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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2015



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2968**

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



Passed March 12, 2015

In effect ninety days from passage.

HB 2968

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**H. B. 2968**

(BY DELEGATE(S) MR. SPEAKER (MR. ARMSTEAD),  
ASHLEY, BATES, PERRY, KESSINGER, HICKS, COOPER, SHOTT,  
MCCUSKEY AND ARVON)

[Passed March 12, 2015;  
in effect ninety days from passage.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from property tax certain real properties in this state owned by nonprofit youth organizations and built at a cost of at least \$100 million; specifying restrictions affecting the property; specifying permitted activities; requiring property owner to pay one and one quarter percent of gross revenues from specified uses, operations and activities; specifying how one and one quarter percent fee is administered, specifying how monies derived from one and one quarter percent fee are distributed; 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.**

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

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

7 (2) Property belonging exclusively to the state;

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

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

13 (5) Property used exclusively for divine worship;

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

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

22 (8) Cemeteries;

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

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

33 (11) Public and family libraries;

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

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

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

43 (15) All real estate not exceeding one acre in extent, and the  
44 buildings on the real estate, used exclusively by any college or  
45 university society as a literary hall, or as a dormitory or  
46 clubroom, if not used with a view to profit, including, but not  
47 limited to, property owned by a fraternity or sorority  
48 organization affiliated with a university or college or property  
49 owned by a nonprofit housing corporation or similar entity on  
50 behalf of a fraternity or sorority organization affiliated with a  
51 university or college, when the property is used as residential  
52 accommodations or as a dormitory for members of the  
53 organization;

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

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

59 (18) Houses of refuge and mental health facility or  
60 orphanage;

61 (19) Homes for children or for the aged, friendless or infirm  
62 not conducted for private profit;

63 (20) Fire engines and implements for extinguishing fires,  
64 and property used exclusively for the safekeeping thereof, and  
65 for the meeting of fire companies;

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

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

70 (23) Bank deposits and money;

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

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

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

81 (27) All property belonging to the state, any county, district,  
82 city, village, town or other political subdivision or any state

83 college or university which is subject to a lease purchase  
84 agreement and which provides that, during the term of the lease  
85 purchase agreement, title to the leased property rests in the  
86 lessee so long as lessee is not in default or shall not have  
87 terminated the lease as to the property;

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

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

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

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

113 (c) Real property which is exempt from taxation by  
114 subsection (a) of this section shall be entered upon the assessor's

115 books, together with the true and actual value thereof, but no  
116 taxes may be levied upon the property or extended upon the  
117 assessor's books.

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

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

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

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

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

143 (1) The exemption from ad valorem taxation provided  
144 pursuant to the provisions of subdivision (29), subsection (a) of

145 this section does not apply to a property owned by a nonprofit  
146 organization otherwise qualifying for the exemption but which  
147 property or facilities are used for-profit or outside the primary  
148 purpose of the owner which result in unrelated business taxable  
149 income as defined by Section 512 of the Internal Revenue Code  
150 of 1986, as amended, unless the income is generated by an  
151 activity upon which the one and one quarter percent fee  
152 authorized by subdivision (2) of this section is applied as  
153 provided in subdivision (3) of this subsection.

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

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

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

173 (B) Gross revenues derived from any retail store located at  
174 the facility that is open only to those persons who are attending  
175 meetings, spectator sports, recreational, celebratory or ceremo-  
176 nial events held on-site at the facility.

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

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

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

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

200 (4) Notwithstanding any other provision of this section to the  
201 contrary, programs or activities occurring on the property or its  
202 facilities held in conjunction with a government organization or  
203 sponsored by other nonprofit organizations serving youth,  
204 veterans, military services, public service agencies including,  
205 fire, police, emergency and search and rescue services,  
206 government agencies, schools and universities, health care  
207 providers and similar organizations or groups which are  
208 designed to provide opportunities for learning or training in the

209 areas of leadership, character education, science, technology,  
210 engineering, arts and mathematics (STEAM) programs, physical  
211 challenges, sustainability, conservation and outdoor learning  
212 shall be considered a charitable or nonprofit use for the purposes  
213 of this section and not subject to the one and one quarter percent  
214 fee.

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

228 (6) Administration –

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

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

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

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

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

253 (7) Distribution –

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

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

271 (C) Fifty percent of monies so collected, net of refunds and  
272 adjustments, shall be divided equally and paid annually into  
273 separate accounts established and maintained by the sheriffs of  
274 the county or counties wherein the property is located and the  
275 sheriffs of any other county that is within the jurisdiction of the  
276 same economic development authority as the county or counties  
277 wherein the property is located to be used solely for the  
278 establishment and delivery of a science, technology, engineering,  
279 art and math (STEAM) program in conjunction with the owner  
280 of the exempt property. The funds shall be divided equally for  
281 use in each county and the programs must be approved by the  
282 respective county superintendents of schools. Expenditures from  
283 the accounts shall be authorized by the county superintendent of  
284 schools.

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

291 (9) If merchants are allowed to do business on the property,  
292 the owner or lessee of the property shall offer space to local  
293 merchants on terms at least as favorable as are offered to other  
294 merchants.

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

299 (11) The Tourism Commission shall include in its annual  
300 report submitted to the Governor and the Legislature a summary  
301 of funds paid into the Tourism Promotion Fund and recommen-  
302 dations pertaining to the administration of this section.

303           (12) This subsection may not be construed to prohibit the  
304 owner of property otherwise subject to this section from having  
305 portions of the property severed from the remainder of the  
306 property, assessed and taxed as if nonexempt and thereafter  
307 conducting business on such property the same as any other  
308 nonexempt property: *Provided*, That the area of property to be  
309 severed shall be approved by the county commission wherein the  
310 property lies so as to include in the severance all property  
311 substantially supporting the for profit or business activity giving  
312 rise to the specific purpose of the severance and excluding all  
313 property entitled to the continued benefits of this Act.

314           (i) To assure the implementation of subsection (h) of this  
315 section does not harm local and regionally located businesses by  
316 use of the tax exempt facility in a manner that cause unfair  
317 competition and unreasonable loss of revenue to those  
318 businesses, studies shall be periodically conducted to assure that  
319 further legislation is in order regarding the uses of the tax  
320 exempt facility. The County commission of any county where  
321 such a property is located shall report to the Joint Committee on  
322 Government and Finance by the first day of January every five  
323 years after the effective date of this section. The report shall  
324 include information on any unfair business competition resulting  
325 from the establishment of the non-profit status, and include a  
326 report of the costs and benefits to its county of the tax exemption  
327 and associated fee, including an audit of that county's use of the  
328 net revenues. The West Virginia University Bureau of Business  
329 and Economic Research in coordination of the Center for  
330 Business and Economic Research at Marshall University, by  
331 January 1, two thousand twenty, shall undertake a study and  
332 report to the Committee, the economic impact of this tax  
333 exemption and fee to the county and that region of the state, and  
334 make any recommendations regarding the benefits and  
335 disadvantages for continuing the provision of this tax exemption  
336 and fee, included, but not limited to, the impacts to other small

337 and large businesses in the county, the costs to the county has  
338 incurred as a result of use of the facility, and any other relevant  
339 data that the universities may deem relevant.

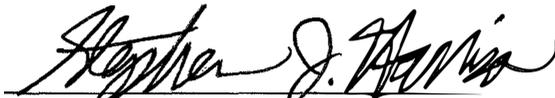
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

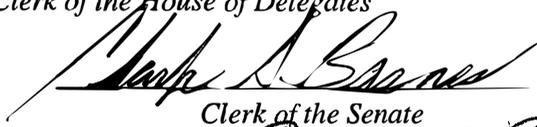
  
Chairman, House Committee

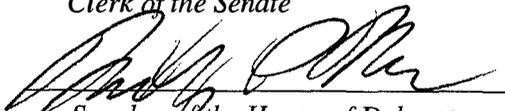
  
Chairman, Senate Committee

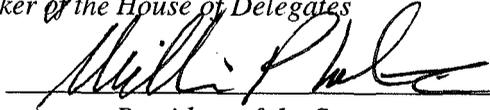
Originating in the House.

In effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
President of the Senate

The within was approved this the 27<sup>th</sup>  
day of March, 2015.

  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 5:30pm