

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2469

By Delegates Anders, White, Dillon, Kump, Kimble, T.

Howell, Dean, and Bridges

[Introduced February 17, 2025; referred to the
Committee on Energy and Public Works]

1 A BILL to amend and reenact §8-20-10, §16-13-16, and §16-13D-15 of the Code of West Virginia,
2 as amended, relating to prohibiting municipality, county, locality, or other governmental
3 entity from assessing a fee to property owners based upon the stormwater, runoff, rain or
4 any like fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
2 shall have plenary power and authority to make, enact, and enforce all necessary rules for the
3 repair, maintenance, operation, and management of the combined system of the municipality and
4 for the use thereof. The governing body of a municipality also has the plenary power and authority
5 to make, enact, and enforce all necessary rules and ordinances for the care and protection of any
6 such system for the health, comfort, and convenience of the public, to provide a clean water
7 supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if
8 applicable, properly collecting and controlling the stormwater as is reasonably possible to do:
9 *Provided*, That no municipality may make, enact, or enforce any rule, regulation, or ordinance
10 regulating any highways, road or drainage easements, or storm water facilities constructed,
11 owned or operated by the West Virginia Division of Highways.

12 (2) A municipality has the plenary power and authority to charge the users for the use and
13 service of a combined system and to establish required deposits, rates, fees, or charges for such
14 purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer services
15 respectively, ~~and, if applicable, the stormwater services~~ or combined rates, fees or for the
16 combined water and sewer services. ~~and, if applicable, the storm water services~~ Such deposits,
17 rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost
18 of repair, maintenance, and operation of the combined system, provide an adequate reserve fund,
19 an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued
20 under this article. Deposits, rates, fees, or charges shall be established, revised, and maintained
21 by ordinance and become payable as the governing body may determine by ordinance. The rates,
22 fees, or charges shall be changed, from time to time, as necessary, consistent with the provisions
23 of this article: *Provided*, That the notice given by the municipality for a change in rates or charges
24 to be charged for the services from the waterworks or electric power system, shall be provided by
25 Class I legal advertisement in a newspaper of general circulation in its service territory not less
26 than one week prior to the public hearing of the governing body of the municipality required for the
27 approval of the change in rates or charges.

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

32 (4) The municipality or governing body, but only one of them, may collect from all new
33 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
34 applicant's specific customer class, whichever is greater, to secure the payment of water and
35 sewage service rates, fees, and charges in the event they become delinquent as provided in this
36 section. In any case where a deposit is forfeited to pay service rates, fees, and charges which
37 were delinquent and the user's service is disconnected or terminated, service may not be

38 reconnected or reinstated by the municipality or governing body until another deposit equal to
39 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
40 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
41 prompt payment history, the municipality or governing body shall return the deposit to the
42 customer or credit the customer's account with interest at a rate to be set by the Public Service
43 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body is
44 not required to return the deposit until the time the tenant discontinues service with the
45 municipality governing body. Whenever any rates, fees, rentals, or charges for services or facilities
46 furnished remain unpaid for a period of 20 days after they become due, the user of the services
47 and facilities provided is delinquent and the user is liable at law until all rates, fees, and charges
48 are fully paid. The municipality or governing body may terminate water services to a delinquent
49 user of either water or sewage facilities, or both, 10 days after the water or sewage services
50 become delinquent regardless of whether the governing body utilizes the security deposit to
51 satisfy any delinquent payments: *Provided, however*, That any termination of water service must
52 comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing
53 contained within the rules of the Public Service Commission requires agents or employees of the
54 municipality or governing body to accept payment at the customer's premises in lieu of
55 discontinuing service for a delinquent bill.

56 (b) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid
57 for a period of 20 days after they become due, the user of the services and facilities provided shall
58 be delinquent and the municipality or governing body may apply any deposit against any
59 delinquent fee. The user is liable until such time as all rates, fees, and charges are fully paid.

60 (c) All rates, fees, or charges for water service, and sewer service and, ~~if applicable,~~
61 ~~stormwater service~~, whenever delinquent, as provided by ordinance of the municipality, shall be
62 liens of equal dignity, rank, and priority with the lien on such premises of state, county, school, and
63 municipal taxes for the amount thereof upon the real property served. The municipality has the

64 plenary power and authority to enforce such lien in a civil action to recover the money due for
65 services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an
66 owner of real property may not be held liable for the delinquent rates, fees, or charges for services
67 or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates,
68 fees, or charges for services or facilities of a tenant of the real property, unless the owner has
69 contracted directly with the municipality to purchase such services or facilities.

70 (d) Municipalities are hereby granted a deferral of filing fees or other fees and costs
71 incidental to filing an action in magistrate court for collection of the delinquent rates and charges. If
72 the municipality collects the delinquent account, plus fees and costs, from its customer or other
73 responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and
74 costs which were previously deferred.

75 (e) No municipality may foreclose upon the premises served by it for delinquent rates, fees,
76 or charges for which a lien is authorized by this section except through a civil action in the circuit
77 court of the county wherein the municipality lies. In every such action, the court shall be required to
78 make a finding based upon the evidence and facts presented that the municipality has exhausted
79 all other remedies for collection of debts with respect to such delinquencies prior to bringing the
80 action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf
81 unless the delinquency has been in existence or continued for a period of two years from the date
82 of the first delinquency for which foreclosure is being sought.

83 (f) Notwithstanding any other provision contained in this article, a municipality which has
84 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
85 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to
86 enact ordinances or regulations which allow for the issuance of orders, the right to enter properties
87 and the right to impose reasonable fines and penalties regarding correction of violations of
88 municipal stormwater ordinances or regulations within the municipal watershed served by the

89 municipal stormwater system, as long as such rules, regulations, fines, or acts are not contrary to
90 any rules or orders of the Public Service Commission.

91 (g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served
92 in person to the alleged violator or by certified mail, return receipt requested. The notice shall state
93 the nature of the violation, the potential penalty, the action required to correct the violation and the
94 time limit for making the correction. Should a person, after receipt of proper notice, fail to correct
95 violation of the municipal stormwater ordinance or regulation, the municipality may correct or have
96 the corrections of the violation made and bring the party into compliance with the applicable
97 stormwater ordinance or regulation. The municipality may collect the costs of correcting the
98 violation from the person by instituting a civil action, as long as such actions are not contrary to any
99 rules or orders of the Public Service Commission.

100 (h) A municipality which has been designated by the Environmental Protection Agency as
101 an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an
102 annual report detailing the collection and expenditure of rates, fees, or charges and make it
103 available for public review at the place of business of the governing body and the stormwater utility
104 main office.

105 (i) Notwithstanding the provisions of subsection (a), no municipality shall impose a fee on
106 the property owner based upon the amount of stormwater, runoff, or rain from that property.

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

9 ~~(b) The governing body may change and readjust the rates, fees, or charges from time to~~
10 ~~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 ~~(c) (b) 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 new applicant for service a report of the stormwater fee charged for the entire~~
16 ~~property and, if the new applicant is a tenant, that portion of the fee to be assessed to the tenant.~~
17 ~~Any municipality that provides stormwater utilities shall form a municipal stormwater appeals~~
18 ~~board. The board shall consist of a member of the stormwater utility board, a municipal council~~
19 ~~member, and a rate payer. New applicants for service may appeal the estimated residential usage~~
20 ~~or equivalent dwelling usage to the board. Any such appeal must be brought within 60 days of~~
21 ~~receiving the report of the stormwater fee~~

22 ~~(d) (c) 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 he or she~~
25 ~~becomes delinquent as provided in this section. In any case where a deposit is forfeited to pay~~
26 ~~service rates, fees, and charges which were delinquent at the time of disconnection or termination~~
27 ~~of service, service may not be reconnected or reinstated by the governing body until another~~
28 ~~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.

(e) (d) 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.

(f)(e) 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.

(g)(f) 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.

(h)(g) 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.

(i)(h) 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.

(i) Notwithstanding the provisions of subsection (a), no municipality, county, locality, or other governmental entity shall impose a fee on property owners with regard to the amount of stormwater, runoff, or rain expected from that property.

ARTICLE 13D. REGIONAL WATER AND WASTEWATER AND STORMWATER AUTHORITY ACT.

§16-13D-15. Rates and charges.

The governing body shall by appropriate resolution make provisions for the payment of the bonds by fixing rates, fees, and charges, for the use of all services rendered by the authority, which rates, fees, and charges shall be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply, wastewater transportation and/or treatment system; ~~or stormwater system~~, to provide an adequate depreciation fund, provide an adequate sinking fund to retire the bonds and pay interest thereon when due, and to create reasonable reserves for those purposes. The fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The authority shall maintain a working capital reserve in an amount of no less than one-eighth of all expenses incurred by the authority on an annual basis:
Provided, That this working capital reserve shall be separate and distinct from, and in addition to: (1) any repair and replacement fund that may be required by bond covenants, and (2) any other funds held by the authority. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon. The rates, fees, and charges for water, wastewater, or both, established by the

authority shall be subject to review and approval by the Public Service Commission pursuant to Chapter 24 of this code.

The Public Service Commission shall, within 30 days of a rate filing, notify the authority whether its rate filing is complete. If the Commission determines that additional information is needed it will inform the authority of the information needed. Notwithstanding the timeframes for Commission review of rate applications set forth in Chapter 24, the Commission shall act on authority rate applications within the following timeframes:

(1) The Public Service Commission shall act on a rate filing by an authority that provides only water service or only wastewater service within 120 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary. Failure of the Commission to act within the 120-day time period shall constitute approval thereof: *Provided*, That the 120-day period may be extended upon request of the authority.

(2) The Public Service Commission shall act on a rate filing by an authority that provides water and wastewater services, ~~water and stormwater services, or wastewater, and stormwater services, or water and wastewater and stormwater services~~ within 180 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the Commission considers necessary: *Provided*, That the information shall include an explanation of the amount and basis for assigning and allocating total costs between the water operations, and the wastewater operations. ~~and if applicable the stormwater operations~~ Failure by the Commission to act within the 180-day period shall constitute approval thereof: *Provided, however*, That the 180-day Commission review period may be extended upon request of the authority.

Notwithstanding the provisions of any other law or charter to the contrary, any regional stormwater authority may provide storm, flood, and surface water drainage management services to areas located outside its jurisdiction from which stormwater affects or drains into the area

43 served by the regional stormwater authority. ~~and any regional stormwater authority may assess~~
44 ~~fees for providing storm, flood, and surface water draining management services to be paid by the~~
45 ~~owner of each and every lot, parcel of real estate or building that in any way uses or is served by~~
46 ~~the stormwater system. The Public Service Commission has no jurisdiction to regulate the rates~~
47 ~~charged for storm, flood, and surface water drainage management services~~

NOTE: The purpose of this bill is to prohibit any governmental entity from charging fees for stormwater, rain, or runoff from real property.

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