

1 **H. B. 2993**

2  
3 (By Delegates Shott, Gearheart, Ellington,  
4 Moore, L. Phillips, Manchin, C. Miller,  
5 Craig and Ambler)

6 [Introduced March 20, 2013; referred to the  
7 Committee on Political Subdivisions then Finance.]

**FISCAL  
NOTE**

8  
9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §11-28-1, §11-28-2,  
12 §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7 and §11-28-8,  
13 all relating to allowing counties and municipalities to levy  
14 a sales tax on food and beverages sold at restaurants;  
15 providing for county and municipality options; limiting the  
16 total tax to three percent; limiting a municipal tax to two  
17 percent; setting forth the procedures for counties or  
18 municipalities to use to impose the tax; requiring  
19 publication; setting forth how the collected tax may be used;  
20 setting forth apportionment of the tax between local  
21 jurisdictions; setting forth exemptions from the tax; defining  
22 terms; and providing criminal penalties.

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

24 That the Code of West Virginia, 1931, as amended, be amended  
25 by adding thereto a new article, designated §11-28-1, §11-28-2,

1 §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7 and §11-28-8, all  
2 to read as follows:

3 **ARTICLE 28. LOCAL OPTION FOOD AND BEVERAGE TAX.**

4 **§11-28-1. Food and beverage tax.**

5 A county or municipality is authorized to levy a tax on food  
6 and beverages sold for human consumption by a restaurant as defined  
7 in this article. Any tax levied under this article may not exceed  
8 three percent of the gross amount charged for the food and  
9 beverages.

10 **§11-28-2. Definitions.**

11 As used in this article:

12 "Alcoholic beverage" means any alcohol, beer, wine and  
13 spirits, and any liquid or solid capable of being used as a  
14 beverage, including any beverage that consists of a mixture of  
15 alcoholic and nonalcoholic liquids or solids.

16 "Beverage" means any alcoholic or nonalcoholic liquid intended  
17 for human consumption.

18 "Fund-raising organization" means any church, school,  
19 fraternal or social organization, volunteer fire department or  
20 rescue squad that periodically sells food and beverages for public  
21 consumption to raise funds to benefit that organization.

22 "Municipal" or "municipality" means any city or town.

23 "Not-for-profit capacity" means the sale of food for the  
24 intentional purpose of equaling the operating costs of the

1 restaurant.

2 "Restaurant" means any place where food is prepared for  
3 service to the public on or off the premises, or any place where  
4 food is served, including, but not limited to, lunchrooms, food  
5 counters, food trucks or carts, short order or fast food eateries,  
6 cafeterias, coffee shops, cafes, taverns, delicatessens, dining  
7 accommodations of public or private clubs, kitchen facilities of  
8 hospitals and nursing homes and dining accommodations of public and  
9 private schools and colleges.

10 **§11-28-3. County option.**

11 (a) Any tax levied under this article must be approved by  
12 referendum within the county in which the tax is to be levied by a  
13 margin of at least sixty percent of those voting.

14 (b) A referendum for imposition of a county food and beverage  
15 tax may be initiated by:

16 (1) A resolution of the county commission; or

17 (2) A petition filed with the county commission signed by a  
18 minimum of ten percent of the county's registered voters as of  
19 January 1 in the year in which the petition is filed.

20 (c) A petition or resolution may designate the length of time  
21 of the tax's imposition and the projects or purposes for which the  
22 tax will be levied: *Provided*, That the information is included on  
23 the referendum's ballot.

24 (d) The county commission shall publish a Class III legal

1 advertisement in compliance with article three, chapter fifty-nine  
2 of this code in a newspaper of general circulation in the county.

3 **§11-28-4. Collection of tax; use.**

4 (a) Any tax levied pursuant to section three of this article  
5 shall be collected in a manner prescribed by the county commission.

6 (b) Any tax levied under section three of this article shall  
7 be placed in the county's general revenue fund and expended as the  
8 county commission desires: *Provided*, That any projects or purposes  
9 designated for the imposition of the tax and included on the  
10 referendum ballot shall be paid as follows:

11 (1) At least twenty-five percent or such greater portion of  
12 the collected tax as may be agreed between the county commission  
13 and the county's economic development authority prior to the  
14 publication required by subsection (d), section three of this  
15 article shall be remitted by the county to the county's economic  
16 development authority to be expended for economic development  
17 purposes;

18 (2) For all restaurants located within a municipality, at  
19 least twenty-five percent or a greater portion of the collected tax  
20 from each restaurant as may be agreed between the county commission  
21 and the municipality shall be remitted by the county to the  
22 municipality to be expended in a manner which the municipality's  
23 governing body desires.

24 **§11-28-5. Municipal option.**

1       (a) Any municipality located in a county that has not levied,  
2 or sought to levy, a food and beverage tax within one year  
3 following the effective date of this article, is authorized to levy  
4 a tax on food and beverages sold for human consumption by a  
5 restaurant as defined in this article. Any tax levied under this  
6 article may not exceed two percent of the gross amount charged for  
7 such food and beverages.

8       (b) Any tax levied under this article must be approved by  
9 referendum within the municipality in which the tax is to be levied  
10 by a margin of at least sixty percent of the voters who vote in the  
11 referendum.

12       (c) A referendum for imposition of municipal food and beverage  
13 tax may be initiated by:

14       (1) A resolution of the municipality's governing body; or

15       (2) A petition filed with the municipality's governing body  
16 signed by a minimum of ten percent of the municipality's registered  
17 voters as of January 1 in the year in which the petition is filed.

18       (d) A petition or resolution may designate the length of time  
19 of the tax's imposition or projects or purposes for which the tax  
20 will be levied: *Provided*, That the information is included on the  
21 referendum's ballot.

22       (e) The municipality's governing body shall publish a Class  
23 III legal advertisement in compliance with the provisions of  
24 article three, chapter fifty-nine of this code in a newspaper of

1 general circulation in the municipality.

2 **§11-28-6. Exemptions.**

3 (a) This tax is applicable to restaurants whose food and  
4 beverage preparation and service are regulated by county boards of  
5 health. Any tax levied under this article may not be levied upon  
6 food and beverages sold from:

7 (1) Places manufacturing packaged or canned foods which are  
8 distributed to grocery stores or other similar food retailers for  
9 sale to the public;

10 (2) Vending machines;

11 (3) Restaurants operating in a not-for-profit capacity;

12 (4) Churches serving meals as a regular part of regular  
13 religious observances;

14 (5) Fund-raising organizations; or

15 (6) Food counters or delicatessens that operate as part of a  
16 larger retail business which:

17 (A) Food and beverage sales do not exceed thirty percent of  
18 the larger retail business's total gross sales; and

19 (B) Have ten or fewer seats on the premises at which food is  
20 consumed.

21 (b) Any tax levied pursuant to this article may not be applied  
22 to any discretionary gratuity paid by the purchaser in addition to  
23 the sales price, nor to any mandatory gratuity or service charge  
24 added by the restaurant to the sales price that does not exceed

1 twenty percent of the sales price.

2 **§11-28-7. Wrongful and fraudulent use of funds; penalty.**

3 All food and beverage tax collections are considered in trust  
4 for the county or municipality imposing the applicable tax. The  
5 wrongful and fraudulent use of the proceeds other than remittance  
6 to the county or municipality as provided by this article  
7 constitutes embezzlement pursuant to section twenty, article three,  
8 chapter sixty-one of this code and is subject to the criminal  
9 penalties of that section.

10 **§11-28-8. Apportionment.**

11 If a business is located partially within two or more local  
12 jurisdictions because of a boundary line that passes through the  
13 place of business, and one or more of the local jurisdictions  
14 imposes the food and beverage tax, the tax rate of each applicable  
15 local jurisdiction shall be apportioned between the local  
16 jurisdictions. The apportionment shall be based upon the area in  
17 the political subdivision which the place of business actually  
18 occupies and actively uses in connection with the business.

NOTE: The purpose of this bill is to allow local governments to levy a sales tax on food and beverages sold at restaurants. The bill providing for county and municipality options. The bill limits the total tax to three percent. The bill limits a municipal tax to two percent. The bill sets forth the procedures for counties and municipalities to use to impose the tax. The bill requires publication. The bill sets forth how the collected tax may be used. The bill sets forth apportionment of the tax between local jurisdictions. The bill sets forth exemptions from the tax. The

bill defines terms. The bill provides criminal penalties.

This article is new; therefore, it has been completely underscored.