

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2968**

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

7 (Originating in the House Committee on Finance.)

8 [February 27, 2015]  
9

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

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

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

20 **ARTICLE 3. ASSESSMENTS GENERALLY.**

21 **§11-3-9. Property exempt from taxation.**

22 (a) All property, real and personal, described in this subsection, and to the extent limited by

1 this section, is exempt from taxation:

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

4 (2) Property belonging exclusively to the state;

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

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

9 (5) Property used exclusively for divine worship;

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

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

15 (8) Cemeteries;

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

19 (10) Property belonging to, or held in trust for, colleges or universities located in West  
20 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 four 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 four percent fee authorized by subdivision (2) of this section  
19 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 four percent of the net revenues the owner

1 receives in accordance with this subsection. For purposes of this subsection, "net revenues" means  
2 the gross amount received by the owner as payment for use of the property or the facilities thereon,  
3 less expenses directly incurred in connection with the use for which payment is received, but such  
4 expenses may not include any amount or allocation for depreciation or other fixed costs associated  
5 with the ownership or operation of the property or facility.

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

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

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

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

20 (D) Net revenues derived from the leasing of zip-lines, canopy tours, wheeled sports and  
21 climbing facilities used by the general public on a for-profit basis (i) Under a written agreement with

1 a licensed commercial outfitter operating a business utilizing zip-lines, canopy tours, wheeled sports  
2 or climbing areas of a similar nature in the same or an adjacent county where the facilities are  
3 located; and (ii) When the property or facilities are used as part of a training or advanced experience  
4 offered by the licensed commercial outfitter.

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

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

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

21 (5) Notwithstanding any other provision of this section to the contrary, activities open to the

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

8 (6) Administration –

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

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

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

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

1           (E) All monies so collected, net of refunds and adjustments, shall be paid into a special  
2 account in the State Treasury, which is hereby created, and the amount thereof shall be distributed  
3 and paid annually, by the State Treasurer, on October 1 of each year, into the funds and to the  
4 distributees specified in subdivision (7) of this subsection in the amounts specified therein.

5           (7) Distribution –

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

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

17           (C) Two percent of monies so collected, net of refunds and adjustments, shall be divided  
18 equally and paid annually into separate accounts established and maintained by the sheriffs of the  
19 county or counties wherein the property is located and the sheriffs of any other county that is within  
20 the jurisdiction of the same economic development authority as the county or counties wherein the  
21 property is located to be used solely for the establishment and delivery of a science, technology,

1 engineering, art and math (STEAM) program in conjunction with the owner of the exempt property.  
2 The funds shall be divided equally for use in each county and the programs must be approved by the  
3 respective county superintendents of schools. Expenditures from the accounts shall be authorized  
4 by the county superintendent of schools.

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

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

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

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

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