

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.]

9  
10 \_\_\_\_\_  
11  
12  
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.