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**H. B. 2968**

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

[Introduced February 24, 2015; referred to the  
Committee on Finance.]

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 properties in this state owned by nonprofit youth organizations and built at cost of at least \$100 million; setting forth the restrictions affecting the property; setting forth permitted activities; requiring the property owner to pay four percent of the net revenues; establishing how that four percent is to be allocated; 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.**

(a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:

- 1           (1) Property belonging to the United States, other than property permitted by the United  
2 States to be taxed under state law;
- 3           (2) Property belonging exclusively to the state;
- 4           (3) Property belonging exclusively to any county, district, city, village or town in this state  
5 and used for public purposes;
- 6           (4) Property located in this state belonging to any city, town, village, county or any other  
7 political subdivision of another state and used for public purposes;
- 8           (5) Property used exclusively for divine worship;
- 9           (6) Parsonages and the household goods and furniture pertaining thereto;
- 10          (7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners  
11 and holders hereafter issued and sold by churches and religious societies for the purposes of securing  
12 money to be used in the erection of church buildings used exclusively for divine worship or for the  
13 purpose of paying indebtedness thereon;
- 14          (8) Cemeteries;
- 15          (9) Property belonging to, or held in trust for, colleges, seminaries, academies and free  
16 schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities  
17 and furniture;
- 18          (10) Property belonging to, or held in trust for, colleges or universities located in West  
19 Virginia, or any public or private nonprofit foundation or corporation which receives contributions  
20 exclusively for such college or university, if the property or dividends, interest, rents or royalties  
21 derived therefrom are used or devoted to educational purposes of such college or university;

- 1 (11) Public and family libraries;
- 2 (12) Property used for charitable purposes and not held or leased out for profit;
- 3 (13) Property used for the public purposes of distributing electricity, water or natural gas or  
4 providing sewer service by a duly chartered nonprofit corporation when such property is not held,  
5 leased out or used for profit;
- 6 (14) Property used for area economic development purposes by nonprofit corporations when  
7 the property is not leased out for profit;
- 8 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used  
9 exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if  
10 not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority  
11 organization affiliated with a university or college or property owned by a nonprofit housing  
12 corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a  
13 university or college, when the property is used as residential accommodations or as a dormitory for  
14 members of the organization;
- 15 (16) All property belonging to benevolent associations not conducted for private profit;
- 16 (17) Property belonging to any public institution for the education of the deaf, ~~dumb~~  
17 intellectually disabled or blind or any hospital not held or leased out for profit;
- 18 (18) Houses of refuge and mental health facility or orphanage;
- 19 (19) Homes for children or for the aged, friendless or infirm not conducted for private profit;
- 20 (20) Fire engines and implements for extinguishing fires, and property used exclusively for  
21 the safekeeping thereof, and for the meeting of fire companies;

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

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

4           (23) Bank deposits and money;

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

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

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

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

17          (28) Personal property, including vehicles that qualify for a farm use exemption certificate  
18 pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed  
19 exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution:  
20 *Provided*, That this exemption only applies in the case of such personal property used on a farm or  
21 farming operation that annually produces for sale agricultural products, as defined in rules of the Tax

1 Commissioner; and

2 (29) Property owned by a nonprofit organization whose primary purpose is youth  
3 development by means of adventure, educational or recreational activities for young people, at  
4 nonprofit constructed facility built with the expenditure of not less than \$100 million, where the  
5 facility is capable of supporting additional activities within the region or the state and which is leased  
6 or used to generate revenue for the nonprofit organization whether or not the property is used by the  
7 nonprofit organization for its nonprofit purpose, subject to the restrictions set forth in subsection (h)  
8 of this section; and

9 ~~(29)~~ (30) Any other property or security exempted by any other provision of law.

10 (b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt  
11 from taxation which has been purchased or procured for the purpose of evading taxation whether  
12 temporarily holding the same over the first day of the assessment year or otherwise.

13 (c) Real property which is exempt from taxation by subsection (a) of this section shall be  
14 entered upon the assessor's books, together with the true and actual value thereof, but no taxes may  
15 be levied upon the property or extended upon the assessor's books.

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

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

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

6 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the 2005  
7 regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence  
8 upon the effective date of the amendment.

9 (h) Property otherwise exempt from taxation by subdivision (29), subsection (a) of this  
10 section is exempt subject to the restrictions set forth in subdivisions (1) through (11) of this  
11 subsection. For the purposes of this subsection, these restrictions apply only to noncharitable or for-  
12 profit activities, specifically including the rental or lease of tax exempt property or facilities for profit  
13 so as to result in an unrelated business taxable event as defined by the Internal Revenue Service  
14 because the event is for purposes outside of the scope of the nonprofit status of the organization as  
15 defined by the Internal Revenue Service.

16 (1) No lodging or camping facilities may be rented out on a per-night for-profit basis to the  
17 general public or operated or advertised as a public motel, hotel, bed and breakfast, or campground.  
18 However, subject to subdivision (6) of this subsection, this subdivision may not be construed to  
19 prohibit the use of lodging and campground facilities by persons participating in retreats, meetings,  
20 and multiday spectator sport or events being held on-site wherein on-site lodging or camping is  
21 offered as part of the program.

1           (2) Any retail store located at the facility shall be open only to those persons who are  
2 attending programs at the facility regardless of the nature of the program offered. However, this  
3 limitation does not apply to gift shops at a welcome or information center located adjacent to a  
4 public highway operated by the nonprofit organization which is open to the general public.

5           (3) Except as may be used for events under subdivision (4) of this subsection, zip-lines,  
6 canopy tours, wheeled sports and climbing facilities shall be used by the general public on a for-  
7 profit basis only:

8           (A) Under a written agreement with a licensed commercial outfitter operating a business  
9 utilizing zip-lines, canopy tours, wheeled sports or climbing areas of a similar nature in the same or  
10 an adjacent county where the facilities are located; and

11           (B) The nonprofit organization's facilities are utilized as part of a training or advanced  
12 experience offered by the licensed commercial outfitter with a fee paid to the nonprofit organization  
13 for use and/or operation of the facilities.

14           However, this prohibition does not preclude the sale of individual visitor passes allowing for  
15 tours and access to limited paid admission areas of the facility open to the public for the purpose of  
16 viewing or participating in demonstrations, programs and facilities providing information and  
17 experiences consistent with the owner's nonprofit purposes where zip-lines, canopy tours, wheeled  
18 sports or climbing facilities are merely components of the demonstrations, programs and facilities  
19 used, and provided that all such visitor fees are sold subject to the applicable state and local sales  
20 tax. Except as otherwise provided, visitors purchasing one-day admissions under this provision shall  
21 not be allowed to rent or utilize any on-site overnight lodging or camping facilities.

1           (4) Subject to subdivision (6) of this subsection, zip-lines, canopy tours, wheeled sports,  
2 climbing and other sporting facilities on the exempt property may be leased on a for-profit basis for  
3 spectator events, such as concerts, spectator sporting events or exhibitions or similar mass gathering  
4 events.

5           (5) Programs or activities at the facility held in conjunction with a government organization  
6 or sponsored by other nonprofit organizations serving youth, veterans, military services, public  
7 services including, fire, police, emergency and search and rescue services, government agencies,  
8 schools and universities, health care providers and similar organizations or groups which are  
9 designed to provide opportunities for learning or training in the areas of leadership, character  
10 education, science, technology, engineering, arts and mathematics (STEAM) programs, physical  
11 challenges, sustainability, conservation and outdoor learning shall be considered a charitable or  
12 nonprofit use for the purposes of this section.

13           (6) When exempt property or facilities are used in a manner subject to the restrictions set  
14 forth in this section, the owner of the exempt property shall pay amount equal to four percent of the  
15 net revenues the owner receives in accordance with this subdivision.

16           (A) One percent of the net revenues shall be paid quarterly to the Tourism Promotion Fund  
17 established pursuant to section twelve, article two, chapter five-b of this code.

18           (B) One percent of the net revenues shall be paid quarterly to the sheriff of the county where  
19 the property is located which, but for the exemption provided in subdivision (29), subsection (a) of  
20 this section, would be entitled to receive ad valorem taxes on the property. The sheriff shall treat  
21 all such payments in the same manner as payments in lieu of taxes. For properties located in more

1 than one county, the amount paid shall be in proportion to the total number of acres located in each  
2 county and contained in the deed to the owner whose property is exempt from the payment of taxes  
3 under subdivision (29), subsection (a) of this section, less any subsequent conveyance by the owner.

4 (C) Two percent of the net revenues shall be paid quarterly into separate accounts established  
5 and maintained by the sheriffs of Fayette, Nicholas, Raleigh and Summers counties to be used solely  
6 for the establishment and delivery of a science, technology, engineering, art and math (STEAM)  
7 program in conjunction with the owner of the exempt property. The funds shall be divided equally  
8 for use in each county and the programs must be approved by the respective superintendents of the  
9 county boards of education. Expenditures from the accounts shall be authorized by the  
10 superintendents.

11 For the purposes of this subdivision, "net revenues" means the gross amount received by the  
12 owner as payment for any noncharitable or for-profit use of the property or facilities as provided in  
13 this subsection less expenses directly incurred in connection with the specific noncharitable or for-  
14 profit program or event for which payment is received, but such expenses may not include any  
15 amount or allocation for depreciation or other fixed costs associated with the ownership or operation  
16 of the property or facility.

17 (7) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event  
18 being held on-site wherein on-site lodging or camping is offered as part of the program as provided  
19 in subdivision (1) of this subsection, any applicable bed tax shall be paid and based upon the actual  
20 location of such lodging and shall be based upon an amount consistent with comparable lodging  
21 available to the public in the local area.

1       (8) If during periods of use which are subject to the restrictions of this section merchants are  
2 allowed to do business on the property, the owner or lessee of the property shall offer space to local  
3 merchants on terms at least as favorable as are offered to other merchants.

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

7       (10) The Tourism Commission shall include in its annual report submitted to the Governor  
8 and the Legislature a summary of funds paid into the Tourism Fund and recommendations pertaining  
9 to the administration of this section.

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

NOTE: The purpose of this bill is to enact enabling legislation for the "Nonprofit Youth Organization Tax Exemption Support Amendment" to Article X of the Constitution of the State of West Virginia passed by the voters of the state at the general election of November 4, 2014. The bill exempts from property tax certain properties in this state owned by nonprofit youth organizations and built at cost of at least \$100 million. The bill sets forth the restrictions that affect the property. The bill sets forth the permitted activities. The bill requires the property owner to pay four percent of the net revenues. The bill establishes how that four percent is to be allocated. The bill requires reports and defines terms.

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