

H. B. 2691

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Introduced January 20, 2011; referred to the
Committee on Finance.]

A BILL to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21A-8-1 and §21A-8-10 of said code, all relating to maintaining solvency of the Unemployment Compensation Fund; providing a mechanism for the Governor to borrow funds from the Revenue Shortfall Reserve Fund and deposit those funds into the Unemployment Compensation Fund if the balance of the Unemployment Compensation Fund drops below \$20 million; providing that no amount borrowed shall exceed \$20 million; and providing for repayment of any outstanding loans from the Revenue Shortfall Reserve Fund.

Be it enacted by the Legislature of West Virginia:

That §11B-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §21A-8-1 and §21A-8-10 of said code be amended and enacted, all to read as follows:

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

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

3 **§11B-2-20. Reduction of appropriations; powers of Governor;**
4 **Revenue Shortfall Reserve Fund and permissible**
5 **expenditures therefrom.**

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

12 (b) A Revenue Shortfall Reserve Fund is hereby continued
13 within the State Treasury. The Revenue Shortfall Reserve Fund
14 shall be funded as set forth in this subsection from surplus
15 revenues, if any, in the State Fund, General Revenue, as the
16 surplus revenues may accrue from time to time. Within sixty days
17 of the end of each fiscal year, the secretary shall cause to be
18 deposited into the Revenue Shortfall Reserve Fund the first fifty
19 percent of all surplus revenues, if any, determined to have accrued
20 during the fiscal year just ended. The Revenue Shortfall Reserve
21 Fund shall be funded continuously and on a revolving basis in
22 accordance with this subsection up to an aggregate amount not to
23 exceed ten percent of the total appropriations from the State Fund,
24 General Revenue, for the fiscal year just ended. If at the end of

1 any fiscal year the Revenue Shortfall Reserve Fund is funded at an
2 amount equal to or exceeding ten percent of the State's General
3 Revenue Fund budget for the fiscal year just ended, then there
4 shall be no further obligation of the secretary under the
5 provisions of this section to apply any surplus revenues as set
6 forth in this subsection until that time the Revenue Shortfall
7 Reserve Fund balance is less than ten percent of the total
8 appropriations from the ~~state fund, general revenue~~ State Fund,
9 General Revenue.

10 (c) Not earlier than ~~the first day of~~ November 1 of each
11 calendar year, if the state's fiscal circumstances are such as to
12 otherwise trigger the authority of the Governor to reduce
13 appropriations under this section or section twenty-one or section
14 twenty-two of this article, then in that event the Governor may
15 notify the presiding officers of both houses of the Legislature in
16 writing of his or her intention to convene the Legislature pursuant
17 to section nineteen, article VI of the Constitution of West
18 Virginia for the purpose of requesting the introduction of a
19 supplementary appropriation bill or to request a supplementary
20 appropriation bill at the next preceding regular session of the
21 Legislature to draw money from the surplus Revenue Shortfall
22 Reserve Fund to meet any anticipated revenue shortfall. If the
23 Legislature fails to enact a supplementary appropriation from the
24 Revenue Shortfall Reserve Fund during any special legislative

1 session called for the purposes set forth in this section or during
2 the next preceding regular session of the Legislature, then the
3 Governor may proceed with a reduction of appropriations pursuant to
4 sections twenty-one and twenty-two of this article. Should any
5 amount drawn from the Revenue Shortfall Reserve Fund pursuant to an
6 appropriation made by the Legislature prove insufficient to address
7 any anticipated shortfall, then the Governor may also proceed with
8 a reduction of appropriations pursuant to sections twenty-one and
9 twenty-two of this article.

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

15 (e) Prior to ~~the thirty-first day of~~ October 31 of ~~in~~ any
16 fiscal year in which revenues are inadequate to make timely
17 payments of the state's obligations, the Governor may by executive
18 order, after first notifying the presiding officers of both houses
19 of the Legislature in writing, borrow funds from the Revenue
20 Shortfall Reserve Fund. The amount of funds borrowed under this
21 subsection shall not exceed one and one-half percent of the general
22 revenue estimate for the fiscal year in which the funds are to be
23 borrowed, or the amount the Governor determines is necessary to
24 make timely payments of the state's obligations, whichever is less.

1 Any funds borrowed pursuant to this subsection shall be repaid,
2 without interest, and redeposited to the credit of the Revenue
3 Shortfall Reserve Fund within ninety days of their withdrawal.

4 (f) On the first day of any month in which the balance in
5 the state's Unemployment Compensation Fund, established in article
6 eight, chapter twenty-one-a of this code, is projected by the
7 Executive Director of Workforce West Virginia to drop below \$20
8 million at any time during said month, the Governor may by
9 executive order, after first notifying the presiding officers of
10 both houses of the Legislature in writing, borrow funds from the
11 Revenue Shortfall Reserve Fund for deposit into the Unemployment
12 Compensation Fund to be expended in accordance with this code. The
13 amount of funds borrowed and outstanding under this subsection
14 shall not exceed \$20 million at any one time, or the amount the
15 Governor determines is necessary to adequately sustain the balance
16 in the Unemployment Compensation Fund at a minimum of \$20 million,
17 whichever is less. Any funds borrowed pursuant to this subsection
18 shall be repaid from funds on deposit in the Unemployment Trust
19 Fund in excess of \$20 million or from other funds legally available
20 for such purpose, without interest, and redeposited to the credit
21 of the Revenue Shortfall Reserve Fund within one-hundred-eighty
22 days of their withdrawal.

23 ~~(f)~~ (g) There is hereby in the State Treasury the "Revenue
24 Shortfall Reserve Fund - Part B." The Revenue Shortfall Reserve

1 Fund - Part B shall consist of moneys transferred from the West
2 Virginia Tobacco Settlement Medical Trust Fund pursuant to the
3 provisions of section two, article eleven-a, chapter four of this
4 code, repayments made of the loan from the West Virginia Tobacco
5 Settlement Medical Trust Fund to the physician's mutual insurance
6 company pursuant to the provisions of article twenty-f, chapter
7 thirty-three of this code, and all interest and other return earned
8 on the moneys in the Revenue Shortfall Reserve Fund - Part B.
9 Moneys in the Revenue Shortfall Reserve Fund - Part B may be
10 expended solely for the purposes set forth in subsection (d) of
11 this section, subject to the following conditions:

12 (1) No moneys in the Revenue Shortfall Reserve Fund - Part B
13 nor any interest or other return earned thereon may be expended for
14 any purpose unless all moneys in the Revenue Shortfall Reserve Fund
15 described in subsection (b) of this section have first been
16 expended, except that the interest or other return earned on moneys
17 in the Revenue Shortfall Reserve Fund - Part B may be expended as
18 provided in subdivision (2) of this subsection; and

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

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

4 ~~(g)~~ (h) Subject to the conditions upon expenditures from the
5 Revenue Shortfall Reserve Fund - Part B prescribed in subsection
6 ~~(f)~~ (g) of this section, in appropriating moneys pursuant to the
7 provisions of this section, the Legislature may in any fiscal year
8 appropriate from the Revenue Shortfall Reserve Fund and the Revenue
9 Shortfall Reserve Fund - Part B, a total amount up to, but not
10 exceeding, ten percent of the total appropriations from the State
11 Fund, General Revenue, for the fiscal year just ended.

12 ~~(h)~~ (i) (1) Of the moneys in the Revenue Shortfall Reserve
13 Fund, \$100 million, or such greater amount as may be certified as
14 necessary by the director of the budget for the purposes of
15 subsection (e) of this section, shall be made available to the West
16 Virginia Board of Treasury Investments for management and
17 investment of the moneys in accordance with the provisions of
18 article six-c, chapter twelve of this code. All other moneys in
19 the Revenue Shortfall Reserve Fund shall be made available to the
20 West Virginia Investment Management Board for management and
21 investment of the moneys in accordance with the provisions of
22 article six, chapter twelve of this code. Any balance of the
23 Revenue Shortfall Reserve Fund including accrued interest and other
24 return earned thereon at the end of any fiscal year shall not

1 revert to the general fund but shall remain in the Revenue
2 Shortfall Reserve Fund for the purposes set forth in this section.

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

12 **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

13 **ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.**

14 **§21A-8-1. Establishment.**

15 There is hereby established as a special fund, separate and
16 apart from all public moneys or funds of the state, an Unemployment
17 Compensation Fund. The fund shall consist of:

- 18 (1) All payments collected under this chapter.
- 19 (2) Interest earned upon money in the fund.
- 20 (3) Property or securities acquired through the use of the
21 fund.
- 22 (4) Earnings of such property or securities.
- 23 (5) Amounts transferred from the Employment Security Special
24 Administration Fund.

1 (6) Any moneys loaned to the fund pursuant to section twenty,
2 article two, chapter eleven-b of this code.

3 ~~(6)~~ (7) Any moneys received from the federal unemployment
4 account in the Unemployment Trust Fund in accordance with Title XII
5 of the Social Security Act, as amended.

6 All money in the funds shall be mingled and undivided.

7 Any interest required to be paid on advances under Title XII
8 of the Social Security Act, as amended, shall be paid by the date
9 on which such interest is due. No interest shall be paid directly
10 or indirectly from amounts in the Unemployment Compensation Trust
11 Fund.

12 **§21A-8-10. Withdrawals.**

13 Except as provided in section thirteen of this article, money
14 shall be requisitioned from this state's account in the
15 unemployment trust fund solely for the payment of benefits and
16 repayment of any loans outstanding from the Revenue Shortfall
17 Reserve Fund as provided in section twenty, article two, chapter
18 eleven-b of this code. The commissioner may requisition from the
19 unemployment trust fund such accounts, not exceeding the amount of
20 the account, as ~~he~~ the commissioner determines to be necessary for
21 the payment of benefits for a reasonable future period.

22 Upon receipt of the money ~~he~~ the commissioner shall deposit it
23 in the benefit account.

NOTE: The purpose of this bill is to provide a mechanism for

the Governor to borrow funds from the Revenue Shortfall Reserve Fund and deposit those funds into the Unemployment Compensation Fund if the balance of the Unemployment Compensation Fund drops below \$20 million and to provide a mechanism for repaying any such loans outstanding from the Revenue Shortfall Reserve Fund.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.