

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2576

By Delegates Linville, Howell, Foster, Steele, Cannon,
Householder, Longanacre, Adkins, Chiarelli, and
Phillips

[Introduced January 16, 2023; Referred to the
Committee on Political Subdivisions then the
Judiciary]

1 A BILL to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to
 2 making the practice of assessing a municipality user fee when the employee was not
 3 working in that municipality unlawful.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13. Special charges for municipal services.

1 (a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes
 2 any essential or special municipal service, including, but not limited to, police and fire protection,
 3 parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning,
 4 street lighting, street maintenance and improvement, sewerage and sewage disposal, and the
 5 collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has
 6 plenary power and authority to provide by ordinance for the installation, continuance,
 7 maintenance, or improvement of the service, to make reasonable regulations of the service, and to
 8 impose by ordinance upon the users of the service reasonable rates, fees, and charges to be
 9 collected in the manner specified in the ordinance.

10 (b) Any sewerage and sewage disposal service and any service incident to the collection
 11 and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the
 12 provisions of Chapter 24 of this code.

13 (c) A municipality shall not have a lien on any property as security for payments due under
 14 subsection (a) of this section except as provided in subsection (d) of this section.

15 (d) A municipality may enact an ordinance, pursuant to this section, permitting it to file a
 16 lien on real property located within the municipal corporate limits for unpaid and delinquent fire,
 17 police, or street fees. The ordinance must provide an administrative procedure for the
 18 municipality's assessment and collection of the fees. The administrative procedure must require
 19 that, before any lien is filed, the municipality will give notice to the property owner, by certified mail,
 20 return receipt requested, that the municipality will file the lien unless the delinquency is paid by a

21 date stated in the notice, which must be no less than 90 days from the date the notice is mailed.
22 The administrative procedure must include the right to appeal to the circuit court of the county in
23 which the real property is located. The circuit court shall consider the appeal under its general
24 authority, including but not limited to §51-2-2(f) of this code.

25 (e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or
26 substantially amended under the provisions of this section shall be published as a Class II legal
27 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication
28 area for the publication is the municipality.

29 (f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed
30 by them in their own handwriting and filed with the recorder of the municipality within 45 days after
31 the expiration of the publication, protest against the ordinance as enacted or amended, the
32 ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the
33 qualified voters of the municipality at a regular municipal election or special municipal election, as
34 the governing body directs. Voting shall not take place until after notice of the submission is given
35 by publication as provided in subsection (e) of this section.

36 (g) The powers and authority granted to municipalities and to the governing bodies of
37 municipalities in this section are in addition and supplemental to the powers and authority named
38 in any charters of the municipalities.

39 (h) Notwithstanding any other provisions of this section, if rates, fees, and charges
40 provided in this section are imposed by the governing body of a municipality for the purpose of
41 replacing, and in amounts approximately sufficient to replace in its general fund amounts
42 appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to
43 an election duly called and held under the Constitution and laws of the state to authorize the
44 issuance and sale of the municipality's general obligation bonds for public improvement purposes,
45 the call for the election shall state that the governing body of the municipality proposes to impose
46 rates, fees, and charges in specified amounts under this section for the use of one or more of the

47 services specified in subsection (a) of this section, which shall be related to the public
48 improvement proposed to be made with the proceeds of the bonds, no notice, publication of
49 notice, or referendum, or election or other condition or prerequisite to the imposition of the rates,
50 fees, and charges shall be required or necessary other than the legal requirements for issuance
51 and sale of the general obligation bonds.

52 (i) Payments for rates, fees, and charges due under this section that are postmarked after
53 the due date by which they are owed shall be considered late and may be subject to late fees or
54 penalties: *Provided*, That payments that are received by the municipality after the due date, but
55 that were postmarked on or before the due date shall be considered to be on time and shall not be
56 assessed any late fees or penalties.

57 (j) Notwithstanding any provision in this chapter to the contrary, a municipality shall not
58 assess a user fee for any person who was not present in the municipality in the performance of his
59 or her job. The employer shall provide the municipality with a sworn affidavit that the employee
60 was not working within the municipality during the times periods that are applicable and, if a
61 charge was assessed incorrectly, the municipality shall issue a credit to that employee for future
62 payments.

NOTE: The purpose of this bill is to make unlawful the practice of municipalities' assessing user fees when employees are not present in the municipality in the performance of his or her job.

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