

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 219

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Originating in the Committee on Finance;
reported February 11, 2011.]

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 or other funds legally available.

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 reenacted, all to read as follows:

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor;

Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the
2 Governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of
4 this article. The Governor may, in lieu of imposing a reduc-
5 tion in appropriations, request an appropriation by the
6 Legislature from the Revenue Shortfall Reserve Fund
7 established in this section.

8 (b) A Revenue Shortfall Reserve Fund is hereby continued
9 within the State Treasury. The Revenue Shortfall Reserve
10 Fund shall be funded as set forth in this subsection from

11 surplus revenues, if any, in the State Fund, General Revenue,
12 as the surplus revenues may accrue from time to time. Within
13 sixty days of the end of each fiscal year, the secretary shall
14 cause to be deposited into the Revenue Shortfall Reserve
15 Fund the first fifty percent of all surplus revenues, if any,
16 determined to have accrued during the fiscal year just ended.
17 The Revenue Shortfall Reserve Fund shall be funded contin-
18 uously and on a revolving basis in accordance with this
19 subsection up to an aggregate amount not to exceed ten
20 percent of the total appropriations from the State Fund,
21 General Revenue, for the fiscal year just ended. If at the end
22 of any fiscal year the Revenue Shortfall Reserve Fund is
23 funded at an amount equal to or exceeding ten percent of the
24 State's General Revenue Fund budget for the fiscal year just
25 ended, then there shall be no further obligation of the
26 secretary under the provisions of this section to apply any
27 surplus revenues as set forth in this subsection until that
28 time the Revenue Shortfall Reserve Fund balance is less than
29 ten percent of the total appropriations from the ~~state fund,~~
30 ~~general revenue~~ State Fund, General Revenue.

31 (c) Not earlier than ~~the first day of~~ November 1 of each
32 calendar year, if the state's fiscal circumstances are such as

33 to otherwise trigger the authority of the Governor to reduce
34 appropriations under this section or section twenty-one or
35 section twenty-two of this article, then in that event the
36 Governor may notify the presiding officers of both houses of
37 the Legislature in writing of his or her intention to convene
38 the Legislature pursuant to section nineteen, article VI of the
39 Constitution of West Virginia for the purpose of requesting
40 the introduction of a supplementary appropriation bill or to
41 request a supplementary appropriation bill at the next
42 preceding regular session of the Legislature to draw money
43 from the surplus Revenue Shortfall Reserve Fund to meet
44 any anticipated revenue shortfall. If the Legislature fails to
45 enact a supplementary appropriation from the Revenue
46 Shortfall Reserve Fund during any special legislative session
47 called for the purposes set forth in this section or during the
48 next preceding regular session of the Legislature, then the
49 Governor may proceed with a reduction of appropriations
50 pursuant to sections twenty-one and twenty-two of this
51 article. Should any amount drawn from the Revenue Short-
52 fall Reserve Fund pursuant to an appropriation made by the
53 Legislature prove insufficient to address any anticipated
54 shortfall, then the Governor may also proceed with a

55 reduction of appropriations pursuant to sections twenty-one
56 and twenty-two of this article.

57 (d) Upon the creation of the fund, the Legislature is
58 authorized and may make an appropriation from the Reve-
59 nue Shortfall Reserve Fund for revenue shortfalls, for
60 emergency revenue needs caused by acts of God or natural
61 disasters or for other fiscal needs as determined solely by the
62 Legislature.

63 (e) Prior to ~~the thirty-first day of October~~ 31 of ~~in~~ any
64 fiscal year in which revenues are inadequate to make timely
65 payments of the state's obligations, the Governor may by
66 executive order, after first notifying the presiding officers of
67 both houses of the Legislature in writing, borrow funds from
68 the Revenue Shortfall Reserve Fund. The amount of funds
69 borrowed under this subsection shall not exceed one and
70 one-half percent of the general revenue estimate for the
71 fiscal year in which the funds are to be borrowed, or the
72 amount the Governor determines is necessary to make timely
73 payments of the state's obligations, whichever is less. Any
74 funds borrowed pursuant to this subsection shall be repaid,
75 without interest, and redeposited to the credit of the Revenue
76 Shortfall Reserve Fund within ninety days of their with-
77 drawal.

78 (f) On the first day of any month in which the balance in
79 the state's Unemployment Compensation Fund, established
80 in article eight, chapter twenty-one-a of this code, is pro-
81 jected by the Executive Director of Workforce West Virginia
82 to drop below \$20 million at any time during said month, the
83 Governor may by executive order, after first notifying the
84 presiding officers of both houses of the Legislature in
85 writing, borrow funds from the Revenue Shortfall Reserve
86 Fund for deposit into the Unemployment Compensation
87 Fund to be expended in accordance with this code. The
88 amount of funds borrowed and outstanding under this
89 subsection shall not exceed \$20 million at any one time, or
90 the amount the Governor determines is necessary to ade-
91 quately sustain the balance in the Unemployment Compen-
92 sation Fund at a minimum of \$20 million, whichever is less.
93 Any funds borrowed pursuant to this subsection shall be
94 repaid from funds on deposit in the Unemployment Trust
95 Fund in excess of \$20 million or from other funds legally
96 available for such purpose, without interest, and redeposited
97 to the credit of the Revenue Shortfall Reserve Fund within
98 one-hundred-eighty days of their withdrawal.

99 ~~(f)~~ (g) There is hereby in the State Treasury the “Revenue
100 Shortfall Reserve Fund – Part B.” The Revenue Shortfall
101 Reserve Fund – Part B shall consist of moneys transferred
102 from the West Virginia Tobacco Settlement Medical Trust
103 Fund pursuant to the provisions of section two, article
104 eleven-a, chapter four of this code, repayments made of the
105 loan from the West Virginia Tobacco Settlement Medical
106 Trust Fund to the physician’s mutual insurance company
107 pursuant to the provisions of article twenty-f, chapter thirty-
108 three of this code, and all interest and other return earned on
109 the moneys in the Revenue Shortfall Reserve Fund – Part B.
110 Moneys in the Revenue Shortfall Reserve Fund – Part B may
111 be expended solely for the purposes set forth in subsection
112 (d) of this section, subject to the following conditions:

113 (1) No moneys in the Revenue Shortfall Reserve Fund –
114 Part B nor any interest or other return earned thereon may
115 be expended for any purpose unless all moneys in the
116 Revenue Shortfall Reserve Fund described in subsection (b)
117 of this section have first been expended, except that the
118 interest or other return earned on moneys in the Revenue
119 Shortfall Reserve Fund – Part B may be expended as pro-
120 vided in subdivision (2) of this subsection; and

121 (2) Notwithstanding any other provision of this section to
122 the contrary, the Legislature may appropriate any interest
123 and other return earned thereon that may accrue on the
124 moneys in the Revenue Shortfall Reserve Fund – Part B after
125 June 30, 2025 ~~the thirtieth day of June, two thousand~~

126 ~~twenty-five~~, for expenditure for the purposes set forth in
127 section three, article eleven-a, chapter four of this code; and

128 (3) Any appropriation made from Revenue Shortfall
129 Reserve Fund – Part B shall be made only in instances of
130 revenue shortfalls or fiscal emergencies of an extraordinary
131 nature.

132 ~~(g)~~ (h) Subject to the conditions upon expenditures from
133 the Revenue Shortfall Reserve Fund – Part B prescribed in
134 subsection ~~(f)~~ (g) of this section, in appropriating moneys
135 pursuant to the provisions of this section, the Legislature
136 may in any fiscal year appropriate from the Revenue Short-
137 fall Reserve Fund and the Revenue Shortfall Reserve Fund –
138 Part B, a total amount up to, but not exceeding, ten percent
139 of the total appropriations from the State Fund, General
140 Revenue, for the fiscal year just ended.

141 ~~(h)~~ (i) (1) Of the moneys in the Revenue Shortfall Reserve
142 Fund, \$100 ~~one hundred~~ million, ~~dollars~~, or such greater

143 amount as may be certified as necessary by the director of
144 the budget for the purposes of subsection (e) of this section,
145 shall be made available to the West Virginia Board of
146 Treasury Investments for management and investment of the
147 moneys in accordance with the provisions of article six-c,
148 chapter twelve of this code. All other moneys in the Revenue
149 Shortfall Reserve Fund shall be made available to the West
150 Virginia Investment Management Board for management and
151 investment of the moneys in accordance with the provisions
152 of article six, chapter twelve of this code. Any balance of the
153 Revenue Shortfall Reserve Fund including accrued interest
154 and other return earned thereon at the end of any fiscal year
155 shall not revert to the general fund but shall remain in the
156 Revenue Shortfall Reserve Fund for the purposes set forth in
157 this section.

158 (2) All of the moneys in the Revenue Shortfall Reserve
159 Fund – Part B shall be made available to the West Virginia
160 Management Board for management and investment of the
161 moneys in accordance with the provisions of article six,
162 chapter twelve of this code. Any balance of the Revenue
163 Shortfall Reserve Fund – Part B, including accrued interest
164 and other return earned thereon at the end of any fiscal year,

165 shall not revert to the general fund but shall remain in the
166 Revenue Shortfall Reserve Fund –Part B for the purposes set
167 forth in this section.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-1. Establishment.

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

5 (1) All payments collected under this chapter.

6 (2) Interest earned upon money in the fund.

7 (3) Property or securities acquired through the use of the
8 fund.

9 (4) Earnings of such property or securities.

10 (5) Amounts transferred from the Employment Security
11 Special Administration Fund.

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

14 ~~(6)~~ (7) Any moneys received from the federal unemploy-
15 ment account in the Unemployment Trust Fund in accor-

16 dance with Title XII of the Social Security Act, as amended.

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

18 Any interest required to be paid on advances under Title
19 XII of the Social Security Act, as amended, shall be paid by
20 the date on which such interest is due. No interest shall be
21 paid directly or indirectly from amounts in the Unemploy-
22 ment Compensation Trust Fund.

§21A-8-10. Withdrawals.

1 Except as provided in section thirteen of this article,
2 money shall be requisitioned from this state's account in the
3 unemployment trust fund solely for the payment of benefits
4 and repayment of any loans outstanding from the Revenue
5 Shortfall Reserve Fund as provided in section twenty, article
6 two, chapter eleven-b of this code. The commissioner may
7 requisition from the unemployment trust fund such accounts,
8 not exceeding the amount of the account, as ~~he~~ the commis-
9 sioner determines to be necessary for the payment of benefits
10 for a reasonable future period or to repay a loan outstanding
11 from the Revenue Shortfall Reserve Fund as provided in
12 section twenty, article two, chapter eleven-b of this code.

13 Upon receipt of the money ~~he~~ the commissioner shall
14 deposit it 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.)