

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 146**

4 (By Senators Unger and Beach)

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6 [Originating in the Committee on the Judiciary;

7 reported March 7, 2013.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new section, designated §50-3-2c, relating to
13 permitting magistrate courts to collect unpaid costs, fines,
14 fees, forfeitures, restitution and penalties it has imposed on
15 a defendant; permitting those unpaid amounts to be deducted
16 from a defendant's income tax refund; providing a process for
17 deducting and distributing those unpaid amounts; creating the
18 Magistrate Fines and Fees Collection Fund; permitting the Tax
19 Commissioner to charge an administrative fee; and providing
20 rule-making authority.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §50-3-2c, to read as
24 follows:

1 **ARTICLE 3. COSTS, FINES AND RECORDS.**

2 **§50-3-2c. Withholding of personal income tax refunds for failure**
3 **to pay fines and costs or failure to appear in court.**

4 (a) If costs, fines, fees, forfeitures, restitution or
5 penalties imposed by the magistrate court upon conviction of a
6 person for a criminal offense as defined by this code or for
7 failure to appear are not paid in full within one year of the
8 judgment, the magistrate court clerk or, upon a judgment rendered
9 on appeal, the circuit clerk shall notify the Tax Commissioner that
10 the defendant has failed to pay the costs, fines, forfeitures or
11 penalties assessed by the court. The notice provided by the
12 magistrate court to the Tax Commissioner must include the
13 defendant's Social Security number. The Tax Commissioner, or his
14 or her designee, shall withhold from any personal income tax refund
15 due and owing to a defendant the costs, fines, fees, forfeitures,
16 restitution or penalties due, the Tax Commissioner's administration
17 fee for the withholding and any and all fees that the magistrate
18 court would have collected had the defendant appeared: *Provided,*
19 That no withholding shall be made under this section if there is an
20 unsatisfied withholding request made pursuant to section two-b,
21 article ten, chapter eight of this code. The Tax Commissioner's
22 administration fee shall not exceed \$25, unless this maximum amount
23 is increased by legislative rule promulgated in accordance with
24 article three, chapter twenty-nine-a of this code. The

1 administrative fees deducted shall be deposited in the special
2 revolving fund hereby created in the State Treasury, which shall be
3 designated as the Magistrate Fines and Fees Collection Fund, and
4 the Tax Commissioner shall make such expenditures from the fund as
5 he or she deems appropriate for the administration of this
6 subsection.

7 (b) After deduction of the Tax Commissioner's administration
8 fee, the Tax Commissioner shall remit to the magistrate court all
9 remaining amounts withheld pursuant to this section and the
10 magistrate court shall distribute applicable costs, fines, fees,
11 forfeitures, restitution or penalties owed to the appropriate fund
12 or payee, as applicable and listed in subsection (j), section two-a
13 of this article. After the costs, fines, fees, forfeitures,
14 restitution or penalties are withheld, the Tax Commissioner shall
15 refund any remaining balance due the defendant. If the refund is
16 not sufficient to cover all the costs, fines, fees, forfeitures,
17 restitution or penalties being withheld pursuant to this section,
18 the Tax Commissioner's administration fee shall be retained by the
19 Tax Commissioner and the remaining money withheld shall be remitted
20 by the Tax Commissioner to the magistrate court. The magistrate
21 court shall then allocate the money so remitted to the magistrate
22 court in the manner listed in subsection (j), section two-a of this
23 article.

24 (c) In the event the costs, fines, fees, forfeitures,

1 restitution or penalties exceed the defendant's income tax refund,
2 the Tax Commissioner shall withhold the remaining balance in
3 subsequent years until such time as the costs, fines, fees,
4 forfeitures, restitution or penalties owed are paid in full. The
5 Tax Commissioner shall remit the moneys that he or she collects to
6 the appropriate magistrate court no later than July 1 of each year.
7 If the magistrate court subsequently determines that any costs,
8 fines, fees, forfeitures, restitution or penalties were erroneously
9 imposed, the magistrate court shall promptly notify the Tax
10 Commissioner. If the refunds have not been withheld and remitted,
11 the Tax Commissioner may not withhold and remit payment to the
12 magistrate court and shall so inform the magistrate court. If the
13 refunds have already been withheld and remitted to the magistrate
14 court, the Tax Commissioner shall so inform the magistrate court.
15 In either event, all refunds for erroneously imposed costs, fines,
16 forfeitures or penalties shall be made by the magistrate court and
17 not by the Tax Commissioner.

18 (d) *Rules.* - The Tax Commissioner may propose for legislative
19 approval such rules as may be useful or necessary to carry out the
20 purpose of this section and to implement the intent of the
21 Legislature. Rules shall be promulgated in accordance with article
22 three, chapter twenty-nine-a of this code.