

**H. B. 4007**

(By Delegates Kump, Folk, Householder,  
Faircloth, Canterbury and Romine)

[Introduced January 8, 2014; referred to the  
Committee on Political Subdivisions then Government  
Organizations.]

**FISCAL  
NOTE**

A BILL to amend and reenact §16-13-23a of the Code of West  
Virginia, 1931, as amended; and to amend and reenact §16-13A-9  
of said code, all relating to prohibiting any state entity  
from forcing currently owner-occupied residences to be  
required to participate in a public sewer or water system  
except under certain circumstances.

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

That §16-13-23a of the Code of West Virginia, 1931, as  
amended, be amended and reenact; and that §16-13A-9 of said code  
be amended and reenacted, all to read as follows:

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

**§16-13-23a. Additional powers of municipality to cease pollution.**

(a) Notwithstanding any other provision contained in this  
article, and in addition thereto, the governing body of any  
municipality which has received or which hereafter receives an

1 order issued by the Secretary of the Department of Environmental  
2 Protection or the Environmental Quality Board requiring the  
3 municipality to cease the pollution of any stream or waters is  
4 hereby authorized to establish and maintain, by ordinance, just and  
5 equitable rates, fees or charges for the use of the services and  
6 facilities of the existing municipal sewer system and/or stormwater  
7 system, or for the use of the services and facilities to be  
8 rendered upon completion of any works and system necessary by  
9 virtue of said order, to be paid by the owner, tenant or occupant  
10 of each and every lot or parcel of real estate or building that is  
11 connected with and uses any part of such sewer system or stormwater  
12 system, or that in any way uses or is served thereby, and may  
13 change and readjust such rates, fees or charges from time to time:  
14 Provided, That owner-occupied residences may not be required to pay  
15 for use or service by an existing or new water system, sewer system  
16 or stormwater system unless the municipality has evidence  
17 independently confirming that the residential water or septic  
18 system being used by the owner-occupied residence is unsafe for  
19 human use or otherwise constitutes a clear public safety hazard to  
20 other citizens.

21 (b) The rates, fees or charges shall be sufficient to all the  
22 proper and reasonable costs and expenses of the acquisition and  
23 construction of plants, machinery and works for the collection,  
24 treatment, purification and disposal of sewage or stormwater and

1 the repair, alteration and extension of existing sewer facilities  
2 or stormwater facilities, as may be necessary to comply with such  
3 order of the Secretary of the Department of Environmental  
4 Protection or the Environmental Quality Board, and for the  
5 operation, maintenance and repair of the entire works and system.

6 (c) The governing body shall create, by ordinance, a sinking  
7 fund to accumulate and hold any part or all of the proceeds derived  
8 from rates or charges until completion of the construction, to be  
9 remitted to and administered by the Municipal Bond Commission by  
10 expending and paying the costs and expenses of construction and  
11 operation in the manner as provided by said ordinance.

12 (d) After the completion of the construction, the rates, fees  
13 or charges shall be sufficient in each year for the payment of the  
14 proper and reasonable costs and expenses of operation, maintenance,  
15 repair, replacement and extension, from time to time, of the entire  
16 sewer and works or entire stormwater works.

17 (e) No such rates, fees or charges shall be established until  
18 after a public hearing, at which all the potential users of the  
19 works and owners of property served or to be served thereby and  
20 others shall have had an opportunity to be heard concerning the  
21 proposed rates or charges.

22 (f) After introduction of the ordinance fixing rates, fees or  
23 charges, and before the same is finally enacted, notice of such  
24 hearing setting forth the proposed schedule of rates, fees or

1 charges shall be given by publication of notice as a Class II-0  
2 legal advertisement in compliance with the provisions of article  
3 three, chapter fifty-nine of this code. The publication area for  
4 such publication is the municipality. The first publication shall  
5 be made at least ten days before the date fixed therein for the  
6 hearing.

7 (g) After such hearing, which may be adjourned from time to  
8 time, the ordinance establishing the rates, fees or charges, either  
9 as originally introduced or as modified and amended, may be passed  
10 and put into effect. A copy of the schedule of the rates, fees and  
11 charges so established shall be kept on file in the office of the  
12 sanitary board having charge of the construction and operation of  
13 such works and in the office of the clerk of the municipality. The  
14 schedule of rates, fees and charges shall be open to inspection by  
15 all parties interested. The rates, fees or charges established for  
16 any class of users or property served shall be extended to cover  
17 any additional premises thereafter served which fall within the  
18 same class, without the necessity of any hearing or notice.

19 (h) Any change or readjustment of rates, fees or charges may  
20 be made in the same manner as rates, fees or charges were  
21 originally established as hereinbefore provided: *Provided*, That if  
22 such change or readjustment be made substantially pro rata, as to  
23 all classes of service, no hearing or notice is required.

24 (i) If any rate, fee or charge is not paid within thirty days

1 after it is due, the amount thereof, together with a penalty of ten  
2 percent and a reasonable attorney's fee, may be recovered by the  
3 sanitary board of the municipality in a civil action in the name of  
4 the municipality.

5 (j) Any municipality exercising the powers given herein has  
6 the authority to construct, acquire, improve, equip, operate,  
7 repair and maintain any plants, machinery or works necessary to  
8 comply with the order of the Secretary of the Department of  
9 Environmental Protection or the Environmental Quality Board and the  
10 authority provided herein to establish, maintain and collect rates,  
11 fees or charges is an additional and alternative method of  
12 financing such works and matters, and is independent of any other  
13 provision of this article insofar as the article provides for or  
14 requires the issuance of revenue bonds or the imposition of rates,  
15 fees and charges in connection with the bonds: *Provided, That*  
16 *except for the method of financing such works and matters, the*  
17 *construction, acquisition, improvement, equipment, custody,*  
18 *operation, repair and maintenance of any plants, machinery or works*  
19 *in compliance with an order of the Secretary of the Department of*  
20 *Environmental Protection or the Environmental Quality Board and the*  
21 *rights, powers and duties of the municipality and the respective*  
22 *officers and departments thereof, including the sanitary board, are*  
23 *governed by the provisions of this article.*

24 (k) The jurisdiction and authority provided by this section

1 does not extend to highways, road and drainage easements and  
2 stormwater facilities constructed, owned or operated by the West  
3 Virginia Division of Highways and no rates, fees or charges for  
4 stormwater services or costs of compliance may be assessed against  
5 highways, road and drainage easements and/or stormwater facilities  
6 constructed, owned and/or operated by the West Virginia Division of  
7 Highways.

8       (1) A municipality which has been designated by the  
9 Environmental Protection Agency as an entity to serve a West  
10 Virginia Separate Storm Sewer System community, as defined in 40  
11 C.F.R. §122.26, has the authority to enact ordinances or  
12 regulations which allow for the issuance of orders, the right to  
13 enter properties and the right to impose reasonable fines and  
14 penalties regarding correction of violations of municipal  
15 stormwater ordinances or regulations within the municipal watershed  
16 served by the municipal stormwater system, as long as such rules,  
17 regulations, fines or actions are not contrary to any rules or  
18 orders of the Public Service Commission.

19       (m) Notice of a violation of a municipal stormwater ordinance  
20 or regulation shall be served in person to the alleged violator or  
21 by certified mail, return receipt requested. The notice shall  
22 state the nature of the violation, the potential penalty, the  
23 action required to correct the violation and the time limit for  
24 making the correction. Should a person, after receipt of proper

1 notice, fail to correct the violation of the municipal stormwater  
2 ordinance or regulation, the municipality may make or have made the  
3 corrections of the violation and bring the party into compliance  
4 with the applicable stormwater ordinance or regulation. The  
5 municipality may collect the costs of correcting the violation from  
6 the person by instituting a civil action, as long as such actions  
7 are not contrary to any rules or orders of the Public Service  
8 Commission.

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

16 **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

17 **§16-13A-9. Rules; service rates and charges; discontinuance of**  
18 **service; required water and sewer connections; lien**  
19 **for delinquent fees.**

20 (a) (1) The board may make, enact and enforce all needful  
21 rules in connection with the acquisition, construction,  
22 improvement, extension, management, maintenance, operation, care,  
23 protection and the use of any public service properties owned or

1 controlled by the district. The board shall establish rates, fees  
2 and charges for the services and facilities it furnishes, which  
3 shall be sufficient at all times, notwithstanding the provisions of  
4 any other law or laws, to pay the cost of maintenance, operation  
5 and depreciation of the public service properties and principal of  
6 and interest on all bonds issued, other obligations incurred under  
7 the provisions of this article and all reserve or other payments  
8 provided for in the proceedings which authorized the issuance of  
9 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  
12 the facilities, taking into consideration domestic, commercial,  
13 industrial and public use of water and gas;

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

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

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

19 (E) May be determined on any other basis or classification  
20 which the board may determine to be fair and reasonable, taking  
21 into consideration the location of the premises served and the  
22 nature and extent of the services and facilities furnished.  
23 However, no rates, fees or charges for stormwater services may be  
24 assessed against highways, road and drainage easements or



1 stormwater facilities constructed, owned or operated by the West  
2 Virginia Division of Highways.

3       (2) Where water, sewer, stormwater or gas services, or any  
4 combination thereof, are all furnished to any premises, the  
5 schedule of charges may be billed as a single amount for the  
6 aggregate of the charges. The board shall require all users of  
7 services and facilities furnished by the district to designate on  
8 every application for service whether the applicant is a tenant or  
9 an owner of the premises to be served. If the applicant is a  
10 tenant, he or she shall state the name and address of the owner or  
11 owners of the premises to be served by the district.  
12 Notwithstanding the provisions of section eight, article three,  
13 chapter twenty-four of this code to the contrary, all new  
14 applicants for service shall deposit the greater of a sum equal to  
15 two twelfths of the average annual usage of the applicant's  
16 specific customer class or \$50, with the district to secure the  
17 payment of service rates, fees and charges in the event they become  
18 delinquent as provided in this section. If a district provides  
19 both water and sewer service, all new applicants for service shall  
20 deposit the greater of a sum equal to two twelfths of the average  
21 annual usage for water service or \$50 and the greater of a sum  
22 equal to two twelfths of the average annual usage for wastewater  
23 service of the applicant's specific customer class or \$50. In any  
24 case where a deposit is forfeited to pay service rates, fees and

1 charges which were delinquent at the time of disconnection or  
2 termination of service, no reconnection or reinstatement of service  
3 may be made by the district until another deposit equal to the  
4 greater of a sum equal to two twelfths of the average usage for the  
5 applicant's specific customer class or \$50 has been remitted to the  
6 district. After twelve months of prompt payment history, the  
7 district shall return the deposit to the customer or credit the  
8 customer's account at a rate as the Public Service Commission may  
9 prescribe: *Provided*, That where the customer is a tenant, the  
10 district is not required to return the deposit until the time the  
11 tenant discontinues service with the district. Whenever any rates,  
12 fees, rentals or charges for services or facilities furnished  
13 remain unpaid for a period of twenty days after the same become due  
14 and payable, the user of the services and facilities provided is  
15 delinquent and the user is liable at law until all rates, fees and  
16 charges are fully paid. The board may, under reasonable rules  
17 promulgated by the Public Service Commission, shut off and  
18 discontinue water or gas services to all delinquent users of either  
19 water or gas facilities, or both, ten days after the water or gas  
20 services become delinquent: *Provided, however*, That nothing  
21 contained within the rules of the Public Service Commission shall  
22 be deemed to require any agents or employees of the board to accept  
23 payment at the customer's premises in lieu of discontinuing service  
24 for a delinquent bill.

1           (b) In the event that any publicly or privately owned utility,  
2 city, incorporated town, other municipal corporation or other  
3 public service district included within the district owns and  
4 operates separately water facilities, sewer facilities or  
5 stormwater facilities and the district owns and operates another  
6 kind of facility either water or sewer, or both, as the case may  
7 be, then the district and the publicly or privately owned utility,  
8 city, incorporated town or other municipal corporation or other  
9 public service district shall covenant and contract with each other  
10 to shut off and discontinue the supplying of water service for the  
11 nonpayment of sewer or stormwater service fees and charges:  
12 *Provided*, That any contracts entered into by a public service  
13 district pursuant to this section shall be submitted to the Public  
14 Service Commission for approval. Any public service district which  
15 provides water and sewer service, water and stormwater service or  
16 water, sewer and stormwater service has the right to terminate  
17 water service for delinquency in payment of water, sewer or  
18 stormwater bills. Where one public service district is providing  
19 sewer service and another public service district or a municipality  
20 included within the boundaries of the sewer or stormwater district  
21 is providing water service and the district providing sewer or  
22 stormwater service experiences a delinquency in payment, the  
23 district or the municipality included within the boundaries of the  
24 sewer or stormwater district that is providing water service, upon

1 the request of the district providing sewer or stormwater service  
2 to the delinquent account, shall terminate its water service to the  
3 customer having the delinquent sewer or stormwater account:  
4 *Provided, however,* That any termination of water service must  
5 comply with all rules and orders of the Public Service Commission.  
6 *Provided further,* That nothing contained within the rules of the  
7 Public Service Commission shall be deemed to require any agents or  
8 employees of the Public Service Districts to accept payment at the  
9 customer's premises in lieu of discontinuing service for a  
10 delinquent bill.

11 (c) Any district furnishing sewer facilities within the  
12 district may require, or may by petition to the circuit court of  
13 the county in which the property is located, compel or may require  
14 the Division of Health to compel all owners, tenants or occupants  
15 of any houses, dwellings and buildings located near any sewer  
16 facilities where sewage will flow by gravity or be transported by  
17 other methods approved by the Division of Health, including, but  
18 not limited to, vacuum and pressure systems, approved under the  
19 provisions of section nine, article one, chapter sixteen of this  
20 code, from the houses, dwellings or buildings into the sewer  
21 facilities, to connect with and use the sewer facilities and to  
22 cease the use of all other means for the collection, treatment and  
23 disposal of sewage and waste matters from the houses, dwellings and  
24 buildings where there is gravity flow or transportation by any

1 other methods approved by the Division of Health, including, but  
2 not limited to, vacuum and pressure systems, approved under the  
3 provisions of section nine, article one, chapter sixteen of this  
4 code and the houses, dwellings and buildings can be adequately  
5 served by the sewer facilities of the district and it is declared  
6 that the mandatory use of the sewer facilities provided ~~for~~ in this  
7 paragraph is necessary and essential for the health and welfare of  
8 the inhabitants and residents of the districts and of the state.  
9 If the public service district requires the property owner to  
10 connect with the sewer facilities even when sewage from dwellings  
11 may not flow to the main line by gravity and the property owner  
12 incurs costs for any changes in the existing dwellings' exterior  
13 plumbing in order to connect to the main sewer line, the Public  
14 Service District Board shall authorize the district to pay all  
15 reasonable costs for the changes in the exterior plumbing,  
16 including, but not limited to, installation, operation, maintenance  
17 and purchase of a pump or any other method approved by the Division  
18 of Health. Maintenance and operation costs for the extra  
19 installation should be reflected in the users charge for approval  
20 of the Public Service Commission. The circuit court shall  
21 adjudicate the merits of the petition by summary hearing to be held  
22 not later than thirty days after service of petition to the  
23 appropriate owners, tenants or occupants.

24 (d) Whenever any district has made available sewer facilities

1 to any owner, tenant or occupant of any house, dwelling or building  
2 located near the sewer facility and the engineer for the district  
3 has certified that the sewer facilities are available to and are  
4 adequate to serve the owner, tenant or occupant and sewage will  
5 flow by gravity or be transported by other methods approved by the  
6 Division of Health from the house, dwelling or building into the  
7 sewer facilities, the district may charge, and the owner, tenant or  
8 occupant shall pay, the rates and charges for services established  
9 under this article only after thirty-day notice of the availability  
10 of the facilities has been received by the owner, tenant or  
11 occupant. Rates and charges for sewage services shall be based  
12 upon actual water consumption or the average monthly water  
13 consumption based upon the owner's, tenant's or occupant's specific  
14 customer class.

15 (e) The owner, tenant or occupant of any real property may be  
16 determined and declared to be served by a stormwater system only  
17 after each of the following conditions is met: (1) The district  
18 has been designated by the Environmental Protection Agency as an  
19 entity to serve a West Virginia Separate Storm Sewer System  
20 community, as defined in 40 C.F.R. §122.26; (2) the district's  
21 authority has been properly expanded to operate and maintain a  
22 stormwater system; (3) the district has made available a stormwater  
23 system where stormwater from the real property affects or drains  
24 into the stormwater system; and (4) the real property is located in

1 the Municipal Separate Storm Sewer System's designated service  
2 area. It is further hereby found, determined and declared that the  
3 mandatory use of the stormwater system is necessary and essential  
4 for the health and welfare of the inhabitants and residents of the  
5 district and of the state. The district may charge and the owner,  
6 tenant or occupant shall pay the rates, fees and charges for  
7 stormwater services established under this article only after  
8 thirty-day notice of the availability of the stormwater system has  
9 been received by the owner. An entity providing stormwater service  
10 shall provide a tenant a report of the stormwater fee charged for  
11 the entire property and, if appropriate, that portion of the fee to  
12 be assessed to the tenant.

13 (f) All delinquent fees, rates and charges of the district for  
14 either water facilities, sewer facilities, gas facilities or  
15 stormwater systems or stormwater management programs are liens on  
16 the premises served of equal dignity, rank and priority with the  
17 lien on the premises of state, county, school and municipal taxes.  
18 Nothing contained within the rules of the Public Service Commission  
19 shall be deemed to require any agents or employees of the Public  
20 Service Districts to accept payment at the customer's premises in  
21 lieu of discontinuing service for a delinquent bill. In addition  
22 to the other remedies provided in this section, public service  
23 districts are granted a deferral of filing fees or other fees and  
24 costs incidental to the bringing and maintenance of an action in

1 magistrate court for the collection of delinquent water, sewer,  
2 stormwater or gas bills. If the district collects the delinquent  
3 account, plus reasonable costs, from its customer or other  
4 responsible party, the district shall pay to the magistrate the  
5 normal filing fee and reasonable costs which were previously  
6 deferred. In addition, each public service district may exchange  
7 with other public service districts a list of delinquent accounts:  
8 *Provided*, That an owner of real property may not be held liable for  
9 the delinquent rates or charges for services or facilities of a  
10 tenant, nor may any lien attach to real property for the reason of  
11 delinquent rates or charges for services or facilities of a tenant  
12 of the real property, unless the owner has contracted directly with  
13 the public service district to purchase the services or facilities.

14 (g) Anything in this section to the contrary notwithstanding,  
15 any establishment, as defined in section three, article eleven,  
16 chapter twenty-two of this code, now or hereafter operating its own  
17 sewage disposal system pursuant to a permit issued by the  
18 Department of Environmental Protection, as prescribed by section  
19 eleven of said article, is exempt from the provisions of this  
20 section.

21 (h) Notwithstanding anything in this section to the contrary,  
22 no public utility may force currently owner occupied residences to  
23 participate in a public sewer or water system, unless the entity  
24 has evidence independently confirming that the residential water



1 or septic system being used by the owner-occupied residence is  
2 unsafe for human use or otherwise constitutes a clear public safety  
3 hazard to other citizens.

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

NOTE: The purpose of this bill is to prohibit any state public utility from forcing owner-occupied residences to participate in a public residential water or sewer system except where the water or sewer system being used is unsafe for human use or is a clear public safety hazard to other citizens.

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