

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 55**

4 (By Senators Sypolt, McCabe and Carmichael)

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6 [Originating in the Committee on Government Organization;
7 reported February 21, 2013.]
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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §11-15-9o, relating
14 generally to consumers sales and service tax liability of
15 homeowners' associations and their members; and exempting from
16 consumers sales and service tax liability the dues, fees and
17 assessments paid by members to homeowners' associations which
18 are to be used by the homeowners' association acting in its
19 representative capacity for all members to purchase for the
20 members, rather than sell to the members, such goods and
21 services.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new section, designated §11-15-9o, to read as
25 follows:

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

2 **§11-15-9o. Exemption for dues, fees and assessments paid to a**
3 **homeowners' association by a member; and exemption**
4 **for certain contracts to purchase third party goods**
5 **or services by homeowner's association.**

6 (a) Membership dues, fees and assessments paid to a
7 homeowners' association by a member thereof are exempt from the tax
8 imposed by this article if the dues, fees and assessments are for
9 the purpose of permitting or funding the homeowner's association to
10 contract for purchase of third-party goods or services when acting
11 in its representative capacity for all members, and only as a
12 conduit for funds from the members, and not when the homeowner's
13 association is selling taxable goods and services, without profit
14 to its members: *Provided*, That purchases of taxable goods and
15 services by the homeowners' association, when acting in its
16 representative capacity for all members, are not exempt from
17 consumer sales and services tax or use tax.

18 (b) For purposes of this article:

19 (1) "Homeowners' association" means a homeowners' association
20 as defined in Section 528 of the Internal Revenue Code of 1986, as
21 amended. The term "homeowners' association" also includes any unit
22 owners association organized under section one hundred one, article
23 three, chapter thirty-six-b of this code.

24 (2) "Member" means a person having membership rights in a

1 homeowners' association, in accordance with the provisions of its
2 articles of incorporation, bylaws or other instruments creating its
3 form and organization; and having bona fide rights and privileges
4 in the organization ordinarily conferred on members of the
5 homeowners' association, such as the right to vote, the right to
6 elect officers and directors and the right to hold office within
7 the organization. The term "member" also includes a "unit owner"
8 as that term is defined in section one hundred three, article one,
9 chapter thirty-six-b of this code.