

## H. B. 2723

(By Delegate Faircloth)

[Introduced February 25, 2013; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §8-10-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §50-2-3b; and to amend said code by adding thereto two new sections designated §59-1-11b and §59-1-11c, relating to bail bond surcharge, providing for collection of a surcharge and creating a special revenue account in the State Treasury to be known as the Bail Bond Surcharge Special Fund.

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

That §8-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §50-2-3b; and that said code be amended by adding thereto two new sections designated §59-1-11b and §59-1-11c, all to read as follows:

### **CHAPTER 8. MUNICIPAL CORPORATIONS.**

#### **ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

##### **§8-10-2. Municipal court for municipalities; bond surcharge.**

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Additionally, any city may provide by charter provision and any municipality may provide by ordinance, that in the absence of or in the case of the inability of the municipal court judge to perform his or her duties, the municipal court clerk or other official designated by charter or ordinance may act as municipal court judge: *Provided*, That the municipal court clerk or other official designated by charter or ordinance to act as municipal court judge shall comply with the requirements set forth in subsections (b) and (c) of this section, as well as any other requirements that the city by charter provision or the municipality by ordinance may require.

(b) Any person who makes application for appointment to, or who files to become a candidate in any election for municipal judge, shall first submit to a criminal background check, to be conducted by the State Police. The cost of the criminal background check shall be paid by the applicant or candidate. The result of each background check conducted in accordance with this section shall be forwarded to the municipal court clerk or recorder whose duty it is to review the results and confirm the eligibility of the applicant or candidate to serve as a municipal judge. No person convicted of a felony or any misdemeanor crime set forth in articles eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one, of this code is eligible to become a municipal judge.

(c) Any person who assumes the duties of municipal court judge who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge shall, additionally, be required to attend a course, on an annual basis for the purpose of continuing education: *Provided*, That the forgoing additional education requirement does not apply to municipal judges who are attorneys admitted to practice in this state. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals, except that the jury in municipal court shall consist of twelve members.

(e) Each municipal court judge or municipal court clerk shall collect an amount equal to five percent of each cash bond, as ordered by the court, to be paid by the purchaser of the bond, and shall deposit the surcharge amount into the special fund created in the State Treasury in section eleven-c, article one, chapter fifty-nine of this code. Bail bondsmen shall collect an amount equal to five percent of each bail bond from the purchaser of the bond and shall deposit the surcharge amount into the special fund.

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 2. JURISDICTION AND AUTHORITY.**

#### **§50-2-3b. Surcharge to be collected on bonds.**

Each magistrate shall collect an amount equal to five percent of each cash bond, as ordered by the court, to be paid by the purchaser of the bond, and shall deposit the surcharge amount into the special fund created in the State Treasury at section eleven-c, article one, chapter fifty-nine of this code. Bail bondsmen shall collect an amount equal to five percent of each bail bond from the purchaser of the bond and shall deposit the surcharge amount into the special fund.

## **CHAPTER 59. FEES, ALLOWANCES AND COSTS;**

### **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-11b. Surcharge to be collected on bonds.**

Each clerk of a circuit court shall collect an amount equal to five percent of each cash bond as ordered by the court, to be paid by the purchaser of the bond, and shall deposit the surcharge amount into the special fund created in the State Treasury at section eleven-c of this article. Bail bondsmen shall collect a five percent surcharge on each bail bond from the purchaser of the bond and shall deposit the surcharge amount into the special fund.

**59-1-11c. Bond Surcharge Special Fund created; surcharge to be collected on bail and cash bonds; surcharge is nonrefundable.**

(a) There is hereby created in the State Treasury a special interest-bearing revenue account known as the Bond Surcharge Special Fund. A surcharge of five percent on each cash bond, to be paid by the person purchasing the bond, shall be collected by the applicable magistrate or clerk of the court in which a criminal defendant is charged, and paid into the fund. Bail bondsmen shall collect from the purchaser of the bond a five percent surcharge on each bail bond, and shall deposit the surcharge amount into the special fund. The surcharge is in the nature of a processing fee and is nonrefundable.

(b) All costs and expenses incurred pursuant to this section, including administrative, shall be paid from the fund. All remaining money collected in the fund, including accumulated interest, shall be distributed annually by the State Treasurer in the following manner: Fifty percent of the money to the Commissioner of Corrections for regional jails, twenty-five percent to the Superintendent of State Police, and twenty-five percent to be disbursed to the governing agencies of the counties, with the amounts to be allocated in accordance with county populations. The governing agency of each county shall disburse the funds to local law-enforcement agencies within each county.

NOTE: The purpose of this bill is to provide for a five percent surcharge on bail bonds to be distributed to benefit regional jails, State Police, county sheriffs and municipal police departments.

Strikethroughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§§50-2-3b, 59-1-11b and 59-1-11c are new; therefore, they have been completely underscored.