WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 412

(By Senator Lowe, et al)

PASSED March 8, 2003

In Effect 90 days from Passage
AN ACT to amend and reenact section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; public utility services; providing that unpaid charges for services do not become a lien against the owner of real property nor is the owner liable for the charges unless the owner contracted directly with the provider for the services; modifying deposit; and providing refund of deposit with interest.

Be it enacted by the Legislature of West Virginia:

That section nine, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE, STORMWATER AND GAS SERVICES.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for
stormwater services may be assessed against highways,
road and drainage easements or stormwater facilities
constructed, owned or operated by the West Virginia
division of highways.

(2) Where water, sewer, stormwater or gas services, or
any combination thereof, are all furnished to any premises,
the schedule of charges may be billed as a single amount
for the aggregate of the charges. The board shall require
all users of services and facilities furnished by the district
to designate on every application for service whether the
applicant is a tenant or an owner of the premises to be
served. If the applicant is a tenant, he or she shall state
the name and address of the owner or owners of the
premises to be served by the district. Notwithstanding the
provisions of section eight, article three, chapter twenty-
four of this code to the contrary, all new applicants for
service shall deposit the greater of a sum equal to two
twelfths of the average annual usage of the applicant’s
specific customer class or fifty dollars, with the district to
secure the payment of service rates, fees and charges in the
event they become delinquent as provided in this section.
If a district provides both water and sewer service, all new
applicants for service shall deposit the greater of a sum
equal to two twelfths of the average annual usage for
water service or fifty dollars and the greater of a sum
equal to two twelfths of the average annual usage for
wastewater service of the applicant’s specific customer
class or fifty dollars. In any case where a deposit is
forfeited to pay service rates, fees and charges which were
delinquent at the time of disconnection or termination of
service, no reconnection or reinstatement of service may be
made by the district until another deposit equal to the
greater of a sum equal to two twelfths of the average usage
for the applicant’s specific customer class or fifty dollars
has been remitted to the district. After twelve months of
prompt payment history, the district shall return the
deposit to the customer or credit the customer’s account at
a rate as the public service commission may prescribe:
Provided, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the
district providing sewer service to the delinquent account,
shall terminate its water service to the customer having
the delinquent sewer account: Provided, however, That
any termination of water service must comply with all
rules and orders of the public service commission.

(c) Any district furnishing sewer facilities within the
district may require, or may by petition to the circuit court
of the county in which the property is located, compel or
may require the division of health to compel all owners,
tenants or occupants of any houses, dwellings and build-
ings located near any sewer facilities where sewage will
flow by gravity or be transported by other methods
approved by the division of health, including, but not
limited to, vacuum and pressure systems, approved under
the provisions of section nine, article one, chapter sixteen
of this code, from the houses, dwellings or buildings into
the sewer facilities, to connect with and use the sewer
facilities and to cease the use of all other means for the
collection, treatment and disposal of sewage and waste
matters from the houses, dwellings and buildings where
there is gravity flow or transportation by any other
methods approved by the division of health, including, but
not limited to, vacuum and pressure systems approved
under the provisions of section nine, article one, chapter
sixteen of this code and the houses, dwellings and build-
ings can be adequately served by the sewer facilities of the
district and it is declared that the mandatory use of the
sewer facilities provided for in this paragraph is necessary
and essential for the health and welfare of the inhabitants
and residents of the districts and of the state. If the public
service district requires the property owner to connect
with the sewer facilities even when sewage from dwellings
may not flow to the main line by gravity and the property
owner incurs costs for any changes in the existing dwell-
ings’ exterior plumbing in order to connect to the main
sewer line, the public service district board shall authorize
the district to pay all reasonable costs for the changes in
the exterior plumbing, including, but not limited to,
installation, operation, maintenance and purchase of a
pump or any other method approved by the division of
health. Maintenance and operation costs for the extra
installation should be reflected in the users charge for
approval of the public service commission. The circuit
court shall adjudicate the merits of the petition by sum-
mary hearing to be held not later than thirty days after
service of petition to the appropriate owners, tenants or
occupants.

(d) Whenever any district has made available sewer
facilities to any owner, tenant or occupant of any house,
dwelling or building located near the sewer facility and
the engineer for the district has certified that the sewer
facilities are available to and are adequate to serve the
owner, tenant or occupant and sewage will flow by gravity
or be transported by other methods approved by the
division of health from the house, dwelling or building into
the sewer facilities, the district may charge, and the owner,
tenant or occupant shall pay the rates and charges for
services established under this article only after thirty-day
notice of the availability of the facilities has been received
by the owner, tenant or occupant. Rates and charges for
sewage services shall be based upon actual water con-
sumption or the average monthly water consumption
based upon the owner's, tenant's or occupant's specific
customer class.

(e) Whenever any district has made available a storm-
water system to any owner, tenant or occupant of any real
property located near the stormwater system and where
stormwater from real property affects or drains into the
stormwater system, it is hereby found, determined and
declared that the owner, tenant or occupant is being
served by the stormwater system and it is further hereby
found, determined and declared that the mandatory use of
the stormwater system is necessary and essential for the
health and welfare of the inhabitants and residents of the
district and of the state. The district may charge, and the
owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-day notice of the availability of the stormwater system has been received by the owner.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven, article eleven, chapter twenty-two of this code, is exempt from the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th Day of March 2003.

Governor