

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4040**

BY DELEGATES HOWELL, WARD, STORCH, MAYNARD,  
CRISS, MARTIN, ATKINSON, DEAN AND HARSHBARGER

[Introduced January 12, 2018; Referred  
to the Committee on Political Subdivisions then the  
Judiciary]

1 A BILL to amend and reenact §16-13A-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to those public service districts whose sewage billings are based on water usage by a  
 3 consumer to exclude from that sewage billing any amount that is the result of a water line  
 4 break; and granting rule-making authority.

*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 four thousand five hundred customers  
23 and annual combined gross revenue of \$3 million or more from its separate or combined water  
24 and sewer services may make, enact and enforce all needful rules in connection with the  
25 enactment or amendment of rates, fees and charges of the district. At a minimum, these rules  
26 shall provide for:

27 (A) Adequate prior public notice of the contemplated rates, fees and charges by causing  
28 a notice of intent to effect such a change to be provided to the customers of the district for the  
29 month immediately preceding the month in which the contemplated change is to be considered  
30 at a hearing by the board. Such notice shall include a statement that a change in rates, fees and  
31 charges is being considered, the time, date and location of the hearing of the board at which the  
32 change will be considered and that the proposed rates, fees and charges are on file at the office  
33 of the district for review during regular business hours. Such notice shall be printed on, or mailed  
34 with, the monthly billing statement, or provided in a separate mailing.

35 (B) Adequate prior public notice of the contemplated rates, fees and charges by causing  
36 to be published, after the first reading and approval of a resolution of the board considering such  
37 revised rates, fees and charges but not less than one week prior to the public hearing of the board  
38 on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with  
39 the provisions of §59-3-1 *et seq.* of this code. The publication area for publication shall be all  
40 territory served by the district. If the district provides service in more than one county, publication  
41 shall be made in a newspaper of general circulation in each county that the district provides  
42 service.

43 (C) The public notice of the proposed action shall summarize the current rates, fees and  
44 charges and the proposed changes to said rates, fees and charges; the date, time and place of;

45 the public hearing on the resolution approving such revised rates, fees and charges and the place  
46 or places within the district where the proposed resolution approving the revised rates, fees and  
47 charges may be inspected by the public. A reasonable number of copies of the proposed  
48 resolution shall be kept at the place or places and be made available for public inspection. The  
49 notice shall also advise that interested parties may appear at the public hearing before the board  
50 and be heard with respect to the proposed revised rates, fees and charges.

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

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

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

71 and compliant public services.

72 (G) The public service district, or a customer aggrieved by the changed rates or charges  
73 who presents to the circuit court a petition signed by at least 750 customers or twenty-five percent  
74 of the customers served by the public service district, whichever is fewer, when dissatisfied by  
75 the approval, modification, or rejection by the county commission of the proposed rates, fees and  
76 charges under the provisions of this subdivision (2) may file a complaint regarding the rates, fees  
77 and charges resulting from the action of, or failure to act by, the county commission in the circuit  
78 court of the county in which the county commission sits: *Provided*, That any complaint or petition  
79 filed hereunder shall be filed within thirty days of the county commission's final action approving,  
80 modifying or rejecting such rates, fees and charges, or the expiration of the forty-five day period  
81 from the receipt by the county commission, in writing, of the rates, fees and charges approved by  
82 resolution of the board, without final action by the county commission to approve, modify or reject  
83 such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided*,  
84 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted  
85 by the district upon which the county commission failed to act, shall remain in full force and effect,  
86 until set aside, altered or amended by the circuit court in an order to be followed in the future.

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

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

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

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

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

149 any other methods approved by the Division of Health, including, but not limited to, vacuum and  
150 pressure systems, approved under the provisions of §16-1-9 of this code and the houses,  
151 dwellings and buildings can be adequately served by the sewer facilities of the district and it is  
152 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary  
153 and essential for the health and welfare of the inhabitants and residents of the districts and of the  
154 state. If the public service district requires the property owner to connect with the sewer facilities  
155 even when sewage from dwellings may not flow to the main line by gravity and the property owner  
156 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the  
157 main sewer line, the public service district board shall authorize the district to pay all reasonable  
158 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,  
159 maintenance and purchase of a pump or any other method approved by the Division of Health.  
160 Maintenance and operation costs for the extra installation should be reflected in the users charge  
161 for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the  
162 petition by summary hearing to be held not later than thirty 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 from the house, dwelling or building into the sewer facilities,  
169 the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for  
170 services established under this article only after thirty days' notice of the availability of the facilities  
171 has been received by the owner, tenant or occupant. Rates and charges for sewage services  
172 shall be based upon actual water consumption or the average monthly water consumption based  
173 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 stormwater 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 stormwater system; (3)  
179 the district has made available a stormwater system where stormwater from the real property  
180 affects or drains into the stormwater 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 stormwater system is necessary and essential for the  
183 health and welfare of the inhabitants and residents of the district and of the state. The district may  
184 charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater  
185 services established under this article only after thirty days' notice of the availability of the  
186 stormwater system has been received by the owner. An entity providing stormwater service shall  
187 provide a tenant a report of the stormwater 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 stormwater systems or stormwater 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, stormwater 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  
214 stormwater utility main office.

215 (i) Notwithstanding any provision of this code to the contrary, a district whose sewage  
216 charges or billings are based on the amount of water used by a consumer may not collect any  
217 portion of a charge or billing that includes water usage resulting from a break or leakage in a water  
218 line. In such an instance, the consumer's charges shall be recalculated to reflect an amount based  
219 on the highest water billing during the preceding twelve months. The Commissioner of the Public  
220 Service Commission shall propose rules for legislative approval in accordance with §29A-3-1 et  
221 seq. of this code to implement this subsection.

NOTE: This purpose of this bill is to require public service districts whose sewage billings are based on water usage by a consumer to exclude from that sewage billing any amount that is the result of a water line break. The bill grants rule-making authority.

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