

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2864

By Delegate Westfall

[Introduced January 20, 2023; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §8-20-10 of said code, all relating to requiring larger municipally owned
 3 public water and wastewater systems to meet the same standards for rates as utilities that
 4 are regulated under Chapter 24 of the Code, which requires rates to be just, reasonable,
 5 applied without unjust discrimination or preference, and based primarily on the cost to
 6 provide the utility service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.
§8-13-13. Special charges for municipal services.

1 (a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes
 2 any essential or special municipal service, including, but not limited to, police and fire protection,
 3 parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning,
 4 street lighting, street maintenance and improvement, sewerage and sewage disposal, and the
 5 collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has
 6 plenary power and authority to provide and to impose by ordinance upon the users of the service
 7 reasonable rates, fees, and charges that are just, reasonable, applied without unjust
 8 discrimination or preference, and based primarily on the cost to provide the utility service to be
 9 collected in the manner specified in the ordinance.

10 (b) Any sewerage and sewage disposal service and any service incident to the collection
 11 and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the
 12 provisions of Chapter 24 of this code.

13 (c) A municipality shall not have a lien on any property as security for payments due under
 14 subsection (a) of this section except as provided in subsection (d) of this section.

15 (d) A municipality may enact an ordinance, pursuant to this section, permitting it to file a
 16 lien on real property located within the municipal corporate limits for unpaid and delinquent fire,
 17 police, or street fees. The ordinance must provide an administrative procedure for the

18 municipality's assessment and collection of the fees. The administrative procedure must require
19 that, before any lien is filed, the municipality will give notice to the property owner, by certified mail,
20 return receipt requested, that the municipality will file the lien unless the delinquency is paid by a
21 date stated in the notice, which must be no less than 90 days from the date the notice is mailed.
22 The administrative procedure must include the right to appeal to the circuit court of the county in
23 which the real property is located. The circuit court shall consider the appeal under its general
24 authority, including but not limited to §51-2-2(f) of this code.

25 (e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or
26 substantially amended under the provisions of this section shall be published as a Class II legal
27 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication
28 area for the publication is the municipality.

29 (f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed
30 by them in their own handwriting and filed with the recorder of the municipality within 45 days after
31 the expiration of the publication, protest against the ordinance as enacted or amended, the
32 ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the
33 qualified voters of the municipality at a regular municipal election or special municipal election, as
34 the governing body directs. Voting shall not take place until after notice of the submission is given
35 by publication as provided in subsection (e) of this section.

36 (g) The powers and authority granted to municipalities and to the governing bodies of
37 municipalities in this section are in addition and supplemental to the powers and authority named
38 in any charters of the municipalities.

39 (h) Notwithstanding any other provisions of this section, if rates, fees, and charges
40 provided in this section are imposed by the governing body of a municipality for the purpose of
41 replacing, and in amounts approximately sufficient to replace in its general fund amounts
42 appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to
43 an election duly called and held under the Constitution and laws of the state to authorize the

44 issuance and sale of the municipality’s general obligation bonds for public improvement purposes,
 45 the call for the election shall state that the governing body of the municipality proposes to impose
 46 rates, fees, and charges in specified amounts under this section for the use of one or more of the
 47 services specified in subsection (a) of this section, which shall be related to the public
 48 improvement proposed to be made with the proceeds of the bonds, no notice, publication of
 49 notice, or referendum, or election or other condition or prerequisite to the imposition of the rates,
 50 fees, and charges shall be required or necessary other than the legal requirements for issuance
 51 and sale of the general obligation bonds.

52 (i) Payments for rates, fees, and charges due under this section that are postmarked after
 53 the due date by which they are owed shall be considered late and may be subject to late fees or
 54 penalties: *Provided*, That payments that are received by the municipality after the due date, but
 55 that were postmarked on or before the due date shall be considered to be on time and shall not be
 56 assessed any late fees or penalties.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
 2 shall have plenary power and authority to make, enact, and enforce all necessary rules for the
 3 repair, maintenance, operation, and management of the combined system of the municipality and
 4 for the use thereof. The governing body of a municipality also has the plenary power and authority
 5 to make, enact, and enforce all necessary rules and ordinances for the care and protection of any
 6 such system for the health, comfort, and convenience of the public, to provide a clean water

7 supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if
8 applicable, properly collecting and controlling the stormwater as is reasonably possible to
9 do: Provided that no municipality may make, enact, or enforce any rule, regulation, or ordinance
10 regulating any highways, road or drainage easements, or storm water facilities constructed,
11 owned or operated by the West Virginia Division of Highways.

12 (2) A municipality has the plenary power and authority to charge the users for the use and
13 service of a combined system and to establish required deposits, rates, fees, or charges for such
14 purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer services
15 respectively and, if applicable, the stormwater services, or combined rates, fees or for the
16 combined water and sewer services, and, if applicable, the storm water services. Such deposits,
17 rates, fees or charges, whether separate or combined, shall be just, reasonable, applied without
18 unjust discrimination or preference, and based primarily on the cost to provide the utility service
19 and shall be sufficient at all times to pay the cost of repair, maintenance, and operation of the
20 combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the
21 principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees, or
22 charges shall be established, revised, and maintained by ordinance and become payable as the
23 governing body may determine by ordinance. The rates, fees, or charges shall be changed, from
24 time to time, as necessary, consistent with the provisions of this article: *Provided*, That the notice
25 given by the municipality for a change in rates or charges to be charged for the services from the
26 waterworks or electric power system, shall be provided by Class I legal advertisement in a
27 newspaper of general circulation in its service territory not less than one week prior to the public
28 hearing of the governing body of the municipality required for the approval of the change in rates or
29 charges.

30 (3) All new applicants for service shall indicate to the municipality or governing body
31 whether they are an owner or tenant with respect to the service location. An entity providing
32 stormwater service shall provide a tenant a report of the stormwater fee charged for the entire

33 property and, if appropriate, that portion of the fee to be assessed to the tenant.

34 (4) The municipality or governing body, but only one of them, may collect from all new
35 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
36 applicant's specific customer class, whichever is greater, to secure the payment of water and
37 sewage service rates, fees, and charges in the event they become delinquent as provided in this
38 section. In any case where a deposit is forfeited to pay service rates, fees, and charges which
39 were delinquent and the user's service is disconnected or terminated, service may not be
40 reconnected or reinstated by the municipality or governing body until another deposit equal to
41 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
42 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
43 prompt payment history, the municipality or governing body shall return the deposit to the
44 customer or credit the customer's account with interest at a rate to be set by the Public Service
45 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body is
46 not required to return the deposit until the time the tenant discontinues service with the
47 municipality governing body. Whenever any rates, fees, rentals, or charges for services or facilities
48 furnished remain unpaid for a period of 20 days after they become due, the user of the services
49 and facilities provided is delinquent and the user is liable at law until all rates, fees, and charges
50 are fully paid. The municipality or governing body may terminate water services to a delinquent
51 user of either water or sewage facilities, or both, 10 days after the water or sewage services
52 become delinquent regardless of whether the governing body utilizes the security deposit to
53 satisfy any delinquent payments: *Provided, however*, That any termination of water service must
54 comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing
55 contained within the rules of the Public Service Commission requires agents or employees of the
56 municipality or governing body to accept payment at the customer's premises in lieu of
57 discontinuing service for a delinquent bill.

58 (b) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid

59 for a period of 20 days after they become due, the user of the services and facilities provided shall
60 be delinquent and the municipality or governing body may apply any deposit against any
61 delinquent fee. The user is liable until such time as all rates, fees, and charges are fully paid.

62 (c) All rates, fees, or charges for water service, sewer service and, if applicable,
63 stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be
64 liens of equal dignity, rank, and priority with the lien on such premises of state, county, school, and
65 municipal taxes for the amount thereof upon the real property served. The municipality has the
66 plenary power and authority to enforce such lien in a civil action to recover the money due for
67 services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an
68 owner of real property may not be held liable for the delinquent rates, fees, or charges for services
69 or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates,
70 fees, or charges for services or facilities of a tenant of the real property, unless the owner has
71 contracted directly with the municipality to purchase such services or facilities.

72 (d) Municipalities are hereby granted a deferral of filing fees or other fees and costs
73 incidental to filing an action in magistrate court for collection of the delinquent rates and charges. If
74 the municipality collects the delinquent account, plus fees and costs, from its customer or other
75 responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and
76 costs which were previously deferred.

77 (e) No municipality may foreclose upon the premises served by it for delinquent rates, fees,
78 or charges for which a lien is authorized by this section except through a civil action in the circuit
79 court of the county wherein the municipality lies. In every such action, the court shall be required to
80 make a finding based upon the evidence and facts presented that the municipality has exhausted
81 all other remedies for collection of debts with respect to such delinquencies prior to bringing the
82 action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf
83 unless the delinquency has been in existence or continued for a period of two years from the date
84 of the first delinquency for which foreclosure is being sought.

85 (f) Notwithstanding any other provision contained in this article, a municipality which has
86 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
87 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to
88 enact ordinances or regulations which allow for the issuance of orders, the right to enter properties
89 and the right to impose reasonable fines and penalties regarding correction of violations of
90 municipal stormwater ordinances or regulations within the municipal watershed served by the
91 municipal stormwater system, as long as such rules, regulations, fines, or acts are not contrary to
92 any rules or orders of the Public Service Commission.

93 (g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served
94 in person to the alleged violator or by certified mail, return receipt requested. The notice shall state
95 the nature of the violation, the potential penalty, the action required to correct the violation and the
96 time limit for making the correction. Should a person, after receipt of proper notice, fail to correct
97 violation of the municipal stormwater ordinance or regulation, the municipality may correct or have
98 the corrections of the violation made and bring the party into compliance with the applicable
99 stormwater ordinance or regulation. The municipality may collect the costs of correcting the
100 violation from the person by instituting a civil action, as long as such actions are not contrary to any
101 rules or orders of the Public Service Commission.

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

NOTE: The purpose of this bill is to require larger municipally owned public water and wastewater utilities to pass rates to meet the same standards as utilities regulated under Chapter 24 of the Code which requires rates to be just, reasonable, applied without unjust discrimination or preference, and based primarily on the cost to provide the utility service.

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