

(a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility that is owned and operated by a homeowners association owns and operates the other kind of facilities, either water or sewer, then the privately owned public utility or the homeowners association may contract with the publicly or privately owned utility, city, incorporated town, or public service district which provides the other services to shutoff and discontinue the supplying of water service for the nonpayment of sewer service fees and charges.

(b) Any contracts entered into by a privately owned public utility or by a public utility that is owned and operated by a homeowners association pursuant to this section must be submitted to the Public Service Commission for approval.

(c) Any privately owned public utility or any public utility that is owned and operated by a homeowners association which provides water and sewer service to its customers may terminate water service for delinquency in payment of either water or sewer bills.

(d) Where a privately owned public utility or a public utility that is owned and operated by a homeowners association is providing sewer service and another utility is providing water service, and the privately owned public utility or the homeowners association providing sewer service experiences a delinquency in payment, the utility providing water service, upon the request of the homeowners association or the privately owned public utility providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account.

(e) Any termination of water service must comply with all rules and orders of the Public Service Commission. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the water or sewer utility to accept payment at the customers premises in lieu of discontinuing water service for a delinquent water or sewer bill.

(f) A publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district that owns or operates water facilities, or a public utility that is owned and operated by a homeowners’ association that owns or operates water facilities may not discontinue or shut off water service to its customers for delinquency in payment of stormwater fees or charges, nor may it contract with any other utility, public or private, to which it provides water service to terminate water service to customers of the other utility for delinquency in the payment of stormwater services fees and charges. A utility providing stormwater services is not prohibited by this subsection from placing a lien for delinquent stormwater service fees and charges on the premises being served.