

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 737

FISCAL
NOTE

By Senators Smith, Rucker, Taylor, and Karnes

[Introduced February 9, 2024; referred
to the Committee on Finance]

22 annuities, and furniture;

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

27 (11) Public and family libraries;

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

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

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

34 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate,
35 used exclusively by any college or university society as a literary hall, or as a dormitory or
36 clubroom, if not used with a view to profit, including, but not limited to, property owned by a
37 fraternity or sorority organization affiliated with a university or college or property owned by a
38 nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization
39 affiliated with a university or college, when the property is used as residential accommodations or
40 as a dormitory for members of the organization;

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

42 (17) Property belonging to any public institution for the education of the deaf, intellectually
43 disabled, or blind or any hospital not held or leased out for profit;

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

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

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

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

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

51 (23) Bank deposits and money;

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

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

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

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

64 (28) Personal property, including vehicles that qualify for a farm use exemption certificate
65 pursuant to §17A-3-2 of this code and livestock, employed exclusively in agriculture, as defined in
66 article X, section one of the West Virginia Constitution: *Provided*, That this exemption only applies
67 in the case of such personal property used on a farm or farming operation that annually produces
68 for sale agricultural products, as defined in rules of the Tax Commissioner;

69 (29) Real property owned by a nonprofit organization whose primary purpose is youth
70 development by means of adventure, educational, or recreational activities for young people,
71 which real property contains a facility built with the expenditure of not less than \$100 million that is
72 capable of supporting additional activities within the region or the state and which is leased or used
73 to generate revenue for the nonprofit organization whether or not the property is used by the

74 nonprofit organization for its nonprofit purpose, subject to the requirements, limitations, and
75 conditions set forth in §11-3-9(h) of this code; and

76 (30) Any other property or security exempted by any other provision of law.

77 (b) Notwithstanding the exemption from taxation on personal property as described in §11-
78 3-9(a)(2) of this code the state is subject to taxation by a county for the real property owned by the
79 state within that county.

80 (c) Notwithstanding the provisions of §11-3-9(a) of this code, no property is exempt from
81 taxation which has been purchased or procured for the purpose of evading taxation whether
82 temporarily holding the same over the first day of the assessment year or otherwise.

83 (e) (d) Real property which is exempt from taxation by §11-3-9(a) of this code shall be
84 entered upon the assessor's books, together with the true and actual value thereof, but no taxes
85 may be levied upon the property or extended upon the assessor's books.

86 (d) (e) Notwithstanding any other provisions of this section, this section does not exempt
87 from taxation any property owned by, or held in trust for, educational, literary, scientific, religious, or
88 other charitable corporations or organizations, including any public or private nonprofit foundation
89 or corporation existing for the support of any college or university located in West Virginia, unless
90 such property, or the dividends, interest, rents, or royalties derived therefrom, is used primarily and
91 immediately for the purposes of the corporations or organizations.

92 (e) (f) The Tax Commissioner shall, by issuance of rules, provide each assessor with
93 guidelines to ensure uniform assessment practices statewide to affect the intent of this section.

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

97 (g) (h) The amendment to §11-3-9(a)(27) of this code, passed during the 2005 regular
98 session of the Legislature, shall apply to all applicable lease purchase agreements in existence
99 upon the effective date of the amendment.

100 ~~(h)~~ (i) Nonprofit youth organization exemption. — Limitations, conditions, collection, and
101 administration of one and one quarter percent fee, limitations, and distribution of moneys.

102 (1) The exemption from ad valorem taxation provided pursuant to the provisions of §11-3-
103 9(a)(29) of this code does not apply to a property owned by a nonprofit organization otherwise
104 qualifying for the exemption but which property or facilities are used for profit or outside the
105 primary purpose of the owner which result in unrelated business taxable income as defined by
106 Section 512 of the Internal Revenue Code of 1986, as amended, unless the income is generated
107 by an activity upon which the one and one quarter percent fee authorized by §11-3-9(h)(2) of this
108 code is applied as provided in §11-3-9(h)(3) of this code.

109 (2) The owner of real property exempt from ad valorem taxation under §11-3-9(a)(29) of
110 this code shall pay an amount equal to one and one quarter percent of the gross revenues the
111 owner receives in accordance with this subsection. For purposes of this subsection, "gross
112 revenues" means the gross amount received by the owner as payment for use of the property or
113 the facilities thereon.

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

116 (A) Gross revenues derived from the use of lodging and campground facilities by persons
117 participating in meetings and multiday spectator sports or multiday recreational, celebratory, or
118 ceremonial events held onsite where onsite lodging or camping is offered as part of the program.
119 For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly, or
120 conference of two or more persons who have deliberately convened at a single specific location at
121 a single specified time and date for a common specific purpose.

122 (B) Gross revenues derived from any retail store located at the facility that is open only to
123 those persons who are attending meetings, spectator sports, recreational, celebratory, or
124 ceremonial events held onsite at the facility.

125 (C) Gross revenues derived from operations of gift shops at a welcome or information

126 center located adjacent to a public highway operated by the nonprofit organization which is open
127 to the general public.

128 (D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports,
129 and climbing facilities used by the general public on a for-profit basis: (i) Under a written
130 agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy
131 tours, wheeled sports, or climbing areas of a similar nature in the same or an adjacent county
132 where the facilities are located; and (ii) when the property or facilities are used as part of a training
133 or advanced experience offered by the licensed commercial outfitter.

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

138 (F) Gross revenues derived from leases or agreements for use of the property for meetings
139 and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial
140 events, held onsite.

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

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

152 public through individual visitor passes allowing tours and access to the property and its facilities
153 for the purpose of viewing or participating in demonstrations, programs, and facilities providing
154 information and experiences consistent with the owner's nonprofit purposes where zip-lines,
155 canopy tours, wheeled sports, or climbing facilities are merely components of the demonstrations,
156 programs, and facilities used shall be considered a charitable or nonprofit use for the purposes of
157 this section and not subject to the one and one quarter percent fee: *Provided*, That such individual
158 visitor passes may not include the rental or use of onsite overnight lodging or camping facilities.

159 (6) Administration. —

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

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

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

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

172 (E) All moneys so collected, net of refunds and adjustments, shall be paid into a special
173 account in the State Treasury, which is hereby created, and the amount thereof shall be distributed
174 and paid annually, by the State Treasurer, on October 1 of each year, into the funds and to the
175 distributees specified in of this code in the amounts specified therein.

176 (7) Distribution. —

177 (A) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be

178 paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12 of this code.

179 (B) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be
180 paid annually to the sheriff of the county where the property is located which, but for the exemption
181 provided in §11-3-9(a)(29) of this code, would be entitled to receive ad valorem taxes on the
182 property. The sheriff shall treat all such payments in the same manner as payments in lieu of taxes,
183 and such payments are subject to the adjustment mandated under §18-9A-12 of this code. For
184 properties located in more than one county, the amount paid to the sheriff of the county shall be in
185 proportion to the total number of acres located in each county at the close of the fiscal year, as
186 specified in the deed to such property.

187 (C) Fifty percent of moneys so collected, net of refunds and adjustments, shall be divided
188 equally and paid annually into separate accounts established and maintained by the sheriffs of the
189 county or counties wherein the property is located and the sheriffs of any other county that is within
190 the jurisdiction of the same economic development authority as the county or counties wherein the
191 property is located to be used solely for the establishment and delivery of a science, technology,
192 engineering, art, and math (STEAM) program in conjunction with the owner of the exempt
193 property. The funds shall be divided equally for use in each county and the programs must be
194 approved by the respective county superintendents of schools. Expenditures from the accounts
195 shall be authorized by the county superintendent of schools.

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

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

203 (10) For the purposes of this subsection, owner includes the owner holding record title to

204 the property and its affiliates to the extent they are commonly owned, controlled or have the power
205 to appoint the governing body of the affiliate.

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

209 (12) This subsection may not be construed to prohibit the owner of property otherwise
210 subject to this section from having portions of the property severed from the remainder of the
211 property, assessed and taxed as if nonexempt and thereafter conducting business on such
212 property the same as any other nonexempt property: *Provided*, That the area of property to be
213 severed shall be approved by the county commission wherein the property lies so as to include in
214 the severance all property substantially supporting the for-profit or business activity giving rise to
215 the specific purpose of the severance and excluding all property entitled to the continued benefits
216 of this act.

217 ~~(i)~~(j) To assure the implementation of §11-3-9(h) of this code does not harm local and
218 regionally located businesses by use of the tax-exempt facility in a manner that cause unfair
219 competition and unreasonable loss of revenue to those businesses, studies shall be periodically
220 conducted to assure that further legislation is in order regarding the uses of the tax-exempt facility.
221 The county commission of any county where such a property is located shall report to the Joint
222 Committee on Government and Finance by the first day of January every five years after the
223 effective date of this section. The report shall include information on any unfair business
224 competition resulting from the establishment of the nonprofit status, and include a report of the
225 costs and benefits to its county of the tax exemption and associated fee, including an audit of that
226 county's use of the net revenues. The West Virginia University Bureau of Business and Economic
227 Research in coordination of the Center for Business and Economic Research at Marshall
228 University, by January 1, 2020, shall undertake a study and report to the committee, the economic
229 impact of this tax exemption and fee to the county and that region of the state, and make any

230 recommendations regarding the benefits and disadvantages for continuing the provision of this tax
231 exemption and fee, included, but not limited to, the impacts to other small and large businesses in
232 the county, the costs to the county has incurred as a result of use of the facility, and any other
233 relevant data that the universities may deem relevant.

NOTE: The purpose of this bill is to eliminate the exemption from taxation of state-owned real property within the counties.

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