WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 465
(Senators Kessler, Edgell and Chafin, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 465

(SENATORS KESSLER, EDGELL AND CHAFIN, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §8-19-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-3-10 of said code, all relating to the discontinuation of water and sewer utility service for a delinquent bill; and eliminating the requirement that a water utility's employee or agent be required to accept payment at the customer's premises in lieu of discontinuing service for a delinquent water or sewer bill.

Be it enacted by the Legislature of West Virginia:

That §8-19-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-20-10 of said code be amended and reenacted; that §16-13-16 of said code be amended and reenacted; that §16-13A-9 of said code be amended and reenacted; and that §24-3-10 of said code be amended and reenacted, all to read as follows:
§8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid. When a payment has become delinquent, the municipality may utilize any funds held as a security deposit to satisfy the delinquent payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to $50 or a sum equal to two
twelfths of the average usage for the applicant's specific
customer class, whichever is greater, is remitted to the
municipality or governing body. After twelve months of
prompt payment history, the municipality or governing
body shall return the deposit to the customer or credit the
customer's account with interest at a rate as the Public
Service Commission may prescribe: Provided, That where
the customer is a tenant, the municipality or governing
body is not required to return the deposit until the time
the tenant discontinues service with the municipality or
governing body. 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 municipality or governing
body may, under reasonable rules promulgated by the
Public Service Commission, shut off and discontinue water
services to a delinquent user of water facilities ten days
after the water services become delinquent regardless of
whether the municipality or governing body utilizes the
security deposit to satisfy any delinquent payments:
Provided further, That nothing contained within the rules
of the Public Service Commission shall be deemed to
require any agents or employees of the municipality or
governing body to accept payment at the customer's
premises in lieu of discontinuing service for a delinquent
bill.

(b) All rates or charges for water service whenever
delinquent shall be liens of equal dignity, rank and
priority with the lien on such premises of state, county,
school and municipal taxes for the amount thereof upon
the real property served, and the municipality shall have
plenary power and authority from time to time to enforce
such lien in a civil action to recover the money due for
such services rendered plus court fees and costs and a
reasonable attorney's fee: 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 shall any
lien attach to real property for the reason of delinquent
rates or charges for services or facilities of a tenant of such
real property, unless the owner has contracted directly
with the municipality to purchase such services or facili-
ties.

(c) Municipalities are hereby 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 the delinquent rates and charges. If the
municipality collects the delinquent account, plus fees and
costs, from its customer or other responsible party, the
municipality shall pay to the magistrate court the filing
fees or other fees and costs which were previously de-
ferred.

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

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordi-
nances 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.

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of
repair, maintenance and operation of the combined
system, provide an adequate reserve fund, an adequate
depreciation fund and pay the principal and interest upon
all revenue bonds issued under this article. Deposits,
rates, fees or charges shall be established, revised and
maintained by ordinance and become payable as the
governing body may determine by ordinance. The rates,
fees or charges shall be changed, from time to time, as
necessary, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the
municipality or governing body whether they are an owner
or tenant with respect to the service location. An entity
providing stormwater service shall provide a tenant a
report of the stormwater fee charged for the entire prop-
erty and, if appropriate, that portion of the fee to be
assessed to the tenant.

(4) The municipality or governing body, but only one of
them, may collect from all new applicants for service a
deposit of $100 or two twelfths of the average annual
usage of the applicant’s specific customer class, whichever
is greater, to secure the payment of water and sewage
service rates, fees and charges in the event they become
delinquent as provided in this section. In any case where
a deposit is forfeited to pay service rates, fees and charges
which were delinquent and the user’s service is discon-
ected or terminated, service may not be reconnected or
reinstated by the municipality or governing body until
another deposit equal to $100 or a sum equal to two
twelfths of the average usage for the applicant’s specific
customer class, whichever is greater, is remitted to the
municipality or governing body. After twelve months of
prompt payment history, the municipality or governing
body shall return the deposit to the customer or credit the
customer’s account with interest at a rate to be set by the
Public Service Commission: Provided, That where the
customer is a tenant, the municipality or governing body
is not required to return the deposit until the time the
tenant discontinues service with the municipality govern-
ing body. Whenever any rates, fees, rentals or charges for
services or facilities furnished remain unpaid for a period
of twenty days after they become due, 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 municipality or governing body may terminate
water services to a delinquent user of either water or
sewage facilities, or both, ten days after the water or
sewage services become delinquent regardless of whether
the governing body utilizes the security deposit to satisfy
any delinquent payments: Provided further, That any
termination of water service must comply with all rules
and orders of the Public Service Commission: Provided
however, That nothing contained within the rules of the
Public Service Commission shall be deemed to require any
agents or employees of the municipality or governing body
to accept payment at the customer’s premises in lieu of
discontinuing service for a delinquent bill.

(b) Whenever any rates, fees or charges for services or
facilities furnished remain unpaid for a period of twenty
days after they become due, the user of the services and
facilities provided shall be delinquent and the municipal-
ity or governing body may apply any deposit against any
delinquent fee. The user is liable until such time as all
rates, fees and charges are fully paid.

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

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

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

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

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

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit;
A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. 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.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become
delinquent as provided in this section. 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, service may not be reconnected or
reinstated by the governing body until another deposit
equal to $50 or a sum equal to two twelfths of the average
usage for the applicant’s specific customer class, which-
ever is greater, is remitted to the governing body. After
twelve months of prompt payment history, the governing
body shall return the deposit to the customer or credit the
customer’s account with interest at a rate as the Public
Service Commission may prescribe: Provided, That where
the customer is a tenant, the governing body is not re-
quired to return the deposit until the time the tenant
discontinues service with the governing body. Whenever
any rates, fees, rentals or charges for services or facilities
furnished remain unpaid for a period of twenty days after
they become due, the user of the services and facilities
provided is delinquent. The user is liable until all rates,
fees and charges are fully paid. The governing body may,
under reasonable rules promulgated by the Public Service
Commission, shut off and discontinue water services to a
delinquent user of sewer facilities ten days after the sewer
services become delinquent regardless of whether the
governing body utilizes the security deposit to satisfy any
delinquent payments: Provided, however, That nothing
contained within the rules of the Public Service Commis-
sion shall be deemed to require any agents or employees of
the governing body to accept payment at the customer's
premises in lieu of discontinuing service for a delinquent
bill.

(f) Such rates, fees or charges shall be sufficient in each
year for the payment of the proper and reasonable expense
of operation, repair, replacements and maintenance of the
works and for the payment of the sums herein required to
be paid into the sinking fund. Revenues collected pursu-
ant to this section shall be considered the revenues of the works.

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

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as hereinbefore provided: Provided, That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the
rates, fees or charges shall always be sufficient for the
expense of operation, repair and maintenance and for the
sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall
constitute a lien upon the premises served by such works.
If any service rate, fees or charge is not paid within twenty
days after it is due, the amount thereof, together with a
penalty of ten percent and a reasonable attorney’s fee, may
be recovered by the board in a civil action in the name of
the municipality. The lien may be foreclosed against such
lot, parcel of land or building in accordance with the laws
relating thereto. Where both water and sewer services are
furnished by any municipality to any premises, the
schedule of charges may be billed as a single amount or
individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for
services or facilities furnished shall remain unpaid for a
period of twenty days after they become due, the property
and the owner thereof, as well as the user of the services
and facilities shall be delinquent until such time as all
rates, fees and charges are fully paid. When any payment
for rates, rentals, fees or charges becomes delinquent, the
governing body may use the security deposit to satisfy the
delinquent payment.

(m) The board collecting the rates, fees or charges shall
be obligated under reasonable rules to shut off and
discontinue both water and sewer services to all delin-
quent users of water, sewer or stormwater facilities and
shall not restore either water facilities or sewer facilities
to any delinquent user of any such facilities until all
delinquent rates, fees or charges for water, sewer and
stormwater facilities, including reasonable interest and
penalty charges, have been paid in full, as long as such
actions are not contrary to any rules or orders of the
Public Service Commission: Provided, That nothing
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 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:

17 (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;

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

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

24 (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 $50, 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 $50 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 $50. 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 $50 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. Provided, however, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(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 water facilities, sewer facilities or stormwater facilities and the district owns and operates another kind of facility either water or sewer, or both, 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 or stormwater 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 which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater 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 or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: Provided, however, That any termination of water service must comply with all rules and orders of the Public Service Commission. Provided further, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the Public Service Districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill.

(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 buildings 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 buildings 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 dwellings' 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 summary 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 consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26; (2) the district’s authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System’s designated service area. 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. An entity providing stormwater service shall
provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(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. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the Public Service Districts to accept payment at the customer’s premises in lieu of discontinuing service for a delinquent bill. 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 of this code, now or hereafter operating its own sewage disposal system
pursuant to a permit issued by the Department of Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

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

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-10. Termination of water service for delinquent sewer bills.

(a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility that is owned and operated by a homeowners' association owns and operates the other kind of facilities, either water or sewer, then the privately owned public utility or the homeowners' association may contract with the publicly or privately owned utility, city, incorporated town, or public service district which provides the other services to shutoff and discontinue the supplying of water service for the nonpayment of sewer service fees and charges.

(b) Any contracts entered into by a privately owned public utility or by a public utility that is owned and operated by a homeowners' association pursuant to this section must be submitted to the Public Service Commission for approval.
(c) Any privately owned public utility or any public utility that is owned and operated by a homeowners' association which provides water and sewer service to its customers may terminate water service for delinquency in payment of either water or sewer bills.

(d) Where a privately owned public utility or a public utility that is owned and operated by a homeowners' association is providing sewer service and another utility is providing water service, and the privately owned public utility or the homeowners' association providing sewer service experiences a delinquency in payment, the utility providing water service, upon the request of the homeowners' association or the privately owned public utility providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account.

(e) Any termination of water service must comply with all rules and orders of the Public Service Commission. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the water or sewer utility to accept payment at the customer's premises in lieu of discontinuing water service for a delinquent water or sewer bill.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]

The within is approved this the 31st Day of ........................................ 2010.

Governor

[Signature]