

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2638**

BY DELEGATES MARTIN, WILSON, DEAN, HAMILTON,

EVANS, A., PAYNTER, HILL AND MAYNARD

[Introduced February 21, 2017;

Referred to Committee on Political Subdivisions then

Finance.]

1 A BILL to amend and reenact §7-1-3d of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §7-17-12 of said code, all relating to county commissions authorizing  
 3 reasonable fees charged for fire department or fire company response to fires or other  
 4 calls for assistance; describing the means to be used for calculating and charging fees for  
 5 responding to fire or other calls for assistance; prohibiting fire company or fire department  
 6 from seeking reimbursement where the property is assessed a fire service levy or fire  
 7 service fee; and establishing the method for revising and reauthorizing the county fire  
 8 service fee by the county commission.

*Be it enacted by the Legislature of West Virginia:*

1 That §7-1-3d of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that §7-17-12 of said code be amended and reenacted, all to read as follows:

#### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

##### **§7-1-3d. Levy for, establishment and operation of fire prevention units; financial aid.**

1 (a) The county commission in any county may levy for and may erect, maintain and  
 2 operate fire stations and fire prevention units and equipment therefor in the county: *Provided,*  
 3 That if a county commission establishes a separate fire protection unit in any ~~city~~ municipality in  
 4 West Virginia that is now operating under the provisions of the state Civil Service Act for paid fire  
 5 departments, then the new unit shall be operated in accordance with the provisions of the Civil  
 6 Service Act.

7 (b) Any county commission may render financial aid to any one or more public fire  
 8 protection facilities in operation in the county for the general benefit of the public in the prevention  
 9 of fires.

10 (c) Any county commission may ~~also~~ authorize ~~volunteer~~ fire companies or ~~paid fire~~  
 11 departments, as authorized by the West Virginia State Fire Marshal, to charge reasonable  
 12 reimbursement fees for personnel and equipment used in performing firefighting ~~services~~  
 13 functions, victim rescue or cleanup of debris or hazardous materials ~~by department personnel or~~

14 such other service as authorized by the Fire Marshal. The rate for any such fees to be charged  
15 to real or personal property owners or other persons responsible or liable for payment for such  
16 services ~~must~~ shall be approved and established by ordinance by the county commission.  
17 Nothing in this section shall deem an insurance company liable for payment for such services  
18 where coverage is limited or excluded by an insurance contract.

19 (d) ~~and~~ Reimbursement fees for services rendered by the fire company or fire department  
20 must be reasonable ~~Provided, however, That no~~ and the total fee for responding to any single  
21 incident or accident ~~shall~~ may not exceed ~~\$500~~ \$1,000, except: (1) An incident or accident  
22 involving hazardous materials; (2) a fire incident at commercial use properties or structures; or  
23 (3) a fire incident at industrial use properties or structures: Provided, That the fee for any incident  
24 involving a single-family dwelling assessed against an owner-occupied residence may not exceed  
25 \$1,000.

26 (e) The county commission shall require that any fees charged pursuant to the authority  
27 conferred by this section must be in writing and be itemized by specific services rendered and the  
28 rate for each service and may include fees of equipment and personnel responding with the first  
29 due fire company or fire department by any and all mutual aid fire companies or fire departments.

30 (f) Reimbursement rates and fees authorized in this section shall be calculated as follows:

31 (1) The fee rate per hour, or one-half hour portion thereof, for motor powered firefighting  
32 apparatus shall be based upon the fully equipped apparatus based upon the type of motor  
33 powered firefighting apparatus including future anticipated replacement cost of the motor powered  
34 apparatus on a twenty-year replacement basis and a reasonable allowance for accounting.

35 (2) The fee rate per hour, or one-half hour increment portion thereof, for firefighters shall  
36 be based upon a firefighter fully equipped with personal protective equipment consisting of  
37 helmet, hood, gloves, bunker coat, bunker pants, boots, personal light and personal self-  
38 contained breathing apparatus and spare bottle, including future anticipated replacement cost on  
39 a ten-year basis, and may include cost of remuneration, insurance, workers' compensation

40 protection and a reasonable allowance for accounting.

41 (3) The actual cost of replacing hose, tools, equipment, sustenance provisions or  
42 dispensable supplies used, damaged or lost in the course of answering the call for assistance.  
43 Hose, tools or equipment damaged in the course of answering the call for assistance shall be  
44 retained for a period of not less than six months following the date of loss to permit review,  
45 appraisal and adjustment by possible insurers answering the claim for reimbursement.

46 (4) The time basis for calculating the total fee for a specific motor powered firefighting  
47 apparatus commences at the time the apparatus initiates response, as recorded by the  
48 emergency dispatch center, and concludes at the time the apparatus leaves, or clears, from the  
49 scene of the accident or incident.

50 (5) The time basis for calculating the total fee for firefighters responding to the incident  
51 scene commences at the time the first apparatus for the respective fire company or fire  
52 department initiates response to the call for assistance and concludes at the time the last  
53 firefighting apparatus leaves, or clears, from the scene of the accident or incident as reported to  
54 and recorded by the emergency dispatch center of the county.

55 (g) The county commission may not authorize, and the fire company or fire department  
56 may not assess, reimbursement for any services rendered in response to a call for assistance to  
57 a property: (1) Previously assessed for fire service fees, whether established by a county  
58 commission or by a municipality and the assessed fire service fees are not delinquent; or (2)  
59 situated in a county where a fire protection levy was authorized by election of the voters and is in  
60 effect.

## **ARTICLE 17. COUNTY FIRE BOARDS.**

### **§7-17-12. County fire service fees; petition; election; dedication; and increase.**

1 (a) Every county commission which provides fire protection services has plenary power  
2 and authority to provide by ordinance for the continuance or improvement of such service, to  
3 make regulations with respect thereto and to impose by ordinance, upon the users of such

4 services, reasonable fire service rates, fees and charges to be collected in the manner specified  
5 in the ordinance. However, before a county commission can impose by ordinance, upon the users  
6 of such service, a reasonable fire service fee, ten percent of the qualified voters shall present a  
7 petition duly signed by them in their own handwriting and filed with the clerk of the county  
8 commission directing that the county commission impose such a fee. The county commission  
9 shall not have a lien on any property as security for payments due under the ordinance. Any  
10 ordinance enacted under the provisions of this section shall be published as a Class II legal  
11 advertisement in compliance with the provisions of article three, chapter fifty-nine of this code,  
12 and the publication area for such publication shall be the county in which the county fire board is  
13 located. In the event thirty percent of the qualified voters of the county by petition duly signed by  
14 them in their own handwriting and filed with the clerk of the county commission within forty-five  
15 days after the expiration of such publication protest against such ordinance as enacted or  
16 amended, the ordinance may not become effective until it is ratified by a majority of the legal votes  
17 cast thereon by the qualified voters of such county at any primary, general or special election as  
18 the county commission directs. Voting thereon may not take place until after notice of the  
19 submission has been given by publication as above provided for the publication of the ordinance  
20 after it is adopted.

21 (b) The powers and authority hereby granted to county commissions are in addition to and  
22 supplemental to the powers and authority otherwise granted to them by other provisions of this  
23 code.

24 (c) Any fees imposed under this article are dedicated to the county fire board for the  
25 purposes provided in this article.

26 (d) ~~In the event~~ If the county fire board determines an increase in any such fee imposed  
27 by this section is necessary, it the county fire board shall by resolution request the county  
28 commission for such an increase. ~~Procedures set forth in this section for the initial levy of such a~~  
29 ~~fee shall be followed by the county commission in the event an increase is sought. the county~~

30 ~~fire board shall, by resolution, request the county commission for such an increase. Procedures~~  
31 ~~set forth in this section for the initial levy of such a fee shall be followed by the county commission~~  
32 ~~in the event an increase is sought~~ The county commission shall, at the next scheduled meeting  
33 of the county commission, proffer an ordinance and set the date and time for a public hearing for  
34 purposes of receiving comment regarding the proposed increase in fees. The date for the public  
35 hearing shall be conducted within the thirty-day period following the county commission meeting  
36 following the first reading of the ordinance. The first reading of the ordinance may be by title. The  
37 public hearing shall be conducted to receive public comment regarding the proposed increase in  
38 fees proposed in the proffered ordinance. Notice of the proffered ordinance and public hearing  
39 shall be announced by publication of a Class I legal advertisement in compliance with the  
40 provisions of article three, chapter fifty-nine of this code and the publication area for the publication  
41 shall be the county in which the county fire board is located. The county commission shall adopt  
42 the ordinance establishing the fire service fees, without revision, at the meeting next following the  
43 second reading of the ordinance. The second reading may be by reading the title only, unless  
44 requested to be read in its entirety.

NOTE: The purpose of this bill is to allow fire companies or fire departments to assess fees to reimburse the fire company or fire department responding to calls for assistance when: the property is not within a county having a fire levy; or, the property is assessed the county's or municipality's fire service fee and the fire service fee is not delinquent. The bill establishes the basis for calculating the rates for reimbursing the fire company or fire department for: services provided or tools, equipment or dispensable items used, damaged or lost while providing response to a call for assistance.

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