

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5441

By Delegates Riley, Barnhart and Hott

[Introduced February 5, 2024; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §8-16-5 of the Code of West Virginia, 1931, as amended, and to
 2 amend and reenact §16-13A-9 and §16-13D-4 of said code, all relating to raising the
 3 threshold from \$25,000 to \$50,000 for the requirement of bids for municipal public works
 4 projects; and setting the threshold at \$50,000 for bids under public service districts, and for
 5 bids under the Regional Water And Wastewater And Stormwater Authority Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-5. Powers of board.

1 (a) The board ~~shall have plenary power and authority~~ may to take all steps and
 2 proceedings, and to make and enter into all contracts or agreements necessary, appropriate,
 3 useful, convenient or incidental to the performance of its duties and the execution of its powers
 4 and authority under this article: *Provided*, That any contract or agreement relating to the financing,
 5 or the construction, reconstruction, establishment, acquisition, improvement, renovation,
 6 extension, enlargement, increase, equipment, operation or maintenance of any such works, and
 7 any trust indenture with respect thereto as hereafter provided for, shall be approved by the
 8 governing body or bodies.

9 (b) The board may employ engineers, architects, inspectors, superintendents, managers,
 10 collectors, attorneys and such other employees as in its judgment may be necessary in the
 11 execution of its powers and duties, and may fix their compensation, all of whom shall do such work
 12 as the board may direct. All compensation and expenses incurred in carrying out the provisions of
 13 this article shall be paid solely from funds provided under the authority of this article, and the board
 14 shall not exercise or carry out any power or authority herein given it so as to bind said board or any
 15 municipality beyond the extent to which money shall have been, or may be provided under the
 16 authority of this article.

17 (c) No contract or agreement with any contractor or contractors for labor or materials, or
 18 both, exceeding in amount the sum of ~~\$25,000~~ \$50,000 shall may be made without advertising for
 19 bids, which bids shall be publicly opened and an award made to the lowest responsible bidder,
 20 with power and authority in the board to reject any and all bids.

21 (d) After the construction, reconstruction, establishment, acquisition, renovation or
 22 equipment of any such works, the board shall maintain, operate, manage and control the same,
 23 and may order and complete any improvements, extensions, enlargements, increase or repair
 24 (including replacements) of and to the works that the board may consider expedient, if funds
 25 therefor be available, or are made available, as provided in this article, and shall establish rules for
 26 the use, maintenance and operation of the works, and do all things necessary or expedient for the
 27 successful operation thereof, and for stormwater systems and associated stormwater
 28 management programs, those activities which include, but are not limited to, stormwater and
 29 surface runoff water quality improvement activities necessary to comply with all federal and state
 30 requirements. All public ways or public works damaged or destroyed by the board in carrying out
 31 its authority under this article shall be restored or repaired by the board and placed in their original
 32 condition, as nearly as practicable, if requested so to do by proper authority, out of the funds
 33 provided under the authority of this article.

34 (e) Emergency repairs shall be exempt from the bidding requirements of subsection (c) of
 35 this section. For the purpose of this subdivision, the term emergency repairs means repairs that if
 36 not made immediately will seriously impair the use of building components, systems, and public
 37 infrastructure or cause danger to persons using the building components, systems, and public
 38 infrastructure.

CHAPTER 16. PUBLIC HEALTH.

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 a
27 notice of intent to effect such a change to be provided to the customers of the district for the month
28 immediately preceding the month in which the contemplated change is to be considered at a
29 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 of
32 the district for review during regular business hours. The notice shall be printed on, or mailed with,
33 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 to
35 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 board
37 on the resolution, as a Class I legal advertisement, of the proposed action, in compliance with the
38 provisions of §59-3-1 *et seq.* of this code. The publication area for publication shall be all territory
39 served by the district. If the district provides service in more than one county, publication shall be
40 made in a newspaper of general circulation in each county that the district provides service.

41 (C) The public notice of the proposed action shall summarize the current rates, fees, and
42 charges and the proposed changes to said rates, fees, and charges; the date, time, and place of
43 the public hearing on the resolution approving the revised rates, fees, and charges and the place
44 or places within the district where the proposed resolution approving the revised rates, fees, and
45 charges may be inspected by the public. A reasonable number of copies of the proposed
46 resolution shall be kept at the place or places and be made available for public inspection. The
47 notice shall also advise that interested parties may appear at the public hearing before the board
48 and be heard with respect to the proposed revised rates, fees, and charges.

49 (D) The resolution proposing the revised rates, fees, and charges shall be read at two
50 meetings of the board with at least two weeks intervening between each meeting. The public
51 hearing may be conducted by the board prior to, or at, the meeting at which the resolution is

52 considered for adoption on the second reading.

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

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

70 (G) The public service district, or a customer aggrieved by the changed rates or charges
71 who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the
72 customers served by the public service district, whichever is fewer, when dissatisfied by the
73 approval, modification, or rejection by the county commission of the proposed rates, fees, and
74 charges under the provisions of this subdivision may file a complaint regarding the rates, fees, and
75 charges resulting from the action of, or failure to act by, the county commission in the circuit court
76 of the county in which the county commission sits: *Provided*, That any complaint or petition filed
77 hereunder shall be filed within 30 days of the county commission's final action approving,

78 modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the
79 receipt by the county commission, in writing, of the rates, fees, and charges approved by
80 resolution of the board, without final action by the county commission to approve, modify, or reject
81 the rates, fees, and charges, and the circuit court shall resolve the complaint: *Provided, however,*
82 That the rates, fees, and charges so fixed by the county commission, or those adopted by the
83 district upon which the county commission failed to act, shall remain in full force and effect, until set
84 aside, altered, or amended by the circuit court in an order to be followed in the future.

85 (3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all
86 furnished to any premises, the schedule of charges may be billed as a single amount for the
87 aggregate of the charges. The board shall require all users of services and facilities furnished by
88 the district to designate on every application for service whether the applicant is a tenant or an
89 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and
90 address of the owner or owners of the premises to be served by the district. Notwithstanding the
91 provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the
92 greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
93 customer class or \$50 with the district to secure the payment of service rates, fees, and charges in
94 the event they become delinquent as provided in this section. If a district provides both water and
95 sewer service, all new applicants for service shall deposit the greater of a sum equal to two
96 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two
97 twelfths of the average annual usage for wastewater service of the applicant's specific customer
98 class or \$50. In any case where a deposit is forfeited to pay service rates, fees, and charges which
99 were delinquent at the time of disconnection or termination of service, no reconnection or
100 reinstatement of service may be made by the district until another deposit equal to the greater of a
101 sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50
102 has been remitted to the district. After 12 months of prompt payment history, the district shall return
103 the deposit to the customer or credit the customer's account at a rate as the Public Service

104 Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not
105 required to return the deposit until the time the tenant discontinues service with the district.
106 Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for
107 a period of 20 days after the same become due and payable, the user of the services and facilities
108 provided is delinquent and the user is liable at law until all rates, fees, and charges are fully paid.
109 The board may, under reasonable rules promulgated by the Public Service Commission, shut off
110 and discontinue water or gas services to all delinquent users of either water or gas facilities, or
111 both, 10 days after the water or gas services become delinquent: *Provided, however*, That nothing
112 contained within the rules of the Public Service Commission may be considered to require any
113 agents or employees of the board to accept payment at the customer's premises in lieu of
114 discontinuing service for a delinquent bill.

115 (b) If any publicly or privately owned utility, city, incorporated town, other municipal
116 corporation or other public service district included within the district owns and operates separate
117 water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another
118 kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly
119 or privately owned utility, city, incorporated town or other municipal corporation or other public
120 service district shall covenant and contract with each other to shut off and discontinue the
121 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
122 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
123 be submitted to the Public Service Commission for approval. Any public service district which
124 provides water and sewer service, water and stormwater service or water, sewer, and stormwater
125 service has the right to terminate water service for delinquency in payment of water, sewer, or
126 stormwater bills. Where one public service district is providing sewer service and another public
127 service district or a municipality included within the boundaries of the sewer or stormwater district
128 is providing water service and the district providing sewer or stormwater service experiences a
129 delinquency in payment, the district or the municipality included within the boundaries of the sewer

130 or stormwater district that is providing water service, upon the request of the district providing
131 sewer or stormwater service to the delinquent account, shall terminate its water service to the
132 customer having the delinquent sewer or stormwater account: *Provided, however,* That any
133 termination of water service must comply with all rules and orders of the Public Service
134 Commission: *Provided further,* That nothing contained within the rules of the Public Service
135 Commission shall be deemed to require any agents or employees of the public service districts to
136 accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

137 (c) Any district furnishing sewer facilities within the district may require or may, by petition
138 to the circuit court of the county in which the property is located, compel or may require the Bureau
139 for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and
140 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
141 other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and
142 pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
143 dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to
144 cease the use of all other means for the collection, treatment, and disposal of sewage and waste
145 matters from the houses, dwellings, and buildings where there is gravity flow or transportation by
146 any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum
147 and pressure systems, approved under the provisions of §16-1-9 of this code and the houses,
148 dwellings, and buildings can be adequately served by the sewer facilities of the district and it is
149 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary
150 and essential for the health and welfare of the inhabitants and residents of the districts and of the
151 state. If the public service district requires the property owner to connect with the sewer facilities
152 even when sewage from dwellings may not flow to the main line by gravity and the property owner
153 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the
154 main sewer line, the public service district board shall authorize the district to pay all reasonable
155 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,

156 maintenance, and purchase of a pump or any other method approved by the Bureau for Public
157 Health. Maintenance and operation costs for the extra installation should be reflected in the users
158 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
159 of the petition by summary hearing to be held not later than 30 days after service of petition to the
160 appropriate owners, tenants, or occupants.

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

171 (e) The owner, tenant, or occupant of any real property may be determined and declared to
172 be served by a stormwater system only after each of the following conditions is met: (1) The district
173 has been designated by the Environmental Protection Agency as an entity to serve a West Virginia
174 Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's
175 authority has been properly expanded to operate and maintain a stormwater system; (3) the
176 district has made available a stormwater system where stormwater from the real property affects
177 or drains into the stormwater system; and (4) the real property is located in the Municipal Separate
178 Storm Sewer System's designated service area. It is further hereby found, determined, and
179 declared that the mandatory use of the stormwater system is necessary and essential for the
180 health and welfare of the inhabitants and residents of the district and of the state. The district may
181 charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater

182 services established under this article only after 30 days' notice of the availability of the stormwater
183 system has been received by the owner. An entity providing stormwater service shall provide a
184 tenant a report of the stormwater fee charged for the entire property and, if appropriate, that
185 portion of the fee to be assessed to the tenant.

186 (f) All delinquent fees, rates, and charges of the district for either water facilities, sewer
187 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on
188 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
189 county, school, and municipal taxes. Nothing contained within the rules of the Public Service
190 Commission may require agents or employees of the public service districts to accept payment at
191 the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other
192 remedies provided in this section, public service districts are granted a deferral of filing fees or
193 other fees and costs incidental to the bringing and maintenance of an action in magistrate court for
194 the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the
195 delinquent account, plus reasonable costs, from its customer or other responsible party, the district
196 shall pay to the magistrate the normal filing fee and reasonable costs which were previously
197 deferred. In addition, each public service district may exchange with other public service districts a
198 list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
199 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
200 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real
201 property unless the owner has contracted directly with the public service district to purchase the
202 services or facilities.

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

207 (h) Notwithstanding any code provision to the contrary, a public service district may accept

208 payment for all fees and charges due, in the form of a payment by a credit or check card
 209 transaction or a direct withdrawal from a bank account. The public service district may set a fee to
 210 be added to each transaction equal to the charge paid by the public service district for use of the
 211 credit or check card or direct withdrawal by the payor. The amount of the fee shall be disclosed to
 212 the payor prior to the transaction and no other fees for the use of a credit or check card or direct
 213 withdrawal may be imposed upon the payor and the whole of the charge or convenience fee shall
 214 be borne by the payor: *Provided*, That to the extent a public service district desires to accept
 215 payments in the forms described in this subsection and does not have access to the equipment or
 216 receive the services necessary to do so, the public service district shall first obtain three bids for
 217 services and equipment necessary to affect the forms of transactions described in this subsection
 218 and use the lowest qualified bid received. Acceptance of a credit or check card or direct withdrawal
 219 as a form of payment shall comport with the rules and requirements set forth by the credit or check
 220 card provider or banking institution.

1 (i) No contract or agreement with any contractor or contractors for labor or materials, or
 2 both, exceeding in amount the sum of \$50,000 may be made without advertising for bids, which
 3 bids shall be publicly opened and an award made to the lowest responsible bidder, with power and
 4 authority in the board to reject any and all bids.

**ARTICLE 13D. REGIONAL WATER AND WASTEWATER AND STORMWATER
 AUTHORITY ACT.**

**§16-13D-4. Furnishing of funds, personnel or services by certain public agencies,
 agreements for purchase, sale, distribution, transmission, transportation,
 collection, disposal, and treatment of water, wastewater, or stormwater; terms and
 conditions.**

1 Any public agency acting individually to organize an authority or entering into an
 2 agreement pursuant to this article may appropriate funds and may sell, lease, give, or otherwise

3 supply to the authority created the personnel or services for the operation of the authority as may
4 be within its legal power to furnish.

5 Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this
6 code, any public agency, whether or not a party to an agreement pursuant to this article, and any
7 publicly or privately owned water distribution company may enter into contracts with any regional
8 authority created pursuant to this article for the purchase of water from the authority or the sale of
9 water to the authority, the treatment of water by either party, and the distribution or transmission of
10 water by either party and any such authority may enter into the contracts. The Public Service
11 Commission shall, within 30 days of the filing date, notify the parties to the contract whether they
12 have filed all required documentation regarding the contract. If the Commission determines that
13 additional information is needed it will inform the agency of the information needed. The Public
14 Service Commission shall act on a filing submitted hereunder within 90 days of the date that the
15 Commission has before it all necessary information from the parties to the contract. Failure of the
16 Commission to act on the filing within the 90-day period shall constitute approval thereof:
17 *Provided*, That the 90-day Commission review period may be extended upon request of the
18 parties to the contract: Provided however, That no contract or agreement with any contractor or
19 contractors for labor or materials, or both, exceeding in amount the sum of \$50,000 may be made
20 without advertising for bids, which bids shall be publicly opened and an award made to the lowest
21 responsible bidder, with power and authority in the commission to reject any and all bids.

22 Any public agency, whether or not a party to an agreement pursuant to this act, and any
23 publicly or privately owned wastewater transportation or treatment system may enter into
24 contracts with any regional authority created pursuant to this article for the transportation and
25 treatment of wastewater by either party and any authority may enter into the contracts, subject to
26 the prior approval of the Public Service Commission pursuant to §24-2-12 of this code. The Public
27 Service Commission shall, within 30 days of the filing date, notify the parties to the agreement
28 whether they have filed all required documentation regarding the contract. If the Commission

29 determines that additional information is needed it will inform the agency of the information
30 needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days
31 of the date that the Commission has before it all necessary information from the parties to the
32 contract. Failure by the Commission to act within the 90-day period shall constitute approval
33 thereof: *Provided*, That the 90-day Commission review period may be extended on upon request
34 of the parties to the contract.

35 Any public agency, whether or not a party to an agreement pursuant to this article, and any
36 publicly or privately owned stormwater system may enter into contracts with any regional authority
37 created pursuant to this article for the collection and disposition of stormwater by either party and
38 any authority may enter into contracts.

39 Any contract may include an agreement for the purchase of water not actually received or
40 the treatment of wastewater not actually treated, or the collection and disposition of stormwater not
41 actually collected and disposed. No contract may be made for a period in excess of 40 years, but
42 renewal options may be included therein. The obligations of any public agency under any contract
43 shall be payable solely from the revenues produced from the public agency's water, stormwater
44 and wastewater system, and the Public Service Commission, in the case of a public agency whose
45 rates are subject to its jurisdiction, shall permit the public agency to recover through its rates
46 revenues sufficient to meet its obligations under the agreement.

NOTE: The purpose of this bill is to raise the threshold from \$25,000 to \$50,000 for the requirement of bids for municipal public works projects and setting the threshold at \$50,000 for public service districts, and public works projects under the Regional Water And Wastewater And Stormwater Authority Act.

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