

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Introduced**

## **Senate Bill 215**

BY SENATORS TRUMP AND MARONEY

[Introduced February 9, 2017; referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §16-13A-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to giving county commissions the authority to amend the proposed rates, fees and  
 3 charges, in its sole discretion, proposed by public service districts.

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

1 That §16-13A-9 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**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) May be determined on any other basis or classification which the board may determine

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

22 (2) The board of a public service district with at least four thousand five hundred customers  
23 and annual combined gross revenue of \$3 million or more from its separate or combined services  
24 may make, enact and enforce all needful rules in connection with the enactment or amendment  
25 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 specified on the monthly billing statement of the  
28 customers of the district for the month next preceding the month in which the contemplated  
29 change is to be before the board on first reading.

30 (B) Adequate prior public notice of the contemplated rates, fees and charges by causing  
31 to be published as a Class I legal advertisement of the proposed action, in compliance with the  
32 provisions of article three, chapter fifty-nine of this code. The publication area for publication shall  
33 be all territory served by the district. If the district provides service in more than one county,  
34 publication shall be made in a newspaper of general circulation in each county that the district  
35 provides service.

36 (C) The public notice of the proposed action shall state the current rates, fees and charges  
37 and the proposed changes to said rates, fees and charges; the date, time and place of both a  
38 public hearing on the proposal and the proposed final vote on adoption; and the place or places  
39 within the district where the proposed rates, fees and charges may be inspected by the public. A  
40 reasonable number of copies of the proposal shall be kept at the place or places and be made  
41 available for public inspection. The notice shall also advise that interested parties may appear at  
42 the public hearing before the board and be heard with respect to the proposed rates, fees and  
43 charges.

44 (D) The proposed rates, fees and charges shall be read at two meetings of the board with  
45 at least two weeks intervening between each meeting. The public hearing may be conducted with  
46 or following the second reading.

47 (E) Rates, fees and charges approved by an affirmative vote of the board shall be  
48 forwarded in writing to the county commission appointing the approving board. The county  
49 commission shall publish notice of the proposed rates, fees and charges by a Class I legal  
50 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.  
51 Within forty-five days of receipt of the proposed rates, fees and charges, the county commission  
52 shall take action to ~~approve or reject~~ approve, reject or amend the proposed rates, fees and  
53 charges, in its sole discretion. ~~the proposed rates, fees and charges~~ After forty-five days, the  
54 proposed rates, fees and charges shall be effective with no further action by the board or county  
55 commission. In any event, this 45-day period shall be mandatory unless extended by the official  
56 action of both the board proposing the rates, fees and charges, and the appointing county  
57 commission.

58 (F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote by  
59 the county commission and shall be effective no sooner than forty-five days following action. The  
60 45-day waiting period may be waived by public vote of the county commission only if the  
61 commission finds and declares the district to be in financial distress such that the 45-day waiting  
62 period would be detrimental to the ability of the district to deliver continued and compliant public  
63 services.

64 (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all  
65 furnished to any premises, the schedule of charges may be billed as a single amount for the  
66 aggregate of the charges. The board shall require all users of services and facilities furnished by  
67 the district to designate on every application for service whether the applicant is a tenant or an  
68 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name  
69 and address of the owner or owners of the premises to be served by the district. Notwithstanding

70 the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all  
71 new applicants for service shall deposit the greater of a sum equal to two twelfths of the average  
72 annual usage of the applicant's specific customer class or \$50, with the district to secure the  
73 payment of service rates, fees and charges in the event they become delinquent as provided in  
74 this section. If a district provides both water and sewer service, all new applicants for service shall  
75 deposit the greater of a sum equal to two twelfths of the average annual usage for water service  
76 or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater  
77 service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited  
78 to pay service rates, fees and charges which were delinquent at the time of disconnection or  
79 termination of service, no reconnection or reinstatement of service may be made by the district  
80 until another deposit equal to the greater of a sum equal to two twelfths of the average usage for  
81 the applicant's specific customer class or \$50 has been remitted to the district. After twelve  
82 months of prompt payment history, the district shall return the deposit to the customer or credit  
83 the customer's account at a rate as the Public Service Commission may prescribe: *Provided, That*  
84 where the customer is a tenant, the district is not required to return the deposit until the time the  
85 tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for  
86 services or facilities furnished remain unpaid for a period of twenty days after the same become  
87 due and payable, the user of the services and facilities provided is delinquent and the user is  
88 liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules  
89 promulgated by the Public Service Commission, shut off and discontinue water or gas services to  
90 all delinquent users of either water or gas facilities, or both, ten days after the water or gas  
91 services become delinquent: *Provided, however, That* nothing contained within the rules of the  
92 Public Service Commission shall be deemed to require any agents or employees of the board to  
93 accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

94 (b) In the event that any publicly or privately owned utility, city, incorporated town, other  
95 municipal corporation or other public service district included within the district owns and operates

96 separately water facilities, sewer facilities or stormwater facilities and the district owns and  
97 operates another kind of facility, either water or sewer, or both, as the case may be, then the  
98 district and the publicly or privately owned utility, city, incorporated town or other municipal  
99 corporation or other public service district shall covenant and contract with each other to shut off  
100 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service  
101 fees and charges: *Provided*, That any contracts entered into by a public service district pursuant  
102 to this section shall be submitted to the Public Service Commission for approval. Any public  
103 service district which provides water and sewer service, water and stormwater service or water,  
104 sewer and stormwater service has the right to terminate water service for delinquency in payment  
105 of water, sewer or stormwater bills. Where one public service district is providing sewer service  
106 and another public service district or a municipality included within the boundaries of the sewer  
107 or stormwater district is providing water service and the district providing sewer or stormwater  
108 service experiences a delinquency in payment, the district or the municipality included within the  
109 boundaries of the sewer or stormwater district that is providing water service, upon the request of  
110 the district providing sewer or stormwater service to the delinquent account, shall terminate its  
111 water service to the customer having the delinquent sewer or stormwater account: *Provided*,  
112 *however*, That any termination of water service must comply with all rules and orders of the Public  
113 Service Commission: *Provided further*, That nothing contained within the rules of the Public  
114 Service Commission shall be deemed to require any agents or employees of the public service  
115 districts to accept payment at the customer's premises in lieu of discontinuing service for a  
116 delinquent bill.

117 (c) Any district furnishing sewer facilities within the district may require or may, by petition  
118 to the circuit court of the county in which the property is located, compel or may require the  
119 Division of Health to compel all owners, tenants or occupants of any houses, dwellings and  
120 buildings located near any sewer facilities where sewage will flow by gravity or be transported by  
121 other methods approved by the Division of Health, including, but not limited to, vacuum and

122 pressure systems, approved under the provisions of section nine, article one, chapter sixteen of  
123 this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use  
124 the sewer facilities and to cease the use of all other means for the collection, treatment and  
125 disposal of sewage and waste matters from the houses, dwellings and buildings where there is  
126 gravity flow or transportation by any other methods approved by the Division of Health, including,  
127 but not limited to, vacuum and pressure systems, approved under the provisions of section nine,  
128 article one of this chapter and the houses, dwellings and buildings can be adequately served by  
129 the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities  
130 provided for in this subsection is necessary and essential for the health and welfare of the  
131 inhabitants and residents of the districts and of the state. If the public service district requires the  
132 property owner to connect with the sewer facilities even when sewage from dwellings may not  
133 flow to the main line by gravity and the property owner incurs costs for any changes in the existing  
134 dwellings' exterior plumbing in order to connect to the main sewer line, the public service district  
135 board shall authorize the district to pay all reasonable costs for the changes in the exterior  
136 plumbing, including, but not limited to, installation, operation, maintenance and purchase of a  
137 pump or any other method approved by the Division of Health. Maintenance and operation costs  
138 for the extra installation should be reflected in the user's charge for approval of the Public Service  
139 Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to  
140 be held not later than thirty days after service of petition to the appropriate owners, tenants or  
141 occupants.

142 (d) Whenever any district has made available sewer facilities to any owner, tenant or  
143 occupant of any house, dwelling or building located near the sewer facility and the engineer for  
144 the district has certified that the sewer facilities are available to and are adequate to serve the  
145 owner, tenant or occupant and sewage will flow by gravity or be transported by other methods  
146 approved by the Division of Health from the house, dwelling or building into the sewer facilities,  
147 the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for

148 services established under this article only after thirty days' notice of the availability of the facilities  
149 has been received by the owner, tenant or occupant. Rates and charges for sewage services  
150 shall be based upon actual water consumption or the average monthly water consumption based  
151 upon the owner's, tenant's or occupant's specific customer class.

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

167 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer  
168 facilities, gas facilities or stormwater systems or stormwater management programs are liens on  
169 the premises served of equal dignity, rank and priority with the lien on the premises of state,  
170 county, school and municipal taxes. Nothing contained within the rules of the Public Service  
171 Commission shall be deemed to require any agents or employees of the public service districts  
172 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.  
173 In addition to the other remedies provided in this section, public service districts are granted a

174 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an  
175 action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If  
176 the district collects the delinquent account, plus reasonable costs, from its customer or other  
177 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable  
178 costs which were previously deferred. In addition, each public service district may exchange with  
179 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property  
180 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor  
181 may any lien attach to real property for the reason of delinquent rates or charges for services or  
182 facilities of a tenant of the real property unless the owner has contracted directly with the public  
183 service district to purchase the services or facilities.

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

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

NOTE: The purpose of this bill is to give county commissions the authority to amend the proposed rates, fees, and charges, in its sole discretion, proposed by public service districts.

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