

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 522

By Senators Tarr and Woodrum

[Originating in the Committee on Government
Organization; reported on February 10, 2023]

1 A BILL to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to
2 allocating a percentage of county excise taxes received from transfers of title to real estate
3 in each county for funding improvements to election administration, infrastructure, and
4 physical and cyber security; accelerating rate at which counties retain excise taxes from
5 transfers of title to real estate in county; allocating a percentage of county excise taxes
6 received from transfers of title to real estate in each county for funding other county
7 purposes including, but not limited to, compliance with the Uniform Real Property
8 Electronic Recording Act; authorizing the Secretary of State to promulgate legislative rules
9 establishing minimum adequate funding thresholds and standards based on county
10 classification for improving election administration, infrastructure, and security; and
11 authorizing county clerks to reallocate the excess portion of funding for improving election
12 administration, infrastructure, and security to other approved county purposes upon
13 determination by the Secretary of State that the minimum funding thresholds and
14 standards have been met.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax; county clerk funding for election administration, infrastructure, and security, and other county clerk purposes.

1 (a) Every person who delivers, accepts, or presents for recording any document, or in
2 whose behalf any document is delivered, accepted, or presented for recording, is subject to pay
3 for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of
4 transferring title to real estate at the rate of \$1.10 for each \$500 value or fraction thereof as
5 represented by the document as defined in §11-22-1 of this code: *Provided*, That beginning July 1,
6 2021, ten percent of each state excise tax collected pursuant to the provisions of this subsection
7 shall be retained by the county wherein the tax was collected to be used for county purposes:

8 *Provided, however,* That beginning July 1, 2024, and in every year thereafter, an additional ~~40~~ 35
9 percent of each state excise tax collected pursuant to this subsection shall be retained by the
10 county wherein the tax was collected to be used for county purposes as provided in subsection (c):
11 *Provided, further,* That beginning July 1, ~~2030~~ 2025, the excise tax collected pursuant to this
12 subsection shall be a county excise tax to be used by the county wherein it is collected for county
13 purposes as provided in subsection (c). The state tax is payable at the time of delivery,
14 acceptance, or presenting for recording of the document. In addition to the state excise tax
15 described in this subsection, there is assessed a fee of \$20 upon the privilege of transferring real
16 estate for consideration. The clerk of the county commission shall collect the additional \$20 fee
17 before recording a transfer of title to real estate and shall deposit the moneys from the additional
18 fees into the Affordable Housing Fund as provided in §31-18-20d of this code. The moneys
19 collected from this additional fee shall be segregated from other funds of the West Virginia
20 Housing Development Fund and shall be accounted for separately. None of these moneys may be
21 expended by the West Virginia Housing Development Fund to defray administrative and operating
22 costs and expenses actually incurred by the West Virginia Housing Development Fund. The West
23 Virginia Housing Development Fund shall publish monthly on the Internet site an accounting of all
24 revenue deposited into the fund during the month and a full disclosure of all expenditures from the
25 fund including the group receiving funds, their location and any contractor awarded the
26 construction contract.

27 (b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise
28 tax for the privilege of transferring title to real estate at the rate of 55 cents for each \$500 value or
29 fraction thereof as represented by such document as defined in §11-22-1 of this code, which
30 county tax shall be payable at the time of delivery, acceptance, or presenting for recording of such
31 document: *Provided,* That after July 1, 1989, the county may increase said excise tax to an
32 amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county
33 tax and to be used for county purposes as provided by subsection (c): *Provided, however,* That

34 after July 1, 2017, the county may increase the excise tax to an amount not to exceed \$1.65 for
35 each \$500 value, or fraction thereof, as represented by a document as defined in §11-22-1 of this
36 code: *Provided further*, That only one such state tax and one such county tax shall be paid on any
37 one document and shall be collected in the county where the document is first admitted to record
38 and the tax shall be paid by the grantor therein unless the grantee accepts the document without
39 such tax having been paid, in which event such tax shall be paid by the grantee: *And provided*
40 *further*, That on any transfer of real property from a trustee or a county clerk transferring real estate
41 sold for taxes, such tax shall be paid by the grantee. The county excise tax imposed under this
42 section may not be increased in any county unless the increase is approved by a majority vote of
43 the members of the county commission of such county. Any county commission intending to
44 increase the excise tax imposed in its county shall publish a notice of its intention to increase such
45 tax not less than 30 days nor more than 60 days prior to the meeting at which such increase will be
46 considered, such notice to be published as a Class I legal advertisement in compliance with the
47 provisions of §59-3-1 *et seq.* of this code and the publication area shall be the county in which
48 such county commission is located.

49 (c)(1) Beginning July 1, 2023, and ending June 30, 2024, the additional 10 percent of the
50 state excise tax retained annually by the county wherein the tax was collected pursuant to
51 subsection (a) shall be deposited into two separate funds under the following requirements:

52 (A) Fifty percent of the additional moneys received shall be allocated for use in improving
53 election administration, infrastructure, and physical and cyber security, in accordance with the
54 minimum fund thresholds and standards established by the Secretary of State as provided in
55 subdivision (4) of this subsection; and

56 (B) Fifty percent of the additional moneys received shall be allocated for other county clerk
57 purposes including, but not limited to, establishing, maintaining, and securing infrastructure to
58 comply with the Uniform Real Property Electronic Recording Act, §39A-4-1 *et seq.* of this code.

59 (2) Beginning July 1, 2024, and ending June 30, 2025, the additional 35 percent of the

60 state excise tax retained annually by the county wherein the tax was collected pursuant to
61 subsection (a) shall be used by the county in accordance with the provisions of §11-22-2(c)(1) of
62 this code.

63 (3) Beginning July 1, 2025, the excise tax collected pursuant to subsection (b) shall be
64 used by the county wherein it is collected for county purposes as follows:

65 (A) Ninety percent of the total excise tax shall be deposited into the county's general fund;
66 and

67 (B) Ten percent of the total excise tax shall be deposited into two separate funds for county
68 clerk purposes under the following requirements:

69 (i) Fifty percent of the moneys described in paragraph (B) shall be allocated for use in
70 improving election administration, infrastructure, and physical and cyber security, in accordance
71 with the minimum fund thresholds and standards established by the Secretary of State as provided
72 in subdivision (4) of this subsection; and

73 (ii) Fifty percent of the moneys received shall be allocated for other county clerk purposes
74 including, but not limited to, establishing, maintaining, and securing infrastructure to comply with
75 Uniform Real Property Electronic Recording Act, §39A-4-1 et seq. of this code.

76 (4) The Secretary of State is authorized to promulgate legislative rules for purposes of this
77 subsection to establish minimum fund thresholds and standards for use in improving election
78 administration, infrastructure, and physical and cyber security, which rules shall include a
79 respective minimum fund threshold for each county classification as provided in §7-7-3 of this
80 code. Upon a determination by the Secretary of State that the county clerk has satisfied the
81 minimum fund threshold and standards, the moneys in excess of the minimum fund threshold may
82 be transferred to the county's general fund at the county commission's direction.

83 (5) All additional moneys under this section that are deposited into two separate funds for
84 use in improving election administration, infrastructure, and physical and cyber security, and other
85 county clerk purposes, shall be in addition to typical county budget allocations and shall not be

86 supplanted by a budget reduction: *Provided*, That reasonable budget reductions are permitted if
87 made in the ordinary course for reasons other than offsetting county clerk additional funding as
88 provided in this section.