

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill Number

BY DELEGATE DOYLE

[Introduced February 10, 2021; Referred to the
Committee on Workforce Development 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 requiring new commercial and industrial customers to pay for the construction of any
 3 expanded or upgraded public service district facilities if the district’s present facilities are
 4 insufficient to serve the needs of that commercial or industrial consumer; and prohibiting
 5 any costs being passed on to present consumers.

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 providing water or sewer service separately or in
24 combination 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. The 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. The 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 the
36 revised rates, fees, and charges but not less than one week prior to the public hearing of the
37 board on the resolution, as a Class I legal advertisement, of the proposed action, in compliance
38 with 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 the 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 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 the 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 the rates, fees, and charges, and the circuit court shall resolve the complaint: *Provided, however*,
83 That the rates, fees, and charges so fixed by the county commission, or those adopted by the
84 district upon which the county commission failed to act, shall remain in full force and effect, until
85 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 may be
114 considered 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) If a commercial or industrial concern locates one or more of its facilities in a public
117 service district whose facilities are insufficient to serve the needs of that commercial or industrial
118 consumer without expansion or upgrade to the district's facilities, the commercial or industrial
119 customer is responsible for all costs associated with the construction of the expanded or upgraded
120 public service district facilities. While the affected public service district may determine the rates
121 for the future and ongoing services it provides to that commercial or industrial consumer, in no

122 event may it or the Public Service Commission permit the expansion or upgrade costs be passed
123 along or borne by the district's other customers.

124 ~~(b)~~ (c) If any publicly or privately owned utility, city, incorporated town, other municipal
125 corporation or other public service district included within the district owns and operates separate
126 water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another
127 kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly
128 or privately owned utility, city, incorporated town or other municipal corporation or other public
129 service district shall covenant and contract with each other to shut off and discontinue the
130 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
131 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
132 be submitted to the Public Service Commission for approval. Any public service district which
133 provides water and sewer service, water and stormwater service or water, sewer, and stormwater
134 service has the right to terminate water service for delinquency in payment of water, sewer, or
135 stormwater bills. Where one public service district is providing sewer service and another public
136 service district or a municipality included within the boundaries of the sewer or stormwater district
137 is providing water service and the district providing sewer or stormwater service experiences a
138 delinquency in payment, the district or the municipality included within the boundaries of the sewer
139 or stormwater district that is providing water service, upon the request of the district providing
140 sewer or stormwater service to the delinquent account, shall terminate its water service to the
141 customer having the delinquent sewer or stormwater account: *Provided, however*, That any
142 termination of water service must comply with all rules and orders of the Public Service
143 Commission: *Provided further*, That nothing contained within the rules of the Public Service
144 Commission shall be deemed to require any agents or employees of the public service districts
145 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

146 ~~(e)~~ (d) Any district furnishing sewer facilities within the district may require or may, by
147 petition to the circuit court of the county in which the property is located, compel or may require

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

170 ~~(d)~~ (e) Whenever any district has made available sewer facilities to any owner, tenant, or
171 occupant of any house, dwelling, or building located near the sewer facility and the engineer for
172 the district has certified that the sewer facilities are available to and are adequate to serve the
173 owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods

174 approved by the Bureau for Public Health from the house, dwelling, or building into the sewer
175 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
176 charges for services established under this article only after 30 days' notice of the availability of
177 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
178 services shall be based upon actual water consumption or the average monthly water
179 consumption based upon the owner's, tenant's, or occupant's specific customer class.

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

195 ~~(f)~~ (g) All delinquent fees, rates, and charges of the district for either water facilities, sewer
196 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
197 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
198 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
199 Commission may require agents or employees of the public service districts to accept payment

200 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
201 other remedies provided in this section, public service districts are granted a deferral of filing fees
202 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
203 for the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the
204 delinquent account, plus reasonable costs, from its customer or other responsible party, the
205 district shall pay to the magistrate the normal filing fee and reasonable costs which were
206 previously deferred. In addition, each public service district may exchange with other public
207 service districts a list of delinquent accounts: *Provided*, That an owner of real property may not
208 be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any
209 lien attach to real property for the reason of delinquent rates or charges for services or facilities
210 of a tenant of the real property unless the owner has contracted directly with the public service
211 district to purchase the services or facilities.

212 ~~(g)~~ (h) Anything in this section to the contrary notwithstanding, any establishment, as
213 defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system
214 pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-
215 11-11 of this code, is exempt from the provisions of this section.

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

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

NOTE: The purpose of this bill is to require new commercial and industrial customers to pay for the construction of any expanded or upgraded public service district facilities if the district's present facilities are insufficient to serve the needs of that commercial or industrial consumer. The bill prohibits any costs being passed on to present consumers.

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