

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2554

BY DELEGATES FAST AND MARTIN

[Introduced February 16, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §16-13A-9 of the Code of West Virginia, 1931, as amended, relating
2 to notice of discontinuance of service by a utility.

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 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
27 a notice of intent to effect such a change to be provided to the customers of the district for the
28 month immediately preceding the month in which the contemplated change is to be considered
29 at a 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
32 of the district for review during regular business hours. The notice shall be printed on, or mailed
33 with, 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
35 to 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
37 board on the resolution, as a Class I legal advertisement, of the proposed action, in compliance
38 with the provisions of §59-3-1 *et seq.* of this code. The publication area for publication shall be all
39 territory served by the district. If the district provides service in more than one county, publication
40 shall be made in a newspaper of general circulation in each county that the district provides
41 service.

42 (C) The public notice of the proposed action shall summarize the current rates, fees, and
43 charges and the proposed changes to said rates, fees and charges; the date, time, and place of
44 the public hearing on the resolution approving the revised rates, fees, and charges and the place
45 or places within the district where the proposed resolution approving the revised rates, fees, and
46 charges may be inspected by the public. A reasonable number of copies of the proposed

47 resolution shall be kept at the place or places and be made available for public inspection. The
48 notice shall also advise that interested parties may appear at the public hearing before the board
49 and be heard with respect to the proposed revised rates, fees and charges.

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

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

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

71 (G) The public service district, or a customer aggrieved by the changed rates or charges
72 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the

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

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

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

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

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

144 (c) Any district furnishing sewer facilities within the district may require or may, by petition
145 to the circuit court of the county in which the property is located, compel or may require the Bureau
146 for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and
147 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
148 other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
149 and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
150 dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to

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

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

177 consumption based upon the owner's, tenant's, or occupant's specific customer class.

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

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

203 district shall pay to the magistrate the normal filing fee and reasonable costs which were
204 previously deferred. In addition, each public service district may exchange with other public
205 service districts a list of delinquent accounts: *Provided*, That an owner of real property may not
206 be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any
207 lien attach to real property for the reason of delinquent rates or charges for services or facilities
208 of a tenant of the real property unless the owner has contracted directly with the public service
209 district to purchase the services or facilities.

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

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

NOTE: The purpose of this bill is to clarify that, while personal contact prior to disconnecting water service for nonpayment of a sewer bill includes both face-to-face meetings and telephone calls, the Public Service Commission rules do not require that agents or employees of the board have a face-to-face meeting with any person at the customer's premises.

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