

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2573

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HORNBUCKLE

[Introduced January 21, 2019; Referred
to the Committee on Industry and Labor 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 requiring new commercial and industrial customers to pay for the construction of any
3 expanded or upgraded public service district facilities if the district's present facilities are
4 insufficient to serve the needs of that commercial or industrial consumer; and prohibiting
5 any costs being passed on to present consumers.

Be it enacted by the Legislature of West Virginia:

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, 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 §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C)
17 of this code; or

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

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

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

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

43 (C) The public notice of the proposed action shall summarize the current rates, fees, and

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

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

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

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

70 waiting period would be detrimental to the ability of the district to deliver continued and compliant
71 public services.

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

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

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

117 (b) If a commercial or industrial concern locates one or more of its facilities in a public
118 service district whose facilities are insufficient to serve the needs of that commercial or industrial
119 consumer without expansion or upgrade to the district's facilities, the commercial or industrial
120 customer is responsible for all costs associated with the construction of the expanded or upgraded
121 public service district facilities. While the affected public service district may determine the rates

122 for the future and ongoing services it provides to that commercial or industrial consumer, in no
123 event may it or the Public Service Commission permit the expansion or upgrade costs be passed
124 along or borne by the district's other customers.

125 (b) (c) In the event that any publicly or privately owned utility, city, incorporated town, other
126 municipal corporation or other public service district included within the district owns and operates
127 separate water facilities, sewer facilities, or stormwater facilities, and the district owns and
128 operates another kind of facility, either water or sewer, or both, as the case may be, then the
129 district and the publicly or privately owned utility, city, incorporated town or other municipal
130 corporation or other public service district shall covenant and contract with each other to shut off
131 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
132 fees and charges: *Provided*, That any contracts entered into by a public service district pursuant
133 to this section shall be submitted to the Public Service Commission for approval. Any public
134 service district which provides water and sewer service, water and stormwater service or water,
135 sewer and stormwater service has the right to terminate water service for delinquency in payment
136 of water, sewer or stormwater bills. Where one public service district is providing sewer service
137 and another public service district or a municipality included within the boundaries of the sewer
138 or stormwater district is providing water service and the district providing sewer or stormwater
139 service experiences a delinquency in payment, the district or the municipality included within the
140 boundaries of the sewer or stormwater district that is providing water service, upon the request of
141 the district providing sewer or stormwater service to the delinquent account, shall terminate its
142 water service to the customer having the delinquent sewer or stormwater account: *Provided*,
143 *however*, That any termination of water service must comply with all rules and orders of the Public
144 Service Commission: *Provided further*, That nothing contained within the rules of the Public
145 Service Commission shall be deemed to require any agents or employees of the public service
146 districts to accept payment at the customer's premises in lieu of discontinuing service for a
147 delinquent bill.

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

172 ~~(d)~~ (e) Whenever any district has made available sewer facilities to any owner, tenant, or
173 occupant of any house, dwelling, or building located near the sewer facility and the engineer for

174 the district has certified that the sewer facilities are available to and are adequate to serve the
175 owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods
176 approved by the Bureau for Public Health from the house, dwelling, or building into the sewer
177 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
178 charges for services established under this article only after 30 days' notice of the availability of
179 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
180 services shall be based upon actual water consumption or the average monthly water
181 consumption based upon the owner's, tenant's, or occupant's specific customer class.

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

197 ~~(f)~~ (g) All delinquent fees, rates, and charges of the district for either water facilities, sewer
198 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
199 the premises served of equal dignity, rank, and priority with the lien on the premises of state,

200 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
201 Commission shall be deemed to require any agents or employees of the public service districts
202 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.
203 In addition to the other remedies provided in this section, public service districts are granted a
204 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an
205 action in magistrate court for the collection of delinquent water, sewer, stormwater, or gas bills. If
206 the district collects the delinquent account, plus reasonable costs, from its customer or other
207 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable
208 costs which were previously deferred. In addition, each public service district may exchange with
209 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property
210 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor
211 may any lien attach to real property for the reason of delinquent rates or charges for services or
212 facilities of a tenant of the real property unless the owner has contracted directly with the public
213 service district to purchase the services or facilities.

214 ~~(g)~~ (h) Anything in this section to the contrary notwithstanding, any establishment, as
215 defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system
216 pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-
217 11-11 of this code, is exempt from the provisions of this section.

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

223 ~~(i)~~ (j) Notwithstanding any code provision to the contrary, a public service district may
224 accept payment for all fees and charges due, in the form of a payment by a credit or check card
225 transaction or a direct withdrawal from a bank account. The public service district may set a fee

226 to be added to each transaction equal to the charge paid by the public service district for use of
227 the credit or check card or direct withdrawal by the payor. The amount of such fee shall be
228 disclosed to the payor prior to the transaction and no other fees for the use of a credit or check
229 card or direct withdrawal may be imposed upon the payor and the whole of such charge or
230 convenience fee shall be borne by the payor: *Provided*, That to the extent a public service district
231 desires to accept payments in the forms described in this subsection and does not have access
232 to the equipment or receive the services necessary to do so, the public service district shall first
233 obtain three bids for services and equipment necessary to affect the forms of transactions
234 described in this subsection and use the lowest qualified bid received. Acceptance of a credit or
235 check card or direct withdrawal as a form of payment shall comport with the rules and
236 requirements set forth by the credit or check card provider or banking institution.

NOTE: The purpose of this bill is to require new commercial and industrial customers to pay for the construction of any expanded or upgraded public service district facilities if the district's present facilities are insufficient to serve the needs of that commercial or industrial consumer. The bill prohibits any costs being passed on to present consumers.

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