

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**For**

**Committee Substitute**

**For**

**Senate Bill 27**

BY SENATORS KIRKENDOLL, MILLER AND GAUNCH,

*original sponsors*

[Passed March 5, 2016; in effect 90 days from passage]



1 AN ACT 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 prosecute actions or defend the county's interest in any  
4 proceeding before any United States Bankruptcy Court; providing for outside attorney to  
5 be reimbursed for actual expenses directly incurred in the representation; providing that  
6 engagements of outside counsel be in writing; requiring that hourly engagements with  
7 outside attorneys contain a cumulative cap of any hourly fees charged on a per-case  
8 basis; requiring that contingency fee agreements with outside attorneys contain a  
9 percentage cap on money or things of value recovered; and requiring attorney fees or  
10 costs be paid prior to distribution to 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 is not required to pay any filing fee, cost, bond or security, as may otherwise  
2 be required of other civil litigants by provisions of this code, in any action in which the sheriff  
3 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 may be brought after five years from the  
4 time the action accrued.

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

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

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2016.

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*Governor*