

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

For

Committee Substitute

For

Senate Bill 27

BY SENATORS KIRKENDOLL, MILLER AND GAUNCH

[Originating in the Committee on the Judiciary;

reported on January 27, 2016]

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 county commissions
3 to hire outside attorneys to assist in collection of taxes or to represent the county before
4 any United States Bankruptcy Court; providing for county commissions to limit fees to be
5 paid to any attorneys so hired; providing for reimbursement of actual expenses incurred
6 by attorneys in the course of representation; and providing for sharing cost of collection
7 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 ENFORCMENT
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~~ may to 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 units
18 shall be prorated on the basis of the total amount of taxes due them.

19 (c) The county commission may hire an attorney to prosecute any such action for the
20 collection of such delinquent taxes or to defend the county's interest in any proceeding before any
21 United States Bankruptcy Court: *Provided*, That any attorney so hired shall be reimbursed for

22 actual expenses directly incurred in the course of the representation: *Provided, however,* That in
23 any engagement of any attorney so hired under this section, the county commission shall enter
24 into a written representation agreement with the attorney so engaged, which written
25 representation agreement shall include, in the case of an hourly fee agreement, a cumulative cap
26 of any hourly fees charged on a per-case basis or, in the case of a contingency fee agreement, a
27 percentage cap of any money or things of value recovered in the representation. Any attorney
28 fees or other costs associated with the collection of taxes, not heretofore provided for in
29 subsection (b) of this section, shall be paid from the taxes so collected prior to the distribution to
30 the various taxing units.