

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 1001**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on Finance;

8 reported August 3, 2011.]

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13 A BILL to amend and reenact §11-15-3a and §11B-2-20 of the Code of
14 West Virginia, 1931, as amended, all relating generally to the
15 consumers sales and service tax and the Revenue Shortfall
16 Reserve Fund; specifying reduction in consumers sales and
17 service tax on sales, purchases and uses of food and food
18 ingredients intended for human consumption; specifying
19 contingent reduction of the consumers sales and service tax on
20 sales, purchases and uses of food and food ingredients
21 intended for human consumption based on specified levels of
22 funding in the Revenue Shortfall Reserve Fund; specifying
23 contingent termination of the consumers sales and service tax
24 on sales, purchases and uses of food and food ingredients
25 intended for human consumption based on specified levels of
26 funding in the Revenue Shortfall Reserve Fund; specifying

1 maximum aggregate funding amount for the Revenue Shortfall
2 Reserve Fund; and providing for effective dates.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §11-15-3a and §11B-2-20 of the Code of West Virginia,
5 1931, as amended, be amended and reenacted, all to read as follows:

6 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

7 **§11-15-3a. Rate of tax on food and food ingredients intended for**
8 **human consumption; reductions of tax beginning July**
9 **1, 2008 and January 1, 2012.**

10 (a) *Rate of tax on food and food ingredients.* --
11 Notwithstanding any provision of this article or article fifteen-a
12 of this chapter to the contrary,:

13 (1) Rate Reduction -- ~~the~~ The rate of tax on sales, purchases
14 and uses of food and food ingredients intended for human
15 consumption after June 30, 2008, shall be three percent of its
16 sales price, as defined in section two, article fifteen-b of this
17 chapter.:

18 ~~Provided, That the~~ (2) Additional Rate Reduction -- The rate
19 of tax on sales, purchases and uses of food and food ingredients as
20 defined in ~~said~~ that section that is intended for human consumption
21 after December 31, 2011, shall be ~~two~~ one and one-half percent of
22 its sales price, as defined in ~~said~~ that section.

23 (3) Contingent Rate Reduction -- The rate of tax on sales,
24 purchases and uses of food and food ingredients as defined in
25 section two article, fifteen-b of this chapter that is intended for

1 human consumption after December 31, 2012, shall be one percent of
2 its sales price, as defined in section two, article fifteen-b of
3 this chapter: *Provided*, That the reduction in tax after December
4 31, 2012, authorized by this subsection shall be suspended if the
5 balance of funds as of June 30, 2012, in the Revenue Shortfall
6 Reserve Fund established in section twenty, article two, eleven-b
7 of this cosde does not equal or exceed twelve and one half percent
8 of the General Revenue Fund budgeted for the fiscal year commencing
9 July 1, 2012. Such suspension shall terminate, and the reduction
10 in tax rate shall proceed, beginning on January 1 of any calendar
11 year beginning after December 31, 2013, when the balance of funds
12 as of June 30, of the preceding fiscal year in said Revenue
13 Shortfall Reserve Fund equals or exceeds twelve and one half
14 percent of the General Revenue Fund budgeted for the immediately
15 succeeding fiscal year.

16 (4) *Contingent Termination of Tax on Food* -- The tax on sales,
17 purchases and uses of food and food ingredients as defined in
18 section two, article fifteen-b of this chapter that is intended for
19 human consumption shall cease after December 31, 2013, and no such
20 tax shall be imposed on sales, purchases and uses of food and food
21 ingredients so defined: *Provided*, That the cessation of tax after
22 December 31, 2013, authorized by this subsection shall be suspended
23 if the balance of funds as of June 30, 2013, in the Revenue
24 Shortfall Reserve Fund established in section twenty, article two,
25 chapter eleven-b of this code does not equal or exceed fifteen
26 percent of the General Revenue Fund budgeted for the fiscal year

1 commencing July 1, 2013. Such suspension shall terminate, and the
2 cessation of tax shall proceed, beginning on January 1 of any
3 calendar year beginning after December 31, 2014, which the balance
4 of funds as of June 30, of the preceding fiscal year in said
5 Revenue Shortfall Reserve Fund equals or exceeds fifteen percent of
6 the General Revenue Fund budgeted for the immediately succeeding
7 fiscal year.

8 (b) *Calculation of tax on fractional parts of a dollar.* -- The
9 tax computation under this section shall be carried to the third
10 decimal place and the tax rounded up to the next whole cent
11 whenever the third decimal place is greater than four and rounded
12 down to the lower whole cent whenever the third decimal place is
13 four or less. The seller may elect to compute the tax due on a
14 transaction on a per item basis or on an invoice basis provided the
15 method used is consistently used during the reporting period.

16 (c) *Federal Food Stamp and Women, Infants and Children*
17 *Programs, other exemptions.* -- Nothing in this section ~~shall affect~~
18 affects application of the exemption from tax provided in section
19 nine of this article for food purchased by an eligible person using
20 food stamps, electronic benefits transfer cards or vouchers issued
21 by or pursuant to authorization of the United States Department of
22 Agriculture to individuals participating in the Federal Food Stamp
23 Program, by whatever name called, or the Women, Infants and
24 Children (WIC) program, or application of any other exemption from
25 tax set forth in this article or article fifteen-a of this chapter.

26 (d) *Effective date of amendments* -- Amendments to this section

1 enacted during the first extraordinary session of the Legislature
2 in the year 2011, shall take effect immediately upon passage.

3 **CHAPTER 11B. DEPARTMENT OF REVENUE.**

4 **ARTICLE 2. STATE BUDGET OFFICE.**

5 **§11B-2-20. Reduction of appropriations; powers of Governor;**
6 **Revenue Shortfall Reserve Fund and permissible**
7 **expenditures therefrom.**

8 (a) Notwithstanding any provision of this section, the
9 Governor may reduce appropriations according to any of the methods
10 set forth in sections twenty-one and twenty-two of this article.
11 The Governor may, in lieu of imposing a reduction in
12 appropriations, request an appropriation by the Legislature from
13 the Revenue Shortfall Reserve Fund established in this section.

14 (b) A Revenue Shortfall Reserve Fund is hereby continued
15 within the state Treasury. The Revenue Shortfall Reserve Fund
16 shall be funded as set forth in this subsection from surplus
17 revenues, if any, in the state fund, general revenue, as the
18 surplus revenues may accrue from time to time. Within sixty days
19 of the end of each fiscal year, the secretary shall cause to be
20 deposited into the Revenue Shortfall Reserve Fund the first fifty
21 percent of all surplus revenues, if any, determined to have accrued
22 during the fiscal year just ended: Provided, That for fiscal years
23 ending on and after June 30, 2011, the Revenue Shortfall Reserve
24 Fund shall be funded continuously and on a revolving basis in
25 accordance with this subsection up to an aggregate amount not to

1 exceed fifteen percent of the total appropriations from the State
2 Fund, General Revenue, for the fiscal year just ended. The Revenue
3 Shortfall Reserve Fund shall be funded continuously and on a
4 revolving basis in accordance with this subsection up to an
5 aggregate amount not to exceed ten percent of the total
6 appropriations from the state fund, general revenue, for the fiscal
7 year just ended. If at the end of any fiscal year the Revenue
8 Shortfall Reserve Fund is funded at an amount equal to or exceeding
9 ten percent of the state's General Revenue Fund budget for the
10 fiscal year just ended, then there shall be no further obligation
11 of the secretary under the provisions of this section to apply any
12 surplus revenues as set forth in this subsection until that time
13 the Revenue Shortfall Reserve Fund balance is less than ten percent
14 of the total appropriations from the state fund, general revenue:
15 Provided, That for fiscal years ending on and after June 30, 2011,
16 if at the end of any fiscal year the Revenue Shortfall Reserve Fund
17 is funded at an amount equal to or exceeding fifteen percent of the
18 State's General Revenue Fund budget for the fiscal year just ended,
19 then there shall be no further obligation of the Secretary under
20 this provisions of this section to apply any surplus revenue as set
21 forth in this subsection until such time as the Revenue Shortfall
22 Reserve Fund balance is less than fifteen percent of the total
23 appropriations from the State Fund, General Revenue.

24 (c) Not earlier than November 1, of each calendar year, if the
25 state's fiscal circumstances are such as to otherwise trigger the
26 authority of the Governor to reduce appropriations under this

1 section or section twenty-one or section twenty-two of this
2 article, then in that event the Governor may notify the presiding
3 officers of both houses of the Legislature in writing of his or her
4 intention to convene the Legislature pursuant to section nineteen,
5 article VI of the Constitution of West Virginia for the purpose of
6 requesting the introduction of a supplementary appropriation bill
7 or to request a supplementary appropriation bill at the next
8 preceding regular session of the Legislature to draw money from the
9 surplus Revenue Shortfall Reserve Fund to meet any anticipated
10 revenue shortfall. If the Legislature fails to enact a
11 supplementary appropriation from the Revenue Shortfall Reserve Fund
12 during any special legislative session called for the purposes set
13 forth in this section or during the next preceding regular session
14 of the Legislature, then the Governor may proceed with a reduction
15 of appropriations pursuant to sections twenty-one and twenty-two of
16 this article. Should any amount drawn from the Revenue Shortfall
17 Reserve Fund pursuant to an appropriation made by the Legislature
18 prove insufficient to address any anticipated shortfall, then the
19 Governor may also proceed with a reduction of appropriations
20 pursuant to sections twenty-one and twenty-two of this article.

21 (d) Upon the creation of the fund, the Legislature is
22 authorized and may make an appropriation from the Revenue Shortfall
23 Reserve Fund for revenue shortfalls, for emergency revenue needs
24 caused by acts of God or natural disasters or for other fiscal
25 needs as determined solely by the Legislature.

26 (e) Prior to the thirty-first day of October, in any fiscal

1 year in which revenues are inadequate to make timely payments of
2 the state's obligations, the Governor may by executive order, after
3 first notifying the presiding officers of both houses of the
4 Legislature in writing, borrow funds from the Revenue Shortfall
5 Reserve Fund. The amount of funds borrowed under this subsection
6 shall not exceed one and one-half percent of the general revenue
7 estimate for the fiscal year in which the funds are to be borrowed,
8 or the amount the Governor determines is necessary to make timely
9 payment of the state's obligations, whichever is less. Any funds
10 borrowed pursuant to this subsection shall be repaid, without
11 interest, and redeposited to the credit of the Revenue Shortfall
12 Reserve Fund within ninety days of their withdrawal.

13 (f) There is hereby created in the state Treasury the "Revenue
14 Shortfall Reserve Fund - Part B." The Revenue Shortfall Reserve
15 Fund - Part B shall consist of moneys transferred from the West
16 Virginia Tobacco Settlement Medical Trust Fund pursuant to the
17 provisions of section two, article eleven-a, chapter four of this
18 code, repayments made of the loan from the West Virginia Tobacco
19 Settlement Medical Trust Fund to the Physician's Mutual Insurance
20 Company pursuant to the provisions of article twenty-f, chapter
21 thirty-three of this code, and all interest and other return earned
22 on the moneys in the Revenue Shortfall Reserve Fund - Part B.
23 Moneys in the Revenue Shortfall Reserve Fund - Part B may be
24 expended solely for the purposes set forth in subsection (d) of
25 this section, subject to the following conditions:

26 (1) No moneys in the Revenue Shortfall Reserve Fund - Part B

1 nor any interest or other return earned thereon may be expended for
2 any purpose unless all moneys in the Revenue Shortfall Reserve Fund
3 described in subsection (b) of this section have first been
4 expended, except that the interest or other return earned on moneys
5 in the Revenue Shortfall Reserve Fund - Part B may be expended as
6 provided in subdivision (2) of this subsection; and

7 (2) Notwithstanding any other provision of this section to the
8 contrary, the Legislature may appropriate any interest and other
9 return earned thereon that may accrue on the moneys in the Revenue
10 Shortfall Reserve Fund - Part B after June 30, 2025, for
11 expenditure for the purposes set forth in section three, article
12 eleven-a, chapter four of this code; and

13 (3) Any appropriation made from Revenue Shortfall Reserve Fund
14 - Part B shall be made only in instances of revenue shortfalls or
15 fiscal emergencies of an extraordinary nature.

16 (g) Subject to the conditions upon expenditures from the
17 Revenue Shortfall Reserve Fund - Part B prescribed in subsection
18 (f) of this section, in appropriating moneys pursuant to the
19 provisions of this section, the Legislature may in any fiscal year
20 appropriate from the Revenue Shortfall Reserve Fund and the Revenue
21 Shortfall Reserve Fund - Part B, a total amount up to, but not
22 exceeding, ten percent of the total appropriations from the state
23 fund, general revenue, for the fiscal year just ended.

24 (h) (1) Of the moneys in the Revenue Shortfall Reserve Fund,
25 \$100 million, or such greater amount as may be certified as
26 necessary by the director of the budget for the purposes of

1 subsection (e) of this section, shall be made available to the West
2 Virginia Board of Treasury Investments for management and
3 investment of the moneys in accordance with the provisions of
4 article six-c, chapter twelve of this code. All other moneys in
5 the Revenue Shortfall Reserve Fund shall be made available to the
6 West Virginia Investment Management Board for management and
7 investment of the moneys in accordance with the provisions of
8 article six, chapter twelve of this code. Any balance of the
9 Revenue Shortfall Reserve Fund including accrued interest and other
10 return earned thereon at the end of any fiscal year shall not
11 revert to the General Fund but shall remain in the Revenue
12 Shortfall Reserve Fund for the purposes set forth in this section.

13 (2) All of the moneys in the Revenue Shortfall Reserve Fund -
14 Part B shall be made available to the West Virginia Investment
15 Management Board for management and investment of the moneys in
16 accordance with the provisions of article six, chapter twelve of
17 this code. Any balance of the Revenue Shortfall Reserve Fund -
18 Part B, including accrued interest and other return earned thereon
19 at the end of any fiscal year, shall not revert to the General Fund
20 but shall remain in the Revenue Shortfall Reserve Fund - Part B for
21 the purposes set forth in this section.

22 (i) Effective date of amendments -- Amendments to this section
23 enacted during the first extraordinary session of the Legislature
24 in the year 2011, shall take effect immediately upon passage.