

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3389**

By Delegate Westfall

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

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; allocating a percentage of county excise taxes received from  
 5 transfers of title to real estate in each county for funding other county purposes including,  
 6 but not limited to, compliance with the Uniform Real Property Electronic Recording Act;  
 7 authorizing the Secretary of State to promulgate legislative rules establishing minimum  
 8 adequate funding thresholds and standards based on county classification for improving  
 9 election administration, infrastructure, and security; and authorizing county clerks to  
 10 reallocate the excess portion of funding for improving election administration,  
 11 infrastructure, and security to other approved county purposes upon determination by the  
 12 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.**

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, 10 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, in every year thereafter, an additional 10 percent of  
 9 each state excise tax collected pursuant to this subsection shall be retained by the county wherein

10 the tax was collected to be used for county purposes as provided in subsection (c) of this section:  
11 *Provided further,* That beginning July 1, 2030, the excise tax collected pursuant to this subsection  
12 shall be a county excise tax to be used by the county wherein it is collected for county purposes as  
13 provided in subsection (c) of this section. 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 in subsection (c) of this section: *Provided,*  
34 *however,* That after July 1, 2017, the county may increase the excise tax to an amount not to  
35 exceed \$1.65 for each \$500 value, or fraction thereof, as represented by a document as defined in

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

49 (c)(1) Beginning July 1, 2023, and ending June 30, 2030, 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 (3) 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 W. Va. Code § 39A-4-1 *et seq.*, the Uniform Real Property Electronic Recording Act.

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

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

62 and

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

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

69 (ii) Fifty percent of the moneys received shall be allocated for other county clerk purposes  
70 including, but not limited to, establishing, maintaining, and securing infrastructure to comply with  
71 §39A-4-1 et seq. of this code, the Uniform Real Property Electronic Recording Act.

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

80 (4) All additional moneys under this section that are deposited into two separate funds for  
81 use in improving election administration, infrastructure, and physical and cyber security, and other  
82 county clerk purposes, shall be in addition to typical county budget allocations and shall not be  
83 supplanted by a budget reduction: *Provided*, That reasonable budget reductions are permitted if  
84 made in the ordinary course for reasons other than offsetting county clerk additional funding as  
85 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.