

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2430

**FISCAL
NOTE**

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[Introduced January 15, 2019; Referred
to the Committee on Technology and Infrastructure
then Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

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

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

16 (b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs
 17 and expenses of the acquisition and construction of plants, machinery and works for the
 18 collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration
 19 and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply

20 with such order of the Secretary of the Department of Environmental Protection or the
21 Environmental Quality Board, and for the operation, maintenance and repair of the entire works
22 and system.

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

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

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

35 (f) After introduction of the ordinance fixing rates, fees or charges, and before the same is
36 finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or
37 charges shall be given by publication of notice as a Class II-0 legal advertisement in compliance
38 with the provisions of §59-3-1 *et seq.* of this code. The publication area for such publication is the
39 municipality. The first publication shall be made at least 10 days before the date fixed therein for
40 the hearing.

41 (g) After such hearing, which may be adjourned from time to time, the ordinance
42 establishing the rates, fees or charges, either as originally introduced or as modified and
43 amended, may be passed and put into effect. A copy of the schedule of the rates, fees and
44 charges so established shall be kept on file in the office of the sanitary board having charge of
45 the construction and operation of such works and in the office of the clerk of the municipality. The

46 schedule of rates, fees and charges shall be open to inspection by all parties interested. The
47 rates, fees or charges established for any class of users or property served shall be extended to
48 cover any additional premises thereafter served which fall within the same class, without the
49 necessity of any hearing or notice.

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

54 (i) If any rate, fee or charge is not paid within 30 days after it is due, the amount thereof,
55 together with a penalty of 10 percent and a reasonable attorney's fee, may be recovered by the
56 sanitary board of the municipality in a civil action in the name of the municipality.

57 (j) Any municipality exercising the powers given herein has the authority to construct,
58 acquire, improve, equip, operate, repair and maintain any plants, machinery or works necessary
59 to comply with the order of the Secretary of the Department of Environmental Protection or the
60 Environmental Quality Board and the authority provided herein to establish, maintain and collect
61 rates, fees or charges is an additional and alternative method of financing such works and matters,
62 and is independent of any other provision of this article insofar as the article provides for or
63 requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection
64 with the bonds: *Provided,* That except for the method of financing such works and matters, the
65 construction, acquisition, improvement, equipment, custody, operation, repair and maintenance
66 of any plants, machinery or works in compliance with an order of the Secretary of the Department
67 of Environmental Protection or the Environmental Quality Board and the rights, powers and duties
68 of the municipality and the respective officers and departments thereof, including the sanitary
69 board, are governed by the provisions of this article.

70 (k) The jurisdiction and authority provided by this section does not extend to highways,
71 road and drainage easements and stormwater facilities constructed, owned or operated by the

72 West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs
73 of compliance may be assessed against highways, road and drainage easements and/or
74 stormwater facilities constructed, owned and/or operated by the West Virginia Division of
75 Highways.

76 (l) A municipality which has been designated by the Environmental Protection Agency as
77 an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40
78 C.F.R. §122.26, has the authority to enact ordinances or regulations which allow for the issuance
79 of orders, the right to enter properties and the right to impose reasonable fines and penalties
80 regarding correction of violations of municipal stormwater ordinances or regulations within the
81 municipal watershed served by the municipal stormwater system, as long as such rules,
82 regulations, fines or actions are not contrary to any rules or orders of the Public Service
83 Commission.

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

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; exception; 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 §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C)
17 of this code; or

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

23 (2) The board of a public service district with at least 4,500 customers and annual
24 combined gross revenue of \$3 million or more from its separate or combined water and sewer
25 services may make, enact, and enforce all needful rules in connection with the enactment or
26 amendment of rates, fees, and charges of the district. At a minimum, these rules 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
38 board on such resolution, as a Class I legal advertisement, of the proposed action, in compliance
39 with 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 45 days of receipt of the proposed rates, fees, and charges, the county commission shall
60 take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole
61 discretion. If, after 45 days, the county commission has not taken final action to approve, modify,
62 or reject the proposed rates, fees and charges, as presented to the county commission, shall be
63 effective with no further action by the board or county commission. In any event, this 45-day period
64 shall be mandatory unless extended by the official action of both the board proposing the rates,
65 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 45 days following
68 action. The 45-day waiting period may be waived by public vote of the county commission only if
69 the commission finds and declares the district to be in financial distress such that the 45-day
70 waiting period would be detrimental to the ability of the district to deliver continued and compliant
71 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 25 percent of the
74 customers served by the public service district, whichever is fewer, when dissatisfied by the

75 approval, modification, or rejection by the county commission of the proposed rates, fees, and
76 charges under the provisions of this subdivision 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 30 days of the county commission's final action approving,
80 modifying, or rejecting such rates, fees and charges, or the expiration of the 45-day period from
81 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 12 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 20 days after the same become due and payable, the user of the
110 services and facilities provided is delinquent and the user is liable at law until all rates, fees, and
111 charges are fully paid. The board may, under reasonable rules promulgated by the Public Service
112 Commission, shut off and discontinue water or gas services to all delinquent users of either water
113 or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided*,
114 *however*, That nothing contained within the rules of the Public Service Commission shall be
115 deemed to require any agents or employees of the board to accept payment at the customer's
116 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 separate 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 storm Water district that is providing water service, upon the request
133 of 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 Bureau
142 for Public 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 Bureau for Public Health, including, but not limited to, vacuum
145 and 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 Bureau for Public Health, including, but not limited to, vacuum
150 and 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 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 Bureau for Public Health from the house, dwelling, or building into the sewer
169 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
170 charges for services established under this article only after 30 days' notice of the availability of
171 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
172 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 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 30 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 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.

229 (j) Notwithstanding anything in this section to the contrary, no public utility or public
230 service district may force currently owner-occupied residences to participate in a public sewer,
231 unless the entity has evidence independently confirming that the residential septic system being
232 used by the owner-occupied residence is unsafe for human use or otherwise constitutes a clear
233 public safety hazard to other citizens.

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

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