

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 27

**FISCAL
NOTE**

BY SENATORS KIRKENDOLL, MILLER AND GAUNCH

[Introduced on January 13, 2016;

Referred to the Committee on Government

Organization; and then to the Committee on the
Judiciary.]

1 A BILL to amend and reenact §7-5-24 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11A-2-2 of said code, all relating to permitting sheriff to hire outside
 3 attorneys to assist in collection of taxes through the courts; and sharing cost of collection
 4 with various taxing units.

Be it enacted by the Legislature of West Virginia:

1 That §7-5-24 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §11A-2-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-24. Sheriff may commence civil action without paying fees and costs; fees and costs recoverable from defendants after completion of litigation.

1 The sheriff ~~will~~ is not be required to pay any filing fee, cost, bond or security, as may
 2 otherwise be required of other civil litigants by provisions of this code, in any action in which the
 3 sheriff commences the action in his or her official capacity or on behalf of the county government:
 4 *Provided*, That where the sheriff or county government prevails in the action and any filing fees,
 5 costs, bond or security are recovered from the opposing party, the sheriff shall pay therefrom the
 6 fees, costs, bond or security to the officer who otherwise would have been entitled thereto but for
 7 the provisions of this section: *Provided, however, That any legal fees and costs not so recovered*
 8 *from the opposing party shall be paid out of the taxes so collected prior to the distribution of the*
 9 *taxes to the various taxing units.*

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

1 (a) Taxes are hereby declared to be debts owing by the taxpayer, for which he or she shall

2 be personally liable. After delinquency, the sheriff may enforce this liability by appropriate action
3 in any court of competent jurisdiction. No such action ~~shall~~ may be brought after five years from
4 the time the action accrued.

5 (b) In any such action, the sheriff ~~shall be permitted to~~ may prosecute the same without
6 paying fees or costs and without providing bond or security, as may otherwise be required of civil
7 litigants by the provisions of this code, and shall have all services and process, including the
8 services of witnesses, without paying therefor: *Provided*, That the sheriff shall maintain for each
9 action for the recovery of delinquent taxes records sufficient to demonstrate the total fees and
10 costs paid and that would have been paid but for the authority provided herein to seek recovery
11 without such payment: *Provided, however*, That where the sheriff recovers delinquent taxes in or
12 as the result of such action, whether by way of settlement or judgment, such fees and costs as
13 above required to be recorded shall be recoverable from the opposite party and upon receipt of
14 any recovery, the sheriff shall pay from the amount recovered such fees or costs to the officer
15 who otherwise would have been entitled thereto but for the provisions of this section: *Provided*
16 *further*, That the fees and costs shall be paid prior to payment to the various taxing units of the
17 balance of the recovered taxes: *And provided further*, That the payment to the various taxing
18 units shall be prorated on the basis of the total amount of taxes due them.

19 (c) The sheriff may hire an attorney to prosecute any such action: *Provided*, That any
20 attorney hired by the sheriff shall be paid an hourly rate and not by a percentage of the taxes
21 collected. Any attorney fees or other costs associated with the collection of taxes, not heretofore
22 provided in subsection (b) of this section, shall be paid from the taxes so collected prior to the
23 distribution to the various taxing units.

NOTE: The purpose of this bill is to permit the sheriff to hire outside attorneys to assist in the collection of taxes through the courts and to share the cost of collection with the various taxing units.

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