WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3389

By Delegate Westfall

[Introduced February 13, 2023; Referred to the Committee on Finance]

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

(a) Every person who delivers, accepts, or presents for recording any document, or in whose behalf any document is delivered, accepted, or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of $1.10 for each $500 value or fraction thereof as represented by the document as defined in §11-22-1 of this code: *Provided,* That beginning July 1, 2021, 10 percent of each state excise tax collected pursuant to the provisions of this subsection shall be retained by the county wherein the tax was collected to be used for county purposes: *Provided, however,* That beginning July 1, in every year thereafter, an additional 10 percent of each state excise tax collected pursuant to this subsection shall be retained by the county wherein the tax was collected to be used for county purposes as provided in subsection (c) of this section: *Provided further,* That beginning July 1, 2030, the excise tax collected pursuant to this subsection shall be a county excise tax to be used by the county wherein it is collected for county purposes as provided in subsection (c) of this section. The state tax is payable at the time of delivery, acceptance, or presenting for recording of the document. In addition to the state excise tax described in this subsection, there is assessed a fee of $20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional $20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the Affordable Housing Fund as provided in §31-18-20d of this code. The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund. The West Virginia Housing Development Fund shall publish monthly on the Internet site an accounting of all revenue deposited into the fund during the month and a full disclosure of all expenditures from the fund including the group receiving funds, their location and any contractor awarded the construction contract.

(b) Effective January 1, 1968, and thereafter, there is imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of 55 cents for each $500 value or fraction thereof as represented by such document as defined in §11-22-1 of this code, which county tax shall be payable at the time of delivery, acceptance, or presenting for recording of such document: *Provided,* That after July 1, 1989, the county may increase said excise tax to an amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes as provided in subsection (c) of this section: *Provided, however,* That after July 1, 2017, the county may increase the excise tax to an amount not to exceed $1.65 for each $500 value, or fraction thereof, as represented by a document as defined in §11-22-1 of this code: *Provided further,* That only one such state tax and one such county tax shall be paid on any one document and shall be collected in the county where the document is first admitted to record and the tax shall be paid by the grantor therein unless the grantee accepts the document without such tax having been paid, in which event such tax shall be paid by the grantee: *And provided further,* That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee. The county excise tax imposed under this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission of such county. Any county commission intending to increase the excise tax imposed in its county shall publish a notice of its intention to increase such tax not less than 30 days nor more than 60 days prior to the meeting at which such increase will be considered, such notice to be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area shall be the county in which such county commission is located.

(c)(1) Beginning July 1, 2023, and ending June 30, 2030, the additional 10 percent of the state excise tax retained annually by the county wherein the tax was collected pursuant to subsection (a) shall be deposited into two separate funds under the following requirements:

(A) Fifty percent of the additional moneys received shall be allocated for use in improving election administration, infrastructure, and physical and cyber security, in accordance with the minimum fund thresholds and standards established by the Secretary of State as provided in subdivision (3) of this subsection; and

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

(2) Beginning July 1, 2030, the excise tax collected pursuant to subsection (b) of this section shall be used by the county wherein it is collected for county purposes as follows:

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

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

(i) Fifty percent of the moneys described in paragraph (B) of this subdivision shall be allocated for use in improving election administration, infrastructure, and physical and cyber security, in accordance with the minimum fund thresholds and standards established by the Secretary of State as provided in subdivision (3) of this subsection; and

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

(3) The Secretary of State may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for purposes of this subsection to establish minimum fund thresholds and standards for use in improving election administration, infrastructure, and physical and cyber security, which rules shall include a respective minimum fund threshold for each county classification as provided in §7-7-3 of this code. Upon a determination by the Secretary of State that the county clerk has satisfied the minimum fund threshold and standards, the moneys in excess of the minimum fund threshold may be transferred to the county’s general fund at the county commission’s direction.

(4) All additional moneys under this section that are deposited into two separate funds for use in improving election administration, infrastructure, and physical and cyber security, and other county clerk purposes, shall be in addition to typical county budget allocations and shall not be supplanted by a budget reduction: *Provided*, That reasonable budget reductions are permitted if made in the ordinary course for reasons other than offsetting county clerk additional funding as provided in this section.

NOTE: The purpose of this bill is to allocate a percentage of county excise taxes received from transfers of title to real estate in each county for county clerk funding for election administration, infrastructure, and security and other county clerk purposes.

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