

COMMITTEE SUBSTITUTE

FOR

**H. B. 2968**

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

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(Originating in the House Committee on Finance.)

[February 27, 2015]

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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 four percent of net revenues from specified uses, operations and activities; specifying how four percent fee is

administered, specifying how monies derived from four 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 four percent fee,  
142 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 four percent fee authorized by

152 subdivision (2) of this section is applied as provided in  
153 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 four percent of the net revenues the  
157 owner receives in accordance with this subsection. For purposes  
158 of this subsection, “net revenues” means the gross amount  
159 received by the owner as payment for use of the property or the  
160 facilities thereon, less expenses directly incurred in connection  
161 with the use for which payment is received, but such expenses  
162 may not include any amount or allocation for depreciation or  
163 other fixed costs associated with the ownership or operation of  
164 the property or facility.

165 (3) Net revenues derived from the following facilities, uses,  
166 activities and operations are subject to a fee of four percent of  
167 such net revenues:

168 (A) Net revenues derived from the use of lodging and  
169 campground facilities by persons participating in meetings and  
170 multiday spectator sports or multiday recreational, celebratory  
171 or ceremonial events held on-site where on-site lodging or

172 camping is offered as part of the program. For purposes of this  
173 section the term “meeting” means, and is limited to, a gathering,  
174 assembly or conference of two or more persons who have  
175 deliberately convened at a single specific location at a single  
176 specified time and date for a common specific purpose.

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

181 (C) Net revenues derived from operations of gift shops at a  
182 welcome or information center located adjacent to a public  
183 highway operated by the nonprofit organization which is open to  
184 the general public.

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

192 are used as part of a training or advanced experience offered by  
193 the licensed commercial outfitter.

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

200 (F) Net revenues derived from leases or agreements for use  
201 of the property for meetings and multiday spectator sports or  
202 events or multiday recreational, celebratory or ceremonial  
203 events, held on site.

204 (4) Notwithstanding any other provision of this section to the  
205 contrary, programs or activities occurring on the property or its  
206 facilities held in conjunction with a government organization or  
207 sponsored by other nonprofit organizations serving youth,  
208 veterans, military services, public service agencies including,  
209 fire, police, emergency and search and rescue services,  
210 government agencies, schools and universities, health care  
211 providers and similar organizations or groups which are

212 designed to provide opportunities for learning or training in the  
213 areas of leadership, character education, science, technology,  
214 engineering, arts and mathematics (STEAM) programs, physical  
215 challenges, sustainability, conservation and outdoor learning  
216 shall be considered a charitable or nonprofit use for the purposes  
217 of this section and not subject to the four percent fee.

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

230 (6) Administration –

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

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

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

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

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

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

255 (7) Distribution –

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

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

271 at the close of the fiscal year, as specified in the deed to such  
272 property.

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

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

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

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

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

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

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





