

H. B. 2723

(By Delegate Faircloth)
[Introduced February 25, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §8-10-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §50-2-3b; and to amend said code by adding thereto two new sections designated §59-1-11b and §59-1-11c, relating to bail bond surcharge, providing for collection of a surcharge and creating a special revenue account in the State Treasury to be known as the Bail Bond Surcharge Special Fund.

Be it enacted by the Legislature of West Virginia:

That §8-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §50-2-3b; and that said code be amended by adding thereto two new sections designated §59-1-11b and §59-1-11c, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2. Municipal court for municipalities; bond surcharge.

1 (a) Notwithstanding any charter provision to the contrary, any
2 city may provide by charter provision and any municipality may
3 provide by ordinance for the creation and maintenance of a
4 municipal court, for the appointment or election of an officer to
5 be known as municipal court judge and for his or her compensation,
6 and authorize the exercise by the court or judge of the
7 jurisdiction and the judicial powers, authority and duties set
8 forth in section one of this article and similar or related
9 judicial powers, authority and duties enumerated in any applicable
10 charter provisions, as set forth in the charter or ordinance.
11 Additionally, any city may provide by charter provision and any
12 municipality may provide by ordinance, that in the absence of or in
13 the case of the inability of the municipal court judge to perform
14 his or her duties, the municipal court clerk or other official
15 designated by charter or ordinance may act as municipal court
16 judge: *Provided*, That the municipal court clerk or other official
17 designated by charter or ordinance to act as municipal court judge
18 shall comply with the requirements set forth in subsections (b) and
19 (c) of this section, as well as any other requirements that the
20 city by charter provision or the municipality by ordinance may
21 require.

22 (b) Any person who makes application for appointment to, or
23 who files to become a candidate in any election for municipal
24 judge, shall first submit to a criminal background check, to be
25 conducted by the State Police. The cost of the criminal background
26 check shall be paid by the applicant or candidate. The result of

1 each background check conducted in accordance with this section
2 shall be forwarded to the municipal court clerk or recorder whose
3 duty it is to review the results and confirm the eligibility of the
4 applicant or candidate to serve as a municipal judge. No person
5 convicted of a felony or any misdemeanor crime set forth in
6 articles eight, eight-a, eight-b, eight-c or eight-d, chapter
7 sixty-one, of this code is eligible to become a municipal judge.

8 (c) Any person who assumes the duties of municipal court judge
9 who has not been admitted to practice law in this state shall
10 attend and complete the next available course of instruction in
11 rudimentary principles of law and procedure. The course shall be
12 conducted by the municipal league or a like association whose
13 members include more than one half of the chartered cities and
14 municipalities of this state. The instruction must be performed by
15 or with the services of an attorney licensed to practice law in
16 this state for at least three years. Any municipal court judge
17 shall, additionally, be required to attend a course, on an annual
18 basis for the purpose of continuing education: *Provided*, That the
19 forgoing additional education requirement does not apply to
20 municipal judges who are attorneys admitted to practice in this
21 state. The cost of any course referred to in this section shall be
22 paid by the municipality that employs the municipal judge.

23 (d) Only a defendant who has been charged with an offense for
24 which a period of confinement in jail may be imposed is entitled to
25 a trial by jury. If a municipal court judge determines, upon
26 demand of a defendant, to conduct a trial by jury in a criminal

1 matter, it shall follow the procedures set forth in the rules of
 2 criminal procedure for magistrate courts promulgated by the Supreme
 3 Court of Appeals, except that the jury in municipal court shall
 4 consist of twelve members.

5 (e) Each municipal court judge or municipal court clerk shall
 6 collect an amount equal to five percent of each cash bond, as
 7 ordered by the court, to be paid by the purchaser of the bond, and
 8 shall deposit the surcharge amount into the special fund created in
 9 the State Treasury in section eleven-c, article one, chapter
 10 fifty-nine of this code. Bail bondsmen shall collect an amount
 11 equal to five percent of each bail bond from the purchaser of the
 12 bond and shall deposit the surcharge amount into the special fund.

13 **CHAPTER 50. MAGISTRATE COURTS.**

14 **ARTICLE 2. JURISDICTION AND AUTHORITY.**

15 **§50-2-3b. Surcharge to be collected on bonds.**

16 Each magistrate shall collect an amount equal to five percent
 17 of each cash bond, as ordered by the court, to be paid by the
 18 purchaser of the bond, and shall deposit the surcharge amount into
 19 the special fund created in the State Treasury at section eleven-c,
 20 article one, chapter fifty-nine of this code. Bail bondsmen shall
 21 collect an amount equal to five percent of each bail bond from the
 22 purchaser of the bond and shall deposit the surcharge amount into
 23 the special fund.

24 **CHAPTER 59. FEES, ALLOWANCES AND COSTS;**

25 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

26 **ARTICLE 1. FEES AND ALLOWANCES.**

1 **§59-1-11b. Surcharge to be collected on bonds.**

2 Each clerk of a circuit court shall collect an amount equal to
3 five percent of each cash bond as ordered by the court, to be paid
4 by the purchaser of the bond, and shall deposit the surcharge
5 amount into the special fund created in the State Treasury at
6 section eleven-c of this article. Bail bondsmen shall collect a
7 five percent surcharge on each bail bond from the purchaser of the
8 bond and shall deposit the surcharge amount into the special fund.

9 **§59-1-11c. Bond Surcharge Special Fund created; surcharge to be**
10 **collected on bail and cash bonds; surcharge is**
11 **nonrefundable.**

12 (a) There is hereby created in the State Treasury a special
13 interest-bearing revenue account known as the Bond Surcharge
14 Special Fund. A surcharge of five percent on each cash bond, to be
15 paid by the person purchasing the bond, shall be collected by the
16 applicable magistrate or clerk of the court in which a criminal
17 defendant is charged, and paid into the fund. Bail bondsmen shall
18 collect from the purchaser of the bond a five percent surcharge on
19 each bail bond, and shall deposit the surcharge amount into the
20 special fund. The surcharge is in the nature of a processing fee
21 and is nonrefundable.

22 (b) All costs and expenses incurred pursuant to this section,
23 including administrative, shall be paid from the fund. All
24 remaining money collected in the fund, including accumulated
25 interest, shall be distributed annually by the State Treasurer in
26 the following manner: Fifty percent of the money to the

1 Commissioner of Corrections for regional jails, twenty-five percent
2 to the Superintendent of State Police, and twenty-five percent to
3 be disbursed to the governing agencies of the counties, with the
4 amounts to be allocated in accordance with county populations. The
5 governing agency of each county shall disburse the funds to local
6 law-enforcement agencies within each county.

NOTE: The purpose of this bill is to provide for a five percent surcharge on bail bonds to be distributed to benefit regional jails, State Police, county sheriffs and municipal police departments.

Strikethroughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§§50-2-3b, 59-1-11b and 59-1-11c are new; therefore, they have been completely underscored.