

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2974

FISCAL
NOTE

BY DELEGATES SMITH, BRUCE, MALLOW, CONLEY, J.

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[Introduced March 08, 2021; Referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-6M-1, §11-6M-2, §11-6M-3, §11-6M-4, §11-6M-5, §11-6M-6, §11-6M-7,
 3 §11-6M-8, and §11-6M-9, all relating to establishing an exemption from school excess
 4 levy tax for taxpayers with a household income at or below U.S. Department of Health &
 5 Human Services Poverty Guidelines.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6M. POVERTY EXEMPTION FROM SCHOOL EXCESS LEVY PROPERTY
 TAX.**

§11-6M-1. Definitions.

1 For purposes of this article:

2 (1) "Assessed value" means the value of property as determined pursuant to §11-3-1 et
 3 seq. and §11-4-1 et seq. of this code;

4 (2) "Claimant" means a person who owns property with a home that is used and occupied
 5 by the owner thereof exclusively for residential purposes;

6 (3) "Family member" means a person who is related by common ancestry, adoption, or
 7 marriage including, but not limited to, persons related by lineal and collateral consanguinity;

8 (4) "Federal poverty guidelines" means the poverty guidelines updated periodically in the
 9 Federal Register by the U.S. Department of Health and Human Services under the authority of
 10 42 U.S.C. § 9902(2);

11 (5) "School excess levy" means any levy laid by a county government in excess of the
 12 regular property tax levy for the benefit of schools in the county where the taxpayer resides.

13 (6) "Used and occupied exclusively for residential purposes" means that the property is
 14 used as an abode, dwelling or habitat for more than six consecutive months of the assessed year
 15 prior to the date of application by the owner thereof; and that the property is used as an abode,
 16 dwelling, or habitat to the exclusion of any commercial use.

17 (7) "Tax year" means the calendar year following the July first assessment day.

§11-6M-2. School Excess Levy Property Tax Poverty Exemption allowed.

1 (a) General. — An exemption from that portion of property taxes attributable to a school
2 excess levy shall be allowed for a claimant who owns property with a home that is used and
3 occupied by the owner thereof exclusively for residential purposes and when such claimant's
4 family member household income is at or below the most recent version of the federal poverty
5 guidelines: *Provided*, That the claimant owner has paid tax tickets for real estate for two years in
6 the state of West Virginia. and that the claimant owner has not received a similar poverty
7 exemption in another state for the same tax year: *Provided, however*, That when a resident of
8 West Virginia establishes residency in another state or country and subsequently returns and
9 reestablishes residency in West Virginia within a period of five years, such resident may be
10 allowed a poverty exemption without satisfying the requirement of two years consecutive
11 residency if such person was a resident of this state for two calendar years out of the ten calendar
12 years immediately preceding the tax year for which the poverty exemption is sought.

13 (b) Attachment of exemption. — This exemption shall attach to the property occupied by
14 the qualified owner on the July 1 assessment date and shall be applicable as an exemption of all
15 school excess levies for the following tax year. An exemption shall not be transferred to another
16 claimant until the following July 1. If the property of an owner qualified under this article is
17 transferred by deed, inheritance, or otherwise, the poverty exemption shall be removed from the
18 property on the next July first assessment date unless the new owner qualifies for the exemption.

§11-6M-3. Claim for exemption; renewals; waiver of exemption.

1 (a) General. — No poverty exemption shall be allowed under this article unless a claim of
2 exemption is filed with the assessor of the county in which the property is located, between July
3 1 and December 1, following the July 1 assessment day. In the case of sickness, absence or
4 other disability of the claimant, the claim may be filed by the claimant or his or her duly authorized
5 agent. The claimant's application for exemption shall be accompanied by a sworn affidavit stating

6 that the claimant is not receiving a similar exemption in another state:

7 (b) Claims for poverty exemption. — Each yearly claim for poverty exemption shall include
8 copies of the following records:

9 (1) The personal income tax return form for the most recent tax year filed for every person
10 residing in the principal residence. Federal tax returns are not required for a person residing in
11 the principal residence if that person was not required to file a federal income tax return in the tax
12 year in which the poverty exemption under this section is claimed;

13 (2) Valid driver license or other form of photo identification;

14 (3) A deed, land contract, or other evidence of ownership of the property for which a
15 poverty exemption is requested; and

16 (4) Proof of residence in the property in question including, but not limited to, the claimant’s
17 voter’s registration card issued in this state or a motor vehicle registration card issued in this state.

18 (c) Renewals. — Automatic renewal is not authorized. The claimant must apply for a
19 poverty exemption from the school excess levy every year. The application for exemption must
20 be submitted between July 1st and December 1st following the July 1st assessment day.

21 (d) Waiver of exemption. — Any claimant not filing his or her claim for exemption on or
22 before December 1, waives his or her right to exemption for the next tax year.

§11-6M-4. Determination; notice of denial of claim or exemption.

1 (a) The assessor shall, as soon as practicable after a claim for poverty exemption is filed,
2 review that claim and either approve or deny it. If the poverty exemption is denied, the assessor
3 shall promptly, but not later than January 1, serve the claimant with written notice explaining why
4 the poverty exemption was denied and furnish a form for filing with the county commission should
5 the claimant desire to take an appeal. The notice required or authorized by this section shall be
6 served on the claimant or his or her authorized representative either by personal service or by
7 certified mail.

8 (b) In the event that the assessor shall have information sufficient to form a reasonable

9 belief that a claimant, after having been originally granted a poverty exemption, is not eligible for
10 said poverty exemption, he or she shall deny the poverty exemption on the next assessment date
11 and shall promptly, but no later than January 1, serve the claimant with written notice explaining
12 the reasons for the denial and furnish a form for filing with the county commission should the
13 claimant desire to take an appeal.

§11-6M-5. Appeals procedure.

1 (a) Notice of appeal; time limit. — Any claimant aggrieved by the denial of his or her claim
2 for poverty exemption or the subsequent denial of his or her poverty exemption may appeal to the
3 county commission within 30 days after receipt of written notice explaining why the poverty
4 exemption was denied.

5 (b) Review; determination; appeal. — The county commission shall complete its review
6 and issue its determination as soon as practicable after receipt of the notice of appeal, but in no
7 event later than February 28 of the tax year for which the poverty exemption is first applied. In
8 conducting its review, the county commission may hold a hearing on the claim. The assessor or
9 the claimant may apply to the circuit court of the county for review of the determination of the
10 county commission in the same manner as is provided for appeals from the county commission
11 in §11-3-25 of this code.

§11-6M-6. Entry in property tax books.

1 The poverty exemption of school excess levy value shall be shown on the property books
2 as a deduction from the total assessed value of the homestead.

§11-6M-7. Forms, instructions and regulations.

1 The Tax Commissioner shall prescribe and supply all necessary instructions and forms
2 for administration of this article. Additionally, the Tax Commissioner may make propose and
3 submit rules necessary to implement the provisions of this article pursuant to the provisions of
4 §29A-3-1 et seq. of this code.

§11-6M-8. Criminal penalties; restitution.

1 (a) False or fraudulent claim for poverty exemption. — Any claimant who willfully files a
2 fraudulent claim for poverty exemption, and any person who knowingly assisted in the preparation
3 or filing of such fraudulent claim for poverty exemption or who knowingly supplied information
4 upon which the fraudulent claim was prepared or allowed, shall be guilty of a misdemeanor, and,
5 upon conviction thereof, shall be fined not less than \$50 nor more than \$150, or confined in jail
6 for not more than six months, or both fined and confined.

7 (b) Fraudulent assessments. — An assessor or employee of a county who, with intent to
8 defraud the state, assesses the value of the eligible poverty exemption claimant's property for an
9 amount which is in excess of its true and actual value or is in excess of the assessed value of
10 similar property in his county, in order to increase the cost of the poverty exemption to his county
11 and to thereby secure a larger reimbursement from the state, shall be guilty of a misdemeanor,
12 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or confined
13 in jail for not more than one year, or both fined and confined. Each violation of this subsection
14 shall constitute a separate offense.

15 (c) Failure to notify assessor. — A claimant or his or her legal representative, who, prior
16 to the next July 1, fails to notify the assessor of the county wherein property subject to the poverty
17 exemption is located, that title to that property or a portion thereof was transferred by deed, grant,
18 sale, gift, inheritance, or by other laws of this state regulating descent and distribution, that the
19 property is no longer used and occupied for residential purposes exclusively by the claimant, shall
20 be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000 or
21 confined in jail for not more than one year, or both fined and confined.

22 (d) Restitution. — In addition to the criminal penalties provided above, upon conviction of
23 any of the above offenses, the court shall order that the defendant make restitution unto the state
24 for all taxes not paid for an improper poverty exemption for the claimant and interest thereon at
25 the legal rate until paid.

§11-6M-9. Effective date.

1 The provisions of this article shall be enacted in the tax year following the year of passage.

NOTE: The purpose of this bill is to allow an exemption from payment of a school excess levy to an owner of a residence whose annual household income is at or below the latest federal poverty guidelines.

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