

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 219**

4 (By Senators Kessler (Acting President) and Hall,

5 By Request of the Executive)

6 \_\_\_\_\_  
7 [Originating in the Committee on Finance;  
8 reported February 11, 2011.]  
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11  
12 A BILL to amend and reenact §11B-2-20 of the Code of West Virginia,  
13 1931, as amended; and to amend and reenact §21A-8-1 and §21A-  
14 8-10 of said code, all relating to maintaining solvency of the  
15 Unemployment Compensation Fund; providing a mechanism for the  
16 Governor to borrow funds from the Revenue Shortfall Reserve  
17 Fund and deposit those funds into the Unemployment  
18 Compensation Fund if the balance of the Unemployment  
19 Compensation Fund drops below \$20 million; providing that no  
20 amount borrowed shall exceed \$20 million; and providing for  
21 repayment of any outstanding loans from the Revenue Shortfall  
22 Reserve Fund or other funds legally available.

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

24 That §11B-2-20 of the Code of West Virginia, 1931, as amended,  
25 be amended and reenacted; and that §21A-8-1 and §21A-8-10 of said  
26 code be amended and reenacted, 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  
25 any fiscal year the Revenue Shortfall Reserve Fund is funded at an  
26 amount equal to or exceeding ten percent of the State's General

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

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

1 amount drawn from the Revenue Shortfall Reserve Fund pursuant to an  
2 appropriation made by the Legislature prove insufficient to address  
3 any anticipated shortfall, then the Governor may also proceed with  
4 a reduction of appropriations pursuant to sections twenty-one and  
5 twenty-two of this article.

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

11 (e) Prior to ~~the thirty-first day of~~ October 31 of ~~in~~ any  
12 fiscal year in which revenues are inadequate to make timely  
13 payments of the state's obligations, the Governor may by executive  
14 order, after first notifying the presiding officers of both houses  
15 of the Legislature in writing, borrow funds from the Revenue  
16 Shortfall Reserve Fund. The amount of funds borrowed under this  
17 subsection shall not exceed one and one-half percent of the general  
18 revenue estimate for the fiscal year in which the funds are to be  
19 borrowed, or the amount the Governor determines is necessary to  
20 make timely payments of the state's obligations, whichever is less.  
21 Any funds borrowed pursuant to this subsection shall be repaid,  
22 without interest, and redeposited to the credit of the Revenue  
23 Shortfall Reserve Fund within ninety days of their withdrawal.

24 (f) On the first day of any month in which the balance in the  
25 state's Unemployment Compensation Fund, established in article  
26 eight, chapter twenty-one-a of this code, is projected by the

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

17       ~~(f)~~ (g) There is hereby in the State Treasury the "Revenue  
18 Shortfall Reserve Fund - Part B." The Revenue Shortfall Reserve  
19 Fund - Part B shall consist of moneys transferred from the West  
20 Virginia Tobacco Settlement Medical Trust Fund pursuant to the  
21 provisions of section two, article eleven-a, chapter four of this  
22 code, repayments made of the loan from the West Virginia Tobacco  
23 Settlement Medical Trust Fund to the physician's mutual insurance  
24 company pursuant to the provisions of article twenty-f, chapter  
25 thirty-three of this code, and all interest and other return earned  
26 on the moneys in the Revenue Shortfall Reserve Fund - Part B.

1 Moneys in the Revenue Shortfall Reserve Fund - Part B may be  
2 expended solely for the purposes set forth in subsection (d) of  
3 this section, subject to the following conditions:

4 (1) No moneys in the Revenue Shortfall Reserve Fund - Part B  
5 nor any interest or other return earned thereon may be expended for  
6 any purpose unless all moneys in the Revenue Shortfall Reserve Fund  
7 described in subsection (b) of this section have first been  
8 expended, except that the interest or other return earned on moneys  
9 in the Revenue Shortfall Reserve Fund - Part B may be expended as  
10 provided in subdivision (2) of this subsection; and

11 (2) Notwithstanding any other provision of this section to the  
12 contrary, the Legislature may appropriate any interest and other  
13 return earned thereon that may accrue on the moneys in the Revenue  
14 Shortfall Reserve Fund - Part B after June 30, 2025 ~~the thirtieth~~  
15 ~~day of June, two thousand twenty-five,~~ for expenditure for the  
16 purposes set forth in section three, article eleven-a, chapter four  
17 of this code; and

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

21 ~~(g)~~ (h) Subject to the conditions upon expenditures from the  
22 Revenue Shortfall Reserve Fund - Part B prescribed in subsection  
23 ~~(f)~~ (g) of this section, in appropriating moneys pursuant to the  
24 provisions of this section, the Legislature may in any fiscal year  
25 appropriate from the Revenue Shortfall Reserve Fund and the Revenue  
26 Shortfall Reserve Fund - Part B, a total amount up to, but not

1 exceeding, ten percent of the total appropriations from the State  
2 Fund, General Revenue, for the fiscal year just ended.

3       ~~(h)~~ (i) (1) Of the moneys in the Revenue Shortfall Reserve  
4 Fund, \$100 ~~one hundred~~ million, ~~dollars~~, or such greater amount as  
5 may be certified as necessary by the director of the budget for the  
6 purposes of subsection (e) of this section, shall be made available  
7 to the West Virginia Board of Treasury Investments for management  
8 and investment of the moneys in accordance with the provisions of  
9 article six-c, chapter twelve of this code. All other moneys in  
10 the Revenue Shortfall Reserve Fund shall be made available to the  
11 West Virginia Investment Management Board for management and  
12 investment of the moneys in accordance with the provisions of  
13 article six, chapter twelve of this code. Any balance of the  
14 Revenue Shortfall Reserve Fund including accrued interest and other  
15 return earned thereon at the end of any fiscal year shall not  
16 revert to the general fund but shall remain in the Revenue  
17 Shortfall Reserve Fund for the purposes set forth in this section.

18       (2) All of the moneys in the Revenue Shortfall Reserve Fund -  
19 Part B shall be made available to the West Virginia Management  
20 Board for management and investment of the moneys in accordance  
21 with the provisions of article six, chapter twelve of this code.  
22 Any balance of the Revenue Shortfall Reserve Fund - Part B,  
23 including accrued interest and other return earned thereon at the  
24 end of any fiscal year, shall not revert to the general fund but  
25 shall remain in the Revenue Shortfall Reserve Fund -Part B for the  
26 purposes set forth in this section.

1                   **CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**

2 **ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.**

3 **§21A-8-1. Establishment.**

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

7           (1) All payments collected under this chapter.

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

9           (3) Property or securities acquired through the use of the  
10 fund.

11           (4) Earnings of such property or securities.

12           (5) Amounts transferred from the Employment Security Special  
13 Administration Fund.

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

16           ~~(6)~~ (7) Any moneys received from the federal unemployment  
17 account in the Unemployment Trust Fund in accordance with Title XII  
18 of the Social Security Act, as amended.

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

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

25 **§21A-8-10. Withdrawals.**

26           Except as provided in section thirteen of this article, money



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

12       Upon receipt of the money ~~he~~ the commissioner shall deposit it  
13 in the benefit account.

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(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.)