

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2968**

5 (By Mr. Speaker (Mr. Armstead) and Delegates Ashley, Bates, Perry, Kessinger, Hicks, Cooper,
6 Shott, McCuskey and Arvon)

7
8 (Originating in the House Committee on Finance.)

9 [February 27, 2015]

10 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating
11 to exempting from property tax certain real properties in this state owned by nonprofit
12 youth organizations and built at a cost of at least \$100 million; specifying restrictions
13 affecting the property; specifying permitted activities; requiring property owner to pay
14 one and one quarter percent of gross revenues from specified uses, operations and
15 activities; specifying how one and one quarter percent fee is administered, specifying how
16 monies derived from one and one quarter percent fee are distributed; requiring reports;
17 and defining terms.

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

19 That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted
20 to read as follows:

21 **ARTICLE 3. ASSESSMENTS GENERALLY.**

22 **§11-3-9. Property exempt from taxation.**

1 (a) All property, real and personal, described in this subsection, and to the extent limited by
2 this section, is exempt from taxation:

3 (1) Property belonging to the United States, other than property permitted by the United
4 States to be taxed under state law;

5 (2) Property belonging exclusively to the state;

6 (3) Property belonging exclusively to any county, district, city, village or town in this state
7 and used for public purposes;

8 (4) Property located in this state belonging to any city, town, village, county or any other
9 political subdivision of another state and used for public purposes;

10 (5) Property used exclusively for divine worship;

11 (6) Parsonages and the household goods and furniture pertaining thereto;

12 (7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners
13 and holders hereafter issued and sold by churches and religious societies for the purposes of securing
14 money to be used in the erection of church buildings used exclusively for divine worship or for the
15 purpose of paying indebtedness thereon;

16 (8) Cemeteries;

17 (9) Property belonging to, or held in trust for, colleges, seminaries, academies and free
18 schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities
19 and furniture;

20 (10) Property belonging to, or held in trust for, colleges or universities located in West
21 Virginia, or any public or private nonprofit foundation or corporation which receives contributions

1 exclusively for such college or university, if the property or dividends, interest, rents or royalties
2 derived therefrom are used or devoted to educational purposes of such college or university;

3 (11) Public and family libraries;

4 (12) Property used for charitable purposes and not held or leased out for profit;

5 (13) Property used for the public purposes of distributing electricity, water or natural gas or
6 providing sewer service by a duly chartered nonprofit corporation when such property is not held,
7 leased out or used for profit;

8 (14) Property used for area economic development purposes by nonprofit corporations when
9 the property is not leased out for profit;

10 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used
11 exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if
12 not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority
13 organization affiliated with a university or college or property owned by a nonprofit housing
14 corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a
15 university or college, when the property is used as residential accommodations or as a dormitory for
16 members of the organization;

17 (16) All property belonging to benevolent associations not conducted for private profit;

18 (17) Property belonging to any public institution for the education of the deaf, ~~dumb~~
19 intellectually disabled or blind or any hospital not held or leased out for profit;

20 (18) Houses of refuge and mental health facility or orphanage;

21 (19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

1 (20) Fire engines and implements for extinguishing fires, and property used exclusively for
2 the safekeeping thereof, and for the meeting of fire companies;

3 (21) All property on hand to be used in the subsistence of livestock on hand at the
4 commencement of the assessment year;

5 (22) Household goods to the value of \$200, whether or not held or used for profit;

6 (23) Bank deposits and money;

7 (24) Household goods, which for purposes of this section means only personal property and
8 household goods commonly found within the house and items used to care for the house and its
9 surrounding property, when not held or used for profit;

10 (25) Personal effects, which for purposes of this section means only articles and items of
11 personal property commonly worn on or about the human body or carried by a person and normally
12 thought to be associated with the person when not held or used for profit;

13 (26) Dead victuals laid away for family use;

14 (27) All property belonging to the state, any county, district, city, village, town or other
15 political subdivision or any state college or university which is subject to a lease purchase agreement
16 and which provides that, during the term of the lease purchase agreement, title to the leased property
17 rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the
18 property;

19 (28) Personal property, including vehicles that qualify for a farm use exemption certificate
20 pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed
21 exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution:

1 *Provided*, That this exemption only applies in the case of such personal property used on a farm or
2 farming operation that annually produces for sale agricultural products, as defined in rules of the Tax
3 Commissioner; ~~and~~

4 (29) Real property owned by a nonprofit organization whose primary purpose is youth
5 development by means of adventure, educational or recreational activities for young people, which
6 real property contains a facility built with the expenditure of not less than \$100 million that is
7 capable of supporting additional activities within the region or the state and which is leased or used
8 to generate revenue for the nonprofit organization whether or not the property is used by the
9 nonprofit organization for its nonprofit purpose, subject to the requirements, limitations and
10 conditions set forth in subsection (h) of this section; and

11 ~~(29)~~ (30) Any other property or security exempted by any other provision of law.

12 (b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt
13 from taxation which has been purchased or procured for the purpose of evading taxation whether
14 temporarily holding the same over the first day of the assessment year or otherwise.

15 (c) Real property which is exempt from taxation by subsection (a) of this section shall be
16 entered upon the assessor's books, together with the true and actual value thereof, but no taxes may
17 be levied upon the property or extended upon the assessor's books.

18 (d) Notwithstanding any other provisions of this section, this section does not exempt from
19 taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other
20 charitable corporations or organizations, including any public or private nonprofit foundation or
21 corporation existing for the support of any college or university located in West Virginia, unless such

1 property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and
2 immediately for the purposes of the corporations or organizations.

3 (e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines
4 to ensure uniform assessment practices statewide to effect the intent of this section.

5 (f) Inasmuch as there is litigation pending regarding application of this section to property
6 held by fraternities and sororities, amendments to this section enacted in the year 1998 shall apply
7 to all cases and controversies pending on the date of such enactment.

8 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the 2005
9 regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence
10 upon the effective date of the amendment.

11 (h) Nonprofit youth organization exemption - Limitations, Conditions, Collection and
12 administration of one and one quarter percent fee, limitations and distribution of monies.

13 (1) The exemption from ad valorem taxation provided pursuant to the provisions of
14 subdivision (29), subsection (a) of this section does not apply to a property owned by a nonprofit
15 organization otherwise qualifying for the exemption but which property or facilities are used for-
16 profit or outside the primary purpose of the owner which result in unrelated business taxable income
17 as defined by Section 512 of the Internal Revenue Code of 1986, as amended, unless the income is
18 generated by an activity upon which the one and one quarter percent fee authorized by subdivision
19 (2) of this section is applied as provided in subdivision (3) of this subsection.

20 (2) The owner of real property exempt from ad valorem taxation under subdivision (29),
21 subsection (a) of this section shall pay an amount equal to one and one quarter percent of the gross

1 revenues the owner receives in accordance with this subsection. For purposes of this subsection,
2 "gross revenues" means the gross amount received by the owner as payment for use of the property
3 or the facilities thereon.

4 (3) Gross revenues derived from the following facilities, uses, activities and operations are
5 subject to a fee of one and one quarter percent of such gross revenues:

6 (A) Gross revenues derived from the use of lodging and campground facilities by persons
7 participating in meetings and multiday spectator sports or multiday recreational, celebratory or
8 ceremonial events held on-site where on-site lodging or camping is offered as part of the program.
9 For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly or
10 conference of two or more persons who have deliberately convened at a single specific location at
11 a single specified time and date for a common specific purpose.

12 (B) Gross revenues derived from any retail store located at the facility that is open only to
13 those persons who are attending meetings, spectator sports, recreational, celebratory or ceremonial
14 events held on-site at the facility.

15 (C) Gross revenues derived from operations of gift shops at a welcome or information center
16 located adjacent to a public highway operated by the nonprofit organization which is open to the
17 general public.

18 (D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports and
19 climbing facilities used by the general public on a for-profit basis (i) Under a written agreement with
20 a licensed commercial outfitter operating a business utilizing zip-lines, canopy tours, wheeled sports
21 or climbing areas of a similar nature in the same or an adjacent county where the facilities are

1 located; and (ii) When the property or facilities are used as part of a training or advanced experience
2 offered by the licensed commercial outfitter.

3 (E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled
4 sports facilities or activities, climbing facilities or activities and the use or operation of other sporting
5 facilities on the exempt property that are leased on a for-profit basis for spectator events, such as
6 concerts, spectator sporting events or exhibitions or similar mass gathering events.

7 (F) Gross revenues derived from leases or agreements for use of the property for meetings
8 and multiday spectator sports or events or multiday recreational, celebratory or ceremonial events,
9 held on site.

10 (4) Notwithstanding any other provision of this section to the contrary, programs or activities
11 occurring on the property or its facilities held in conjunction with a government organization or
12 sponsored by other nonprofit organizations serving youth, veterans, military services, public service
13 agencies including, fire, police, emergency and search and rescue services, government agencies,
14 schools and universities, health care providers and similar organizations or groups which are
15 designed to provide opportunities for learning or training in the areas of leadership, character
16 education, science, technology, engineering, arts and mathematics (STEAM) programs, physical
17 challenges, sustainability, conservation and outdoor learning shall be considered a charitable or
18 nonprofit use for the purposes of this section and not subject to the one and one quarter percent fee.

19 (5) Notwithstanding any other provision of this section to the contrary, activities open to the
20 public through individual visitor passes allowing tours and access to the property and its facilities
21 for the purpose of viewing or participating in demonstrations, programs and facilities providing

1 information and experiences consistent with the owner's nonprofit purposes where zip-lines, canopy
2 tours, wheeled sports or climbing facilities are merely components of the demonstrations, programs
3 and facilities used shall be considered a charitable or nonprofit use for the purposes of this section
4 and not subject to the one and one quarter percent fee: *Provided*, That such individual visitor passes
5 may not include the rental or use of on-site overnight lodging or camping facilities.

6 (6) Administration –

7 (A) The sheriff of the county wherein the majority of the acreage of the property is located
8 as specified in the deed to such property, shall collect, on a monthly basis, all monies derived from
9 the fee of one and one quarter percent of the gross revenues imposed under this subsection.

10 (B) The sheriff of the county wherein the majority of the acreage of the property is located
11 as specified in the deed to such property, shall prescribe such forms and schedules as may be
12 necessary for the efficient, accurate, and expeditious payment and reporting of the one and one
13 quarter percent fee specified in this subsection on gross revenues.

14 (C) The sheriff of the county wherein the majority of the acreage of the property is located
15 as specified in the deed to such property, shall administer the fee imposed under this subsection,
16 including refunds and adjustments.

17 (D) Payment, administration and compliance of fee payers and administrators shall be subject
18 to audit by the Office of Chief Inspector.

19 (E) All monies so collected, net of refunds and adjustments, shall be paid into a special
20 account in the State Treasury, which is hereby created, and the amount thereof shall be distributed

1 and paid annually, by the State Treasurer, on October 1 of each year, into the funds and to the
2 distributees specified in subdivision (7) of this subsection in the amounts specified therein.

3 (7) Distribution –

4 (A) One percent of monies so collected, net of refunds and adjustments, shall be paid
5 annually to the Tourism Promotion Fund established pursuant to section twelve, article two, chapter
6 five-b of this code.

7 (B) One percent of monies so collected, net of refunds and adjustments, shall be paid
8 annually to the sheriff of the county where the property is located which, but for the exemption
9 provided in subdivision (29), subsection (a) of this section, would be entitled to receive ad valorem
10 taxes on the property. The sheriff shall treat all such payments in the same manner as payments in
11 lieu of taxes, and such payments are subject to the adjustment mandated under section twelve, article
12 nine-a, chapter eighteen of this code. For properties located in more than one county, the amount
13 paid to the sheriff of the county shall be in proportion to the total number of acres located in each
14 county at the close of the fiscal year, as specified in the deed to such property.

15 (C) Two percent of monies so collected, net of refunds and adjustments, shall be divided
16 equally and paid annually into separate accounts established and maintained by the sheriffs of the
17 county or counties wherein the property is located and the sheriffs of any other county that is within
18 the jurisdiction of the same economic development authority as the county or counties wherein the
19 property is located to be used solely for the establishment and delivery of a science, technology,
20 engineering, art and math (STEAM) program in conjunction with the owner of the exempt property.
21 The funds shall be divided equally for use in each county and the programs must be approved by the

1 respective county superintendents of schools. Expenditures from the accounts shall be authorized
2 by the county superintendent of schools.

3 (8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event
4 being held on-site wherein on-site lodging or camping is offered as part of the program, any
5 applicable hotel occupancy tax and state and local consumers sales and service tax and use tax shall
6 be paid based upon the actual location of such lodging.

7 (9) If merchants are allowed to do business on the property, the owner or lessee of the
8 property shall offer space to local merchants on terms at least as favorable as are offered to other
9 merchants.

10 (10) For the purposes of this subsection, owner includes the owner holding record title to the
11 property and its affiliates to the extent they are commonly owned, controlled or have the power to
12 appoint the governing body of the affiliate.

13 (11) The Tourism Commission shall include in its annual report submitted to the Governor
14 and the Legislature a summary of funds paid into the Tourism Promotion Fund and recommendations
15 pertaining to the administration of this section.

16 (12) This subsection may not be construed to prohibit the owner of property otherwise subject
17 to this section from having portions of the property severed from the remainder of the property,
18 assessed and taxed as if nonexempt and thereafter conducting business on such property the same
19 as any other nonexempt property: *Provided,* That the area of property to be severed shall be approved
20 by the county commission wherein the property lies so as to include in the severance all property
21 substantially supporting the for profit or business activity giving rise to the specific purpose of the

1 severance and excluding all property entitled to the continued benefits of this Act.

2 (i) To assure the implementation of subsection (h) of this section does not harm local and
3 regionally located businesses by use of the tax exempt facility in a manner that cause unfair
4 competition and unreasonable loss or revenue to those businesses, studies shall be periodically
5 conducted to assure that further legislation is in order regarding the uses of the tax exempt facility.

6 The County commission of any county where such a property is located shall report to the Joint
7 Committee on Government and Finance by the first day of January every five years after the effective
8 date of this section. The report shall include information on any unfair business competition
9 resulting from the establishment of the non-profit status, and include a report of the costs and
10 benefits to its county of the tax exemption and associated fee, including an audit of that county's use
11 of the net revenues. The West Virginia University Bureau of Business and Economic Research in
12 coordination of the Center for Business and Economic Research at Marshall University, by January
13 1, two thousand twenty, shall undertake a study and report to the Committee, the economic impact
14 of this tax exemption and fee to the county and that region of the state, and make any
15 recommendations regarding the benefits and disadvantages for continuing the provision of this tax
16 exemption and fee, included, but not limited to, the impacts to other small and large businesses in
17 the county, the costs to the county has incurred as a result of use of the facility, and any other
18 relevant data that the universities may deem relevant.