

E N G R O S S E D

COMMITTEE SUBSTITUTE

for

H. B. 2968

(BY DELEGATE(S) MR. SPEAKER (MR. ARMSTEAD),
ASHLEY, BATES, PERRY, KESSINGER, HICKS, COOPER, SHOTT,
MCCUSKEY AND ARVON)

(Originating in the House Committee on Finance.)

[February 27, 2015]

A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from property tax certain real properties in this state owned by nonprofit youth organizations and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying

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how one and one quarter percent fee is administered, specifying how monies derived from one and one quarter percent fee are distributed; requiring reports; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ASSESSMENTS GENERALLY.

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

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

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

7 (2) Property belonging exclusively to the state;

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

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

13 (5) Property used exclusively for divine worship;

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

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

22 (8) Cemeteries;

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

27 (10) Property belonging to, or held in trust for, colleges or
28 universities located in West Virginia, or any public or private
29 nonprofit foundation or corporation which receives contributions
30 exclusively for such college or university, if the property or
31 dividends, interest, rents or royalties derived therefrom are used
32 or devoted to educational purposes of such college or university;

33 (11) Public and family libraries;

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

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

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

43 (15) All real estate not exceeding one acre in extent, and the
44 buildings on the real estate, used exclusively by any college or
45 university society as a literary hall, or as a dormitory or
46 clubroom, if not used with a view to profit, including, but not
47 limited to, property owned by a fraternity or sorority
48 organization affiliated with a university or college or property
49 owned by a nonprofit housing corporation or similar entity on
50 behalf of a fraternity or sorority organization affiliated with a
51 university or college, when the property is used as residential

52 accommodations or as a dormitory for members of the
53 organization;

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

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

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

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

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

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

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

70 (23) Bank deposits and money;

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

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

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

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

88 (28) Personal property, including vehicles that qualify for a
89 farm use exemption certificate pursuant to section two, article
90 three, chapter seventeen-a of this code and livestock, employed

91 exclusively in agriculture, as defined in article ten, section one
92 of the West Virginia Constitution: *Provided*, That this exemption
93 only applies in the case of such personal property used on a farm
94 or farming operation that annually produces for sale agricultural
95 products, as defined in rules of the Tax Commissioner; ~~and~~

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

106 ~~(29)~~ (30) Any other property or security exempted by any
107 other provision of law.

108 (b) Notwithstanding the provisions of subsection (a) of this
109 section, no property is exempt from taxation which has been
110 purchased or procured for the purpose of evading taxation

111 whether temporarily holding the same over the first day of the
112 assessment year or otherwise.

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

118 (d) Notwithstanding any other provisions of this section, this
119 section does not exempt from taxation any property owned by,
120 or held in trust for, educational, literary, scientific, religious or
121 other charitable corporations or organizations, including any
122 public or private nonprofit foundation or corporation existing for
123 the support of any college or university located in West Virginia,
124 unless such property, or the dividends, interest, rents or royalties
125 derived therefrom, is used primarily and immediately for the
126 purposes of the corporations or organizations.

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

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

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

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

143 (1) The exemption from ad valorem taxation provided
144 pursuant to the provisions of subdivision (29), subsection (a) of
145 this section does not apply to a property owned by a nonprofit
146 organization otherwise qualifying for the exemption but which
147 property or facilities are used for-profit or outside the primary
148 purpose of the owner which result in unrelated business taxable
149 income as defined by Section 512 of the Internal Revenue Code

150 of 1986, as amended, unless the income is generated by an
151 activity upon which the one and one quarter percent fee
152 authorized by subdivision (2) of this section is applied as
153 provided in subdivision (3) of this subsection.

154 (2) The owner of real property exempt from ad valorem
155 taxation under subdivision (29), subsection (a) of this section
156 shall pay an amount equal to one and one quarter percent of the
157 gross revenues the owner receives in accordance with this
158 subsection. For purposes of this subsection, “gross revenues”
159 means the gross amount received by the owner as payment for
160 use of the property or the facilities thereon.

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

164 (A) Gross revenues derived from the use of lodging and
165 campground facilities by persons participating in meetings and
166 multiday spectator sports or multiday recreational, celebratory
167 or ceremonial events held on-site where on-site lodging or
168 camping is offered as part of the program. For purposes of this
169 section the term “meeting” means, and is limited to, a gathering,

170 assembly or conference of two or more persons who have
171 deliberately convened at a single specific location at a single
172 specified time and date for a common specific purpose.

173 (B) Gross revenues derived from any retail store located at
174 the facility that is open only to those persons who are attending
175 meetings, spectator sports, recreational, celebratory or ceremo-
176 nial events held on-site at the facility.

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

181 (D) Gross revenues derived from the leasing of zip-lines,
182 canopy tours, wheeled sports and climbing facilities used by the
183 general public on a for-profit basis (i) Under a written agreement
184 with a licensed commercial outfitter operating a business
185 utilizing zip-lines, canopy tours, wheeled sports or climbing
186 areas of a similar nature in the same or an adjacent county where
187 the facilities are located; and (ii) When the property or facilities
188 are used as part of a training or advanced experience offered by
189 the licensed commercial outfitter.

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

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

200 (4) Notwithstanding any other provision of this section to the
201 contrary, programs or activities occurring on the property or its
202 facilities held in conjunction with a government organization or
203 sponsored by other nonprofit organizations serving youth,
204 veterans, military services, public service agencies including,
205 fire, police, emergency and search and rescue services,
206 government agencies, schools and universities, health care
207 providers and similar organizations or groups which are
208 designed to provide opportunities for learning or training in the
209 areas of leadership, character education, science, technology,

210 engineering, arts and mathematics (STEAM) programs, physical
211 challenges, sustainability, conservation and outdoor learning
212 shall be considered a charitable or nonprofit use for the purposes
213 of this section and not subject to the one and one quarter percent
214 fee.

215 (5) Notwithstanding any other provision of this section to the
216 contrary, activities open to the public through individual visitor
217 passes allowing tours and access to the property and its facilities
218 for the purpose of viewing or participating in demonstrations,
219 programs and facilities providing information and experiences
220 consistent with the owner's nonprofit purposes where zip-lines,
221 canopy tours, wheeled sports or climbing facilities are merely
222 components of the demonstrations, programs and facilities used
223 shall be considered a charitable or nonprofit use for the purposes
224 of this section and not subject to the one and one quarter percent
225 fee: *Provided*, That such individual visitor passes may not
226 include the rental or use of on-site overnight lodging or camping
227 facilities.

228 (6) Administration –

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

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

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

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

247 (E) All monies so collected, net of refunds and adjustments,
248 shall be paid into a special account in the State Treasury, which

249 is hereby created, and the amount thereof shall be distributed and
250 paid annually, by the State Treasurer, on October 1 of each year,
251 into the funds and to the distributees specified in subdivision (7)
252 of this subsection in the amounts specified therein.

253 (7) Distribution –

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

258 (B) One percent of monies so collected, net of refunds and
259 adjustments, shall be paid annually to the sheriff of the county
260 where the property is located which, but for the exemption
261 provided in subdivision (29), subsection (a) of this section,
262 would be entitled to receive ad valorem taxes on the property.
263 The sheriff shall treat all such payments in the same manner as
264 payments in lieu of taxes, and such payments are subject to the
265 adjustment mandated under section twelve, article nine-a,
266 chapter eighteen of this code. For properties located in more than
267 one county, the amount paid to the sheriff of the county shall be
268 in proportion to the total number of acres located in each county

269 at the close of the fiscal year, as specified in the deed to such
270 property.

271 (C) Two percent of monies so collected, net of refunds and
272 adjustments, shall be divided equally and paid annually into
273 separate accounts established and maintained by the sheriffs of
274 the county or counties wherein the property is located and the
275 sheriffs of any other county that is within the jurisdiction of the
276 same economic development authority as the county or counties
277 wherein the property is located to be used solely for the
278 establishment and delivery of a science, technology, engineering,
279 art and math (STEAM) program in conjunction with the owner
280 of the exempt property. The funds shall be divided equally for
281 use in each county and the programs must be approved by the
282 respective county superintendents of schools. Expenditures from
283 the accounts shall be authorized by the county superintendent of
284 schools.

285 (8) If lodging is furnished as part of a retreat, meeting, or
286 multiday spectator sport or event being held on-site wherein on-
287 site lodging or camping is offered as part of the program, any
288 applicable hotel occupancy tax and state and local consumers

289 sales and service tax and use tax shall be paid based upon the
290 actual location of such lodging.

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

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

299 (11) The Tourism Commission shall include in its annual
300 report submitted to the Governor and the Legislature a summary
301 of funds paid into the Tourism Promotion Fund and recommen-
302 dations pertaining to the administration of this section.

303 (12) This subsection may not be construed to prohibit the
304 owner of property otherwise subject to this section from having
305 portions of the property severed from the remainder of the
306 property, assessed and taxed as if nonexempt and thereafter
307 conducting business on such property the same as any other
308 nonexempt property: *Provided*, That the area of property to be

309 severed shall be approved by the county commission wherein the
310 property lies so as to include in the severance all property
311 substantially supporting the for profit or business activity giving
312 rise to the specific purpose of the severance and excluding all
313 property entitled to the continued benefits of this Act.

314 (i) To assure the implementation of subsection (h) of this
315 section does not harm local and regionally located businesses by
316 use of the tax exempt facility in a manner that cause unfair
317 competition and unreasonable loss or revenue to those
318 businesses, studies shall be periodically conducted to assure that
319 further legislation is in order regarding the uses of the tax
320 exempt facility. The County commission of any county where
321 such a property is located shall report to the Joint Committee on
322 Government and Finance by the first day of January every five
323 years after the effective date of this section. The report shall
324 include information on any unfair business competition resulting
325 from the establishment of the non-profit status, and include a
326 report of the costs and benefits to its county of the tax exemption
327 and associated fee, including an audit of that county's use of the
328 net revenues. The West Virginia University Bureau of Business

329 and Economic Research in coordination of the Center for
330 Business and Economic Research at Marshall University, by
331 January 1, two thousand twenty, shall undertake a study and
332 report to the Committee, the economic impact of this tax
333 exemption and fee to the county and that region of the state, and
334 make any recommendations regarding the benefits and
335 disadvantages for continuing the provision of this tax exemption
336 and fee, included, but not limited to, the impacts to other small
337 and large businesses in the county, the costs to the county has
338 incurred as a result of use of the facility, and any other relevant
339 data that the universities may deem relevant.