

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 571

FISCAL  
NOTE

BY SENATORS MANN AND BALDWIN

[Introduced February 16, 2018; Referred  
to the Committee on Banking and Insurance; and then to  
the Committee on Finance]

1 A BILL to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §11-15-3a of said code; and to amend said code by adding thereto a new  
 3 section, designated §11-15A-2c, all relating to fixing the Public Employees Insurance  
 4 Agency aggregate premium cost sharing at 85 percent for the employer and 15 percent  
 5 for the employee; and establishing a tax on sales, purchases, and uses of food and food  
 6 ingredients intended for human consumption as a means of paying for the increased  
 7 employer share.

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

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
 GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;  
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-5. Purpose, powers, and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.**

1 (a) The purpose of the finance board created by this article is to bring fiscal stability to the  
 2 Public Employees Insurance Agency through development of annual financial plans and long-  
 3 range plans designed to meet the agency's estimated total financial requirements, taking into  
 4 account all revenues projected to be made available to the agency and apportioning necessary  
 5 costs equitably among participating employers, employees and retired employees, and providers  
 6 of health care services.

7 (b) The finance board shall retain the services of an impartial, professional actuary, with  
 8 demonstrated experience in analysis of large group health insurance plans, to estimate the total  
 9 financial requirements of the Public Employees Insurance Agency for each fiscal year and to

10 review and render written professional opinions as to financial plans proposed by the finance  
11 board. The actuary shall also assist in the development of alternative financing options and  
12 perform any other services requested by the finance board or the director. All reasonable fees  
13 and expenses for actuarial services shall be paid by the Public Employees Insurance Agency.  
14 Any financial plan or modifications to a financial plan approved or proposed by the finance board  
15 pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally  
16 approved and submitted to the Governor and to the Legislature without the actuary's written  
17 professional opinion that the plan may be reasonably expected to generate sufficient revenues to  
18 meet all estimated program and administrative costs of the agency, including incurred but  
19 unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the  
20 financial plan for each fiscal year shall allow for no more than 30 days of accounts payable to be  
21 carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a  
22 requirement for establishment of a reserve fund.

23 (c) All financial plans required by this section shall establish:

24 (1) Maximum levels of reimbursement which the Public Employees Insurance Agency  
25 makes to categories of health care providers;

26 (2) Any necessary cost-containment measures for implementation by the director;

27 (3) The levels of premium costs to participating employers; and

28 (4) The types and levels of cost to participating employees and retired employees.

29 The financial plans may provide for different levels of costs based on the insureds' ability  
30 to pay. The finance board may establish different levels of costs to retired employees based upon  
31 length of employment with a participating employer, ability to pay, or other relevant factors. The  
32 financial plans may also include optional alternative benefit plans with alternative types and levels  
33 of cost. The finance board may develop policies which encourage the use of West Virginia health  
34 care providers.

35 In addition, the finance board may allocate a portion of the premium costs charged to

36 participating employers to subsidize the cost of coverage for participating retired employees, on  
37 such terms as the finance board determines are equitable and financially responsible.

38 (d)(1) The finance board shall prepare an annual financial plan for each fiscal year during  
39 which the finance board remains in existence. The finance board chairman shall request the  
40 actuary to estimate the total financial requirements of the Public Employees Insurance Agency  
41 for the fiscal year.

42 (2) The finance board shall prepare a proposed financial plan designed to generate  
43 revenues sufficient to meet all estimated program and administrative costs of the Public  
44 Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no  
45 more than 30 days of accounts payable to be carried over into the next fiscal year. Before final  
46 adoption of the proposed financial plan, the finance board shall request the actuary to review the  
47 plan and to render a written professional opinion stating whether the plan will generate sufficient  
48 revenues to meet all estimated program and administrative costs of the Public Employees  
49 Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If  
50 the actuary concludes that the proposed financial plan will not generate sufficient revenues to  
51 meet all anticipated costs, then the finance board shall make necessary modifications to the  
52 proposed plan to ensure that all actuarially determined financial requirements of the agency will  
53 be met.

54 (3) Upon obtaining the actuary's opinion, the finance board shall conduct one or more  
55 public hearings in each congressional district to receive public comment on the proposed financial  
56 plan, shall review the comments, and shall finalize and approve the financial plan.

57 (4) Any financial plan shall be designed to allow 30 days or less of accounts payable to be  
58 carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her  
59 estimate of total revenues to the finance board no later than October 15, of the preceding fiscal  
60 year: *Provided*, That, for the prospective financial plans required by this section, the Governor  
61 shall estimate the revenues available for each fiscal year of the plans based on the estimated

62 percentage of growth in general fund revenues. The finance board shall submit its final, approved  
63 financial plan, after obtaining the necessary actuary's opinion and conducting one or more public  
64 hearings in each congressional district, to the Governor and to the Legislature no later than  
65 January 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective and  
66 shall be implemented by the director on July 1, of the fiscal year. In addition to each final, approved  
67 financial plan required under this section, the finance board shall also simultaneously submit  
68 financial statements based on generally accepted accounting practices (GAAP) and the final,  
69 approved plan restated on an accrual basis of accounting, which shall include allowances for  
70 incurred but not reported claims: *Provided, however,* That the financial statements and the  
71 accrual-based financial plan restatement shall not affect the approved financial plan.

72 (e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation,  
73 approval, and implementation of the financial plans required by this section.

74 (f) By January 1, of each year the finance board shall submit to the Governor and the  
75 Legislature a prospective financial plan, for a period not to exceed five years, for the programs  
76 provided in this article. Factors that the board shall consider include, but are not limited to, the  
77 trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of  
78 services; and specific information such as average age of employee population, active to retiree  
79 ratios, the service delivery system and health status of the population.

80 (g) The prospective financial plans shall be based on the estimated revenues submitted  
81 in accordance with subdivision (4), subsection (d) of this section and shall include an average of  
82 the projected cost-sharing percentages of premiums and an average of the projected deductibles  
83 and copays for the various programs. Beginning in the plan year which commences on July 1,  
84 2002, and in each plan year thereafter, until and including the plan year which commences on  
85 July 1, 2006, the prospective plans shall include incremental adjustments toward the ultimate level  
86 required in this subsection, in the aggregate cost-sharing percentages of premium between  
87 employers and employees, including the amounts of any subsidization of retired employee

88 benefits. Effective in the plan year commencing on July 1, 2006, and in each plan year thereafter  
89 through, but not including, the plan year commencing on July 1, 2018, the aggregate premium  
90 cost-sharing percentages between employers and employees, including the amounts of any  
91 subsidization of retired employee benefits, shall be at a level of 80 percent for the employer and  
92 20 percent for employees, except for the employers provided in §5-16-18(d) of this code whose  
93 premium cost-sharing percentages shall be governed by that subsection. Effective in the plan  
94 year commencing on July 1, 2018, and in each plan year thereafter, the aggregate premium cost-  
95 sharing percentages between employers and employees, including the amounts of any  
96 subsidization of retired employee benefits, shall be at a level of 85 percent for the employer and  
97 15 percent for employees, except for the employers provided in §5-16-18(d) of this code whose  
98 premium cost-sharing percentages shall be governed by that subsection. After the submission of  
99 the initial prospective plan, the board may not increase costs to the participating employers or  
100 change the average of the premiums, deductibles, and copays for employees, except in the event  
101 of a true emergency as provided in this section: *Provided*, That if the board invokes the emergency  
102 provisions, the cost shall be borne between the employers and employees in proportion to the  
103 cost-sharing ratio for that plan year: *Provided, however*, That for purposes of this section,  
104 "emergency" means that the most recent projections demonstrate that plan expenses will exceed  
105 plan revenues by more than one percent in any plan year: *Provided further*, That the aggregate  
106 premium cost-sharing percentages between employers and employees, including the amounts of  
107 any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation  
108 for that purpose.

109 (h) The finance board shall meet on at least a quarterly basis to review implementation of  
110 its current financial plan in light of the actual experience of the Public Employees Insurance  
111 Agency. The board shall review actual costs incurred, any revised cost estimates provided by the  
112 actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make  
113 any additional modifications to the plan necessary to ensure that the total financial requirements

114 of the agency for the current fiscal year are met. The finance board may not increase the types  
 115 and levels of cost to employees during its quarterly review except in the event of a true  
 116 emergency.

117 (i) For any fiscal year in which legislative appropriations differ from the Governor's estimate  
 118 of general and special revenues available to the agency, the finance board shall, within 30 days  
 119 after passage of the budget bill, make any modifications to the plan necessary to ensure that the  
 120 total financial requirements of the agency for the current fiscal year are met.

## CHAPTER 11. TAXATION.

### ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

#### **§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.**

1 (a) *Rate of tax on food and food ingredients.* -- Notwithstanding any provision of this article  
 2 or article fifteen-a of this chapter to the contrary:

3 ~~(1) Rate reduction. -- The rate of tax on sales, purchases and uses of food and food~~  
 4 ~~ingredients intended for human consumption after June 30, 2008, shall be three percent of its~~  
 5 ~~sales price, as defined in section two, article fifteen-b of this chapter.~~

6 ~~(2) Additional rate reduction. -- The rate of tax on sales, purchases and uses of food and~~  
 7 ~~food ingredients as defined in that section that is intended for human consumption after December~~  
 8 ~~31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,~~  
 9 ~~the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section~~  
 10 ~~that is intended for human consumption shall be one percent of its sales price, as defined in that~~  
 11 ~~section.~~

12 ~~(3) Contingent termination of tax on food. -- The tax on sales, purchases and uses of food~~  
 13 ~~and food ingredients as defined in section two, article fifteen-b of this chapter that is intended for~~  
 14 ~~human consumption shall cease after June 30, 2013, and no such tax shall be imposed on sales,~~

15 ~~purchases and uses of food and food ingredients so defined: Provided, That the cessation of tax~~  
16 ~~after June 30, 2013, authorized by this subsection shall be suspended if the balance of funds as~~  
17 ~~of December 31, 2012, in the Revenue Shortfall Reserve Fund established in section twenty,~~  
18 ~~article two, chapter eleven-b of this code does not equal or exceed twelve and one-half percent~~  
19 ~~of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012. Such~~  
20 ~~suspension shall terminate, and the cessation of tax shall proceed, beginning on July 1 of any~~  
21 ~~calendar year beginning after December 31, 2013, in which the balance of funds as of December~~  
22 ~~31 of the preceding fiscal year in said Revenue Shortfall Reserve Fund equals or exceeds twelve~~  
23 ~~and one-half percent of the General Revenue Fund budgeted for the immediately succeeding~~  
24 ~~fiscal year~~

25 (1) There is hereby imposed a tax on sales, purchases, and uses of food and food  
26 ingredients intended for human consumption after June 30, 2018. The rate of tax shall be one  
27 and one-half percent of its sales price, as defined in §11-15B-2 of this code.

28 (2) During the 2021 – 2022 interim period and before the 2022 regular session of the  
29 Legislature, the Joint Committee on Government and Finance shall review the continued  
30 necessity of the tax imposed pursuant to subdivision (1), subsection (a) of this section in funding  
31 the employer share of the aggregate premium required pursuant to §16-5-16 of this code, and if  
32 it determines that the tax is no longer needed for that purpose, it may recommend that the tax be  
33 eliminated by Act of the Legislature;

34 (b) *Calculation of tax on fractional parts of a dollar.* -- The tax computation under this  
35 section shall be carried to the third decimal place and the tax rounded up to the next whole cent  
36 whenever the third decimal place is greater than four and rounded down to the lower whole cent  
37 whenever the third decimal place is four or less. The seller may elect to compute the tax due on  
38 a transaction on a per item basis or on an invoice basis provided the method used is consistently  
39 used during the reporting period.

40 (c) *Federal Food Stamp and Women, Infants and Children programs, other exemptions.* -



41 Nothing in this section affects application of the exemption from tax provided in §11-15-9 of this  
42 code for food purchased by an eligible person using food stamps, electronic benefits transfer  
43 cards, or vouchers issued by or pursuant to authorization of the United States Department of  
44 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name  
45 called, or the Women, Infants, and Children (WIC) program, or application of any other exemption  
46 from tax set forth in this article or §11-15A-1 *et seq.* of this code.

47 **ARTICLE 15A. USE TAX.**

**§11-15A-2c. Rate of tax on food and food ingredients intended for human consumption;  
reductions and cessations of tax.**

1 (a) Rate of tax on food and food ingredients. – Notwithstanding any provision of this article  
2 or §11-15-1 *et seq.* of this code to the contrary:

3 (1) There is hereby imposed a tax on sales, purchases, and uses of food and food  
4 ingredients intended for human consumption after June 30, 2018. The rate of tax shall be one  
5 and one-half percent of its sales price, as defined in §11-15B-2 of this code.

6 (2) During the 2021 – 2022 interim period and before the 2022 regular session of the  
7 Legislature, the Joint Committee on Government and Finance shall review the continued  
8 necessity of the tax imposed pursuant to §11-15A-2c(a)(1) of this code in funding the employer  
9 share of the aggregate premium required pursuant to §16-5-16 of this code, and if it determines  
10 that the tax is no longer needed for that purpose, it may recommend that the tax be eliminated by  
11 Act of the Legislature;

12 (b) Calculation of tax on fractional parts of a dollar. – The tax computation under this  
13 section shall be carried to the third decimal place and the tax rounded up to the next whole cent  
14 whenever the third decimal place is greater than four and rounded down to the lower whole cent  
15 whenever the third decimal place is four or less. The seller may elect to compute the tax due on  
16 a transaction on a per item basis or on an invoice basis provided the method used is consistently  
17 used during the reporting period.

18           (c) Federal Food Stamp and Women, Infants, and Children programs, other exemptions.-  
19 Nothing in this section affects application of the exemption from tax provided in §11-15A-3 of this  
20 code for food purchased by an eligible person using food stamps, electronic benefits transfer  
21 cards, or vouchers issued by or pursuant to authorization of the United States Department of  
22 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name  
23 called, or the Women, Infants, and Children (WIC) program, or application of any other exemption  
24 from tax set forth in this article or §11-15A-1 et seq. of this code.

NOTE: The purpose of this bill is to fix the Public Employees Insurance Agency aggregate premium cost sharing at 85 percent for the employer and 15 percent for the employee; and establish a tax on sales, purchases, and uses of food and food ingredients intended for human consumption as a means of paying for the increased employer share.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.