

Rec, Mar. 11, 1933

314

ENROLLED BILL

(REGULAR SESSION, 1933)

House Bill No. 314

(By Mr. Norton)

Passed March 11, 1933

In Effect from Passage

Originated in the.....*House*.....Takes effect.....*from*.....passage
Geo. L. Kues.....*Geo. L. Kues*.....
 Clerk. Clerk of the House of Delegates.

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James Z. Smith.....Chairman House Committee.
James A. H. No......Chairman Senate Committee.

ENROLLED BILL
 (H. B. No. 314)

[Passed March 11, 1933; in effect from passage.]

AN ACT to amend sections one to fifteen, inclusive, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, by substituting therefor, sections one to twenty-six, inclusive, relating to tax levies.

Be it enacted by the Legislature of West Virginia:

That sections one to fifteen, inclusive, article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, be amended to read as follows:

ARTICLE VIII.

Section 1. The purpose of this article is to provide reasonable and effective rates for the taxation of real and personal property. It is the intent of the legislature that the "tax limitation amendment" shall be interpreted through this article to give full effect to the expressed and well understood purposes of the voters; namely, to secure

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7 (1) A fair classification of property that will promote and
8 encourage home ownership, agriculture and business enterprise;

9 (2) A limitation on direct levies that will relieve property
10 of oppressive tax burdens without: (a) Jeopardizing the serv-
11 ices essential to public safety; (b) undermining the integrity of
12 local credit; (c) impairing the obligation of contracts; or (d)
13 denying to the taxpayers the equal protection of the law.

Sec. 2. To accomplish the purposes as set forth in section
2 one, the "tax limitation amendment" and this article shall be
3 interpreted in accordance with the following principles and
4 definitions:

5 (1) The phrase "aggregate of taxes assessed" shall mean
6 the total amount levied by local levying bodies under each
7 maximum rate on each classification of property as hereinafter
8 defined in sections four and five of this article, for the mainte-
9 nance of the local unit and the payment of the local debts, ex-
10 cept as may be necessary to avoid the impairment of the obliga-
11 tion of contracts;

12 (2) "Local levies" shall include all levies imposed by the
13 local levying bodies;

14 (3) "Now-existing indebtedness" shall mean the indebted-

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15 ness of the state or its political subdivisions contracted prior
16 to the ratification of the "tax limitation amendment;"

17 (4) "Subsequent indebtedness" shall mean the indebted-
18 ness of the state or its political subdivisions contracted after
19 the ratification of the "tax limitation amendment;"

20 (5) "Local levying body" or "fiscal body" shall mean a
21 county court, board of education, or governing body of a mu-
22 nicipal corporation.

Sec. 3. The state levy, other than for now-existing indebted-
2 ness, shall be as follows; not to exceed one cent on the one hun-
3 dred dollars' valuation on all real and personal property for
4 state and state school taxes. The board of public works shall,
5 when it finds that no state levy is necessary for any year, so
6 declare, and refrain from imposing the levy for that year. The
7 board may apportion the levy between the state fund and the
8 general school fund. If the amount of the general school fund
9 in any year is less than seven hundred fifty thousand dollars,
10 the board of public works shall transfer from the state fund
11 an amount necessary to make the general school fund at least
12 seven hundred fifty thousand dollars. Any act of the board of
13 public works in imposing the levy shall be certified by the presi-
14 dent and secretary of the board not later than the first day of

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15 August of the year for which the levy applies, to the clerk of the
16 county court, the assessor and the sheriff of each county.

17 The proper officer shall extend the levy on the property books
18 of his county.

19 For the fiscal year one thousand nine hundred thirty-three,
20 the maximum state levy for state and state school purposes
21 shall not exceed ten cents on the one hundred dollars' valuation.

Sec. 4. For the purpose of local levies, except as provided
2 in section thirteen of this article, property shall be classified as
3 follows:

4 Class I. All tangible personal property employed
5 exclusively in agriculture, including horticulture and
6 grazing;

7 All products of agriculture (including livestock)
8 while owned by the producer;

9 All money and all notes, bonds, bills and accounts re-
10 ceivable, stocks and any other intangible personal prop-
11 erty;

12 Class II. All property owned, used and occupied by
13 the owner exclusively for residential purposes;

14 All farms, including land used for horticulture and

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15 grazing, occupied and cultivated by their owners or
16 bona fide tenants;

17 Class III. All real and personal property situated
18 outside of municipalities, exclusive of classes I and II.

19 Class IV. All real and personal property situated
20 inside of municipalities, exclusive of Classes I and II.

Sec. 5. The aggregate of taxes assessed in any one year shall
2 not exceed fifty cents on each one hundred dollars' assessed
3 valuation on class I property; one dollar on class II property;
4 one dollar fifty cents on class III property; and two dollars
5 on class IV property.

Sec. 6. Each local levying body shall hold a session on the
2 first Tuesday in August for the transaction of business gen-
3 erally, and particularly for the business herein required.

Sec. 7. The county court shall, at the session provided for
2 in section six of this article, ascertain the fiscal condition of
3 the county, and make an itemized statement which shall set
4 forth:

5 (1) The amount due and the amount that will become due
6 and collectible from every source during the current fiscal year
7 except from the levy of taxes to be made for the year upon the

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8 county as a whole and upon any district of the county;

9 (2) Debts legally incurred subsequent to the ratification of
10 the "tax limitation amendment" owed by the county as a whole
11 and such debts payable out of any fund of any district, includ-
12 ing such debts that will become due and payable during the
13 year by the county as a whole or out of the funds of any dis-
14 trict, including interest on indebtedness, funded or bonded, or
15 otherwise;

16 (3) All other expenditures to be paid out of the levy for the
17 current fiscal year, whether by the county as a whole or out of
18 any fund of any district, with proper allowance for delinquent
19 taxes, exonerations and contingencies;

20 (4) The total amount necessary to be raised for each fund
21 by the levy of taxes for the current year;

22 (5) The proposed county levy in cents on each one hun-
23 dred dollars' assessed valuation of each class of property for
24 the county and its subdivisions;

25 (6) The proposed levy in each district for district funds,
26 if any, on each hundred dollars' valuation of each class of
27 property;

28 (7) The separate and aggregate amounts of the real, per-

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29 sonal, and public utility property in each class in the county
30 and in each subdivision thereof.

31 A copy of the statement duly certified by the clerk of the
32 court shall be forwarded to the tax commissioner, and shall
33 be published twice, at least one week intervening between publi-
34 cations, in two newspapers published in the county, of general
35 circulation and of opposite polities. If there is only one news-
36 paper published in the county, the publication shall be made
37 therein.

38 The session shall then stand adjourned until the third Tues-
39 day in August, at which time it shall reconvene. The court shall
40 then hear and consider any objections made orally or in writing
41 by the prosecuting attorney, by the tax commissioner or his
42 representative, or by any taxpayer of the county, to the esti-
43 mate and proposed levy or to any item thereof. The court shall
44 enter of record any objections so made and the reasons and
45 grounds for such objections.

46 The failure of any officer or taxpayer to offer objections shall
47 not preclude him from pursuing any legal remedy necessary
48 to correct any levy made by any fiscal body under this article.

49 The court, after hearing objections, shall reconsider the pro-

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50 posed original estimate and proposed rate of levy, and if the
51 objections are well taken, shall correct the estimate and levy.
52 The court shall then approve the estimate and levy. Thereupon
53 the clerk shall enter the estimate and levy, together with the
54 order approving them, in the proper record book.

55 The county court shall then levy as many cents per hun-
56 dred dollars' assessed valuation on each class of property in the
57 county or its subdivisions, according to the last assessment, as
58 will produce the amounts shown to be necessary by the state-
59 ment. The levy for all county purposes authorized by law, shall
60 not exceed, on class I property nine and four-tenths cents; on
61 class II property eighteen and seven-tenths cents; on class III
62 and on class IV property thirty-seven and five-tenths cents.

63 When less than the maximum levies are imposed, the levies
64 upon each class of property shall be in the same proportions
65 as the maximum herein authorized.

Sec. 8. When an order is made for a levy the clerk of the
2 court, within three days, shall prepare, certify and forward
3 copies to the tax commissioner, the state auditor, the assessor
4 and the officer who, according to law, is required to collect the
5 levy. He shall charge the collecting officer with the amount of

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6 the levy in the proper account book. The assessor shall im-
7 mediately extend the taxes in the land and personal property
8 books. The officer who is required to collect the levy shall make
9 out proper tax bills. County levies shall be collected by the
10 sheriff at the same time, in the same manner, and under the
11 same regulations as other taxes are collected. Delinquent lists
12 for county levies shall be returned and delinquent lands sold
13 for county levies in the same manner and at the same place and
14 under the same regulations that lands returned delinquent for
15 state taxes are returned and sold.

Sec. 9. Every board of education shall, at the session provided
2 for in section six of this article, if the laying of a levy has been
3 authorized by the voters of the district under article nine,
4 chapter eighteen of the code, ascertain the condition of the
5 fiscal affairs of the district, distinguishing between elementary
6 and high schools and the funds provided for each, and make a
7 statement setting forth:

8 (1) The separate amounts due the various funds, and the
9 amounts that will become due and collectible during the cur-
10 rent fiscal year except from the levy of taxes to be made for
11 the year;

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12 (2) Debts legally incurred, subsequent to the ratification of
13 the "tax limitation amendment," and such debts that will be-
14 come due and payable during the current fiscal year, including
15 interest on indebtedness, funded, bonded, or otherwise;

16 (3) All other expenditures to be paid out of the levy for the
17 current fiscal year, with proper allowances for delinquent taxes,
18 exonerations and contingencies;

19 (4) The separate amount necessary for each fund and the
20 total to be raised by the levy of taxes for the current fiscal
21 year;

22 (5) The proposed rate of levy in cents on each one hundred
23 dollars' assessed valuation of each class of property;

24 (6) The separate and aggregate amounts of the assessed
25 valuation of real, personal, and public utility property within
26 each class.

27 The secretary of the board shall forward immediately, a
28 certified copy of the statement to the tax commissioner and
29 shall publish the statement in a manner similar to that pro-
30 vided in section seven of this article.

31 The session shall then stand adjourned until the third
32 Tuesday in August, at which time it shall reconvene and pro-

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33 ceed in a manner similar in all respects to that provided in
34 section seven of this article.

35 The board, after entering the statement as finally approved,
36 in its record of proceedings, shall levy as many cents on each
37 one hundred dollars' assessed valuation of each class of prop-
38 erty as will produce the amount necessary for defraying the
39 expenses for the fiscal year. These levies shall not exceed, on
40 class I property twenty-eight and one-tenth cents; on class
41 II property, fifty-six and three-tenths cents; on class III and
42 on class IV property, one hundred twelve and five-tenths
43 cents.

44 When less than the maximum levies are imposed, the levies
45 upon each class of property shall be in the same proportions as
46 the maximums herein authorized.

Sec. 10. Within three days after the board of education
2 has laid the levies, the secretary of the board shall forward
3 to the county superintendent and to the tax commissioner,
4 certified copies of the orders laying levies and the rate of levy
5 upon each class. Within three days thereafter the county
6 superintendent shall report the rate of levy for each of the
7 various classes and the total value of real, personal, and public

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8 utility property in each class in every district to the clerk of
9 the county court, the assessor, the state superintendent and the
10 auditor. The proper county officers shall then extend on the
11 property books the amount of taxes levied. The sheriff shall
12 collect and account for the taxes as required by law.

Sec. 11. The municipal council shall, at the session provided
2 for in section six, ascertain the fiscal condition of the corpora-
3 tion, and make an itemized statement which shall set forth:

4 (1) The amount due and the amount that will become due
5 and collectible from every source during the current fiscal year
6 except from the levy of taxes to be made for the year.

7 (2) Debts legally incurred, subsequent to the ratification of
8 the "tax limitation amendment," owed by the municipality,
9 and such debts that will become due and payable during the
10 current fiscal year, including interest on indebtedness, funded,
11 bonded, or otherwise.

12 (3) All other expenditures to be paid out of the funds of
13 the municipality for the current fiscal year with proper allow-
14 ance for delinquent taxes, exonerations, and contingencies.

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15 (4) The total amount necessary to be raised by the levy
16 of taxes for the current fiscal year.

17 (5) The proposed rate of levy in cents on each one hundred
18 dollars' assessed valuation of each class of property.

19 (6) The separate and aggregate assessed valuations of real,
20 personal, and public utility property in each class in the muni-
21 cipality.

22 The recording officer of the municipality shall forward im-
23 mediately a certified copy of the statement to the tax commis-
24 sioner, and shall publish the statement in a manner similar
25 to that provided in section seven of this article. The session
26 shall then stand adjourned until the third Tuesday in August,
27 at which time it shall reconvene and proceed in a manner
28 similar in all respects to that provided in section seven of this
29 article.

30 The council, after entering the statement as finally approved,
31 in its record of proceedings, shall levy as many cents on each
32 one hundred dollars' assessed valuation of each class of prop-
33 erty as will produce the amount necessary to defray the ex-
34 penses for the fiscal year. The levies shall not exceed, on

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35 class I property, twelve and five-tenths cents on each one hun-
36 dred dollars' assessed valuation; on class II property, twenty-
37 five cents on each one hundred dollars' assessed valuation; and
38 on class IV property, fifty cents.

39 When less than the maximum levies are imposed, the levies
40 upon each class of property shall be in the same proportions
41 as the maximums herein authorized.

Sec. 12. Within three days after the council of a munici-
2 pality has laid the levies, its recording officer shall forward
3 certified copies of the order laying levies to the tax commis-
4 sioner, the state auditor and the officer whose duty it is to ex-
5 tend the levies.

Sec. 13. The local levying bodies, at the meeting provided
2 for in section six of this article, shall impose the levy neces-
3 sary for current expenses and for the current requirements of
4 principal and interest upon now-existing indebtedness. If the
5 levy laid exhausts the maximum prescribed in section five of
6 this article without meeting current requirements of principle
7 and interest on now-existing indebtedness, the local levying
8 body shall prepare a statement setting forth the following:

9 (1) The amount necessary in excess of the maximum levies

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10 prescribed by section five of this article, to meet the current
11 requirements of now-existing indebtedness, with proper allow-
12 ance for delinquent taxes, exonerations, and contingencies.

13 (2) The total assessed valuation of real, personal, and public
14 utility property, without regard to the classes elsewhere pro-
15 vided for in this article.

16 (3) The rate of levy in cents upon each one hundred dollars'
17 assessed valuation necessary to produce the amount determined
18 under subsection one.

19 The recording officer shall forward immediately a certified
20 copy of this statement to the tax commissioner in the same
21 manner and at the same time as required in section seven of
22 this article for the regular levies imposed by the local levying
23 body. Notice of this levy shall be published at the same time
24 and in the same manner as required for other levies made by
25 the fiscal body.

26 When the fiscal body reconvenes on the third Tuesday in
27 August, it shall reconsider the estimate and if it is found to
28 be sufficient, shall levy on all property without regard to the
29 classes provided for in this article, as many cents per one hun-
30 dred dollars' assessed valuation as will produce the amount

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31 determined under subsection one.

Sec. 14. The order making a levy, authorized by section
2 thirteen of this article, shall be certified, extended upon the
3 property books, and collected at the same time and in the same
4 manner as provided for regular levies in this article.

Sec. 15. A local levying body, upon petition of five percent
2 of the qualified voters, based on the number of votes cast at
3 the last general election, may provide for an election to increase
4 the levies, by entering on its record of proceedings, an order
5 setting forth:

6 (1) The purposes for which additional funds are needed;

7 (2) The amount for each purpose;

8 (3) The total amount;

9 (4) The separate and aggregate assessed valuations of each
10 class of taxable property within its jurisdiction;

11 (5) The proposed additional rate of levy in cents on each
12 class of property;

13 (6) The proposed number of years, not to exceed three, to
14 which the additional levy shall apply.

15 The local levying body shall submit to the voters within
16 their political subdivision, the question of the additional levy,

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James D. [unclear]
John [unclear]

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17 at either a general or special election. If at least sixty per cent
18 of the voters cast their ballots in favor of the additional levy,
19 the local levying body may impose the additional levy. This
20 levy shall not exceed fifty per cent of the rates authorized in
21 sections seven, nine, or eleven of this article, as the case may
22 be.

23 Levies authorized by this section shall not continue for more
24 than three years without resubmission to the voters.

Sec. 16. The local levying body shall publish notice, call-
2 ing the election, at least once each week for two successive
3 weeks before the election in two newspapers of opposite politics
4 and of general circulation in the territory in which the elec-
5 tion is held. If there is only one newspaper published in the
6 county, the publication shall be made therein. The local
7 levying body shall also post printed copies of the order at each
8 place of voting at least ten days before the election. All the
9 provisions of the laws concerning general elections shall apply
10 as far as they are practicable, except as follows: A separate
11 ballot shall be used at a levy election held in connection with
12 any other election. The ballot shall be entitled: "Special
13 election to authorize additional levies for the year (s),

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14 and for the purpose of....., according
15 to the order of the.....entered on the.....day
16 of.....”

17 “The additional levy shall be on class I property.....
18 cents; on class II property.....cents; on Class III property
19 (if any).....cents; on class IV property (if any).....
20 cents.”

Sec. 17. The tax commissioner shall prepare and furnish
2 forms and instructions for making the statement required in
3 sections seven, nine, eleven and thirteen of this article. The
4 attorney general shall prepare and furnish forms and instruc-
5 tions for the holding of any election authorized by this article.

Sec. 18. Within forty days after an order for levy, the cir-
2 cuit court of the county, or the judge in vacation, may allow
3 a writ of supersedeas on the petition of at least twenty-four
4 persons interested in reversing the order. The levying body,
5 without awaiting the final decision, may rescind the order, and
6 impose a new levy. If the court, on the hearing, finds that the
7 order is contrary to law and reverses the order, the levying
8 body shall impose a levy according to law. If money is col-
9 lected under any order which is afterward rescinded or re-

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10 versed, the collecting officer shall, upon demand, refund any
11 payment to the person from whom it was collected. If the
12 collecting officer fails to repay the amount, he and his sureties
13 shall be jointly and severally liable for the amount and the
14 costs of recovery. Recovery may be had by summons before a
15 justice or on motion in the circuit court.

Sec. 19. Boards or officers expending funds derived from
2 the levying of taxes shall expend the funds only for the pur-
3 poses for which they were raised.

Sec. 20. A local fiscal body shall not expend money or incur
2 obligations:

- 3 (1) In an unauthorized manner.
- 4 (2) For an unauthorized purpose.
- 5 (3) In excess of the amount allocated to the fund in the
6 levy order.
- 7 (4) In excess of the funds available for current expenses.

Sec. 21. Any indebtedness created, contract made, or order
2 or draft issued in violation of section nineteen of this article
3 shall be void.

Sec. 22. A fiscal body which has expended money or in-
2 curred obligations in violation of section nineteen of this article

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3 shall institute proceedings in a court of competent jurisdiction
4 to recover the money expended or to cancel the obligation, or
5 both.

Sec. 23. A person who in his official capacity willfully par-
2 ticipates in the violation of section nineteen of this article shall
3 be personally liable, jointly and severally, for the amount
4 illegally expended.

Sec. 24. A person who in his official capacity willfully par-
2 ticipates in an illegal expenditure may be proceeded against
3 for the recovery of the amount illegally expended. The politi-
4 cal subdivision concerned, a taxpayer of the subdivision, the
5 state tax commissioner or a person prejudiced may bring the
6 proceeding.

7 All moneys recovered in these proceedings shall be paid into
8 the treasury of the proper fiscal body and credited to the
9 proper fund.

10 If the plaintiff prevails, he shall recover against the defen-
11 dant, the costs of the proceedings, including a reasonable at-
12 torney's fee to be fixed by the trial court and included in the
13 taxation of costs.

Sec. 25. A person who in his official capacity willfully vio-

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James L. Smith

Chairman Senate Committee.

2 lates the provisions of this article shall be guilty of a misde-
3 meanor, and upon conviction shall be fined not more than five
4 hundred dollars, or confined in jail not more than one year, or
5 both. Upon conviction he shall also forfeit his office.

Sec. 26. The state, a taxpayer, or the tax commissioner may
2 institute and prosecute to final judgment any proceeding for
3 the removal of a member of a local fiscal body who has willfully
4 or negligently violated any of the provisions of this article.

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5 Upon the petition of the state, a taxpayer, or the tax commis-
6 sioner, the court or in vacation, the judge, shall set a time for
7 hearing the petition. An attested copy of the petition and the
8 charges contained therein, shall be served upon the defendants
9 at least twenty days prior to the date of hearing. No other
10 pleading or notice of the proceedings shall be necessary.

Sec. 27. If a part of this act is, for any reason, declared
2 unconstitutional, the decision of the court shall not affect the
3 validity of any of the remaining portions.

4 All existing provisions of law inconsistent with this act are
5 hereby repealed.

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Chairman House Committee.

O. M. Hiner
.....
Speaker of the House of Delegates.

John Hall
.....
Clerk of the House of Delegates.

A. M. Airnes
.....
President of the Senate.

Arthur Amely
.....
Clerk of the Senate.

The within is... *approved*
this... *16th* day of... *March* ..., 1933.

H. S. Kemp
.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 17 1933**
Wm. S. O'BRIEN,
Secretary of State