

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 606

By Senators Rucker, Deeds, Roberts, Maynard, and

Woodrum

[Introduced February 10, 2023; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to
 2 exempting from ad valorem property tax all property used for divine worship; and including
 3 parts of those properties that are used for educational and other charitable purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

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

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

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

5 (2) Property belonging exclusively to the state;

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

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

10 (5) Property used ~~exclusively~~ for divine worship, including:

11 (A) Educational activities;

12 (B) Other activities, the purposes of supporting the community, and which are non-profit;

13 (C) Where a portion of the property is used exclusively for divine worship and the
 14 remainder of the property is used for other purposes which are primary and immediate, and are
 15 educational, literary, scientific or charitable in nature, the property will be exempt under this
 16 section;

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

18 (7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide
 19 owners and holders hereafter issued and sold by churches and religious societies for the purposes
 20 of securing money to be used in the erection of church buildings used exclusively for divine

21 worship or for the purpose of paying indebtedness thereon;

22 (8) Cemeteries;

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

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

30 (11) Public and family libraries;

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

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

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

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

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

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

- 47 (18) Houses of refuge and mental health facility or orphanage;
- 48 (19) Homes for children or for the aged, friendless or infirm not conducted for private profit;
- 49 (20) Fire engines and implements for extinguishing fires, and property used exclusively for
50 the safekeeping thereof, and for the meeting of fire companies;
- 51 (21) All property on hand to be used in the subsistence of livestock on hand at the
52 commencement of the assessment year;
- 53 (22) Household goods to the value of \$200, whether or not held or used for profit;
- 54 (23) Bank deposits and money;
- 55 (24) Household goods, which for purposes of this section means only personal property
56 and household goods commonly found within the house and items used to care for the house and
57 its surrounding property, when not held or used for profit;
- 58 (25) Personal effects, which for purposes of this section means only articles and items of
59 personal property commonly worn on or about the human body or carried by a person and
60 normally thought to be associated with the person when not held or used for profit;
- 61 (26) Dead victuals laid away for family use;
- 62 (27) All property belonging to the state, any county, district, city, village, town or other
63 political subdivision or any state college or university which is subject to a lease purchase
64 agreement and which provides that, during the term of the lease purchase agreement, title to the
65 leased property rests in the lessee so long as lessee is not in default or shall not have terminated
66 the lease as to the property;
- 67 (28) Personal property, including vehicles that qualify for a farm use exemption certificate
68 pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed
69 exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution:
70 *Provided*, That this exemption only applies in the case of such personal property used on a farm or
71 farming operation that annually produces for sale agricultural products, as defined in rules of the
72 Tax Commissioner;

73 (29) Real property owned by a nonprofit organization whose primary purpose is youth
74 development by means of adventure, educational or recreational activities for young people,
75 which real property contains a facility built with the expenditure of not less than \$100 million that is
76 capable of supporting additional activities within the region or the state and which is leased or used
77 to generate revenue for the nonprofit organization whether or not the property is used by the
78 nonprofit organization for its nonprofit purpose, subject to the requirements, limitations and
79 conditions set forth in subsection (h) of this section; and

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

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

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

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

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

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

98 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the

99 2005 regular session of the Legislature, shall apply to all applicable lease purchase agreements in
100 existence upon the effective date of the amendment.

101 (h) Nonprofit youth organization exemption - Limitations, Conditions, Collection and
102 administration of one and one quarter percent fee, limitations and distribution of monies.

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

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

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

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

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

125 ceremonial events held on-site at the facility.

126 (C) Gross revenues derived from operations of gift shops at a welcome or information
127 center located adjacent to a public highway operated by the nonprofit organization which is open
128 to the general public.

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

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

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

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

151 one and one quarter percent fee.

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

160 (6) Administration –

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

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

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

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

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

177 (7) Distribution –

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

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

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

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

202 (9) If merchants are allowed to do business on the property, the owner or lessee of the

203 property shall offer space to local merchants on terms at least as favorable as are offered to other
204 merchants.

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

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

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

219 (i) To assure the implementation of subsection (h) of this section does not harm local and
220 regionally located businesses by use of the tax exempt facility in a manner that cause unfair
221 competition and unreasonable loss of revenue to those businesses, studies shall be periodically
222 conducted to assure that further legislation is in order regarding the uses of the tax exempt facility.
223 The County commission of any county where such a property is located shall report to the Joint
224 Committee on Government and Finance by the first day of January every five years after the
225 effective date of this section. The report shall include information on any unfair business
226 competition resulting from the establishment of the non-profit status, and include a report of the
227 costs and benefits to its county of the tax exemption and associated fee, including an audit of that
228 county's use of the net revenues. The West Virginia University Bureau of Business and Economic

229 Research in coordination of the Center for Business and Economic Research at Marshall
230 University, by January 1, 2020, shall undertake a study and report to the Committee, the economic
231 impact of this tax exemption and fee to the county and that region of the state, and make any
232 recommendations regarding the benefits and disadvantages for continuing the provision of this tax
233 exemption and fee, included, but not limited to, the impacts to other small and large businesses in
234 the county, the costs to the county has incurred as a result of use of the facility, and any other
235 relevant data that the universities may deem relevant.

NOTE: The purpose of this bill is to exempt from ad valorem property tax all property used for divine worship, including parts of those properties that are used for educational and other charitable 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.