

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 4542

BY DELEGATE HANSHAW

[Originating in the Committee on Finance;

February 20, 2018.]

1 A BILL to amend and reenact §16-13A-9 of the Code of West Virginia, 1931, as amended, relating
2 to allowing public service districts to accept certain methods of payment; allowing public
3 service districts to charge certain fees related thereto; and requiring public service districts
4 to obtain certain bids; and removing and replacing reference to certain obsolete entities.

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 or more from its separate or combined water and sewer
24 services 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. Such 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. Such 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 such
36 revised rates, fees and charges but not less than one week prior to the public hearing of the board
37 on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with
38 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 such 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 (2) 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 such rates, fees and charges, or the expiration of the 45 day period from
80 the 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 such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided*,
83 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted
84 by the district upon which the county commission failed to act, shall remain in full force and effect,
85 until 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 shall be
114 deemed 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.

116 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
117 municipal corporation or other public service district included within the district owns and operates
118 separately water facilities, sewer facilities or storm water facilities and the district owns and
119 operates another kind of facility, either water or sewer, or both, as the case may be, then the
120 district and the publicly or privately owned utility, city, incorporated town or other municipal
121 corporation or other public service district shall covenant and contract with each other to shut off
122 and discontinue the supplying of water service for the nonpayment of sewer or storm water service

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

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

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

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

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

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

200 costs which were previously deferred. In addition, each public service district may exchange with
201 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property
202 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor
203 may any lien attach to real property for the reason of delinquent rates or charges for services or
204 facilities of a tenant of the real property unless the owner has contracted directly with the public
205 service district to purchase the services or facilities.

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

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

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

226 described in this subsection and use the lowest qualified bid received. Acceptance of a credit or
227 check card or direct withdrawal as a form of payment shall comport with the rules and
228 requirements set forth by the credit or check card provider or banking institution.