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Senate Bill No. 1002

(By Senators Kessler (Acting President) and Hall,

By Request of the Executive)

[Introduced August 1, 2011; referred to the Committee on Economic
Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §11-13A-6a, relating
to reallocating and dedicating five percent of coal severance
tax revenues up to \$20 million to the coal-producing counties
of origin to be phased in over a five-year period after
accounting for the revenues dedicated to other funds;
establishing state and local coal county reallocated severance
tax funds and providing for distribution of the moneys to the
county commissions by the State Treasurer; establishing
amounts each coal-producing county to receive; requiring the
creation of local funds into which moneys to be deposited;
requiring moneys be expended solely for economic development
projects and infrastructure projects; providing definitions;
providing restrictions on the expenditure of moneys; providing
duties of State Tax Commissioner; providing audits of

1 distributed funds when authorized by the Joint Committee on
2 Government and Finance; authorizing legislative and emergency
3 rules; and establishing administrative fees.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new section, designated §11-13A-6a, to read as
7 follows:

8 **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

9 **§11-13A-6a. Reallocation and dedication of percentage of**
10 **severance tax for benefit of coal-producing**
11 **counties; phase-in period; permissible uses of**
12 **distributed revenues; duties of State Treasurer**
13 **and State Tax Commissioner; audits; rulemaking.**

14 (a) The purpose of this section is to provide for the
15 reallocation and dedication of a portion of the tax attributable to
16 the severance of coal imposed by section three of this article for
17 the use and benefit of the various counties of this state in which
18 the coal upon which that tax is imposed was located at the time it
19 was severed from the ground. Those counties are referred to in
20 this section as the "coal-producing counties" or, in the singular,
21 as a "coal-producing county."

22 (b) (1) Effective July 1, 2012, one percent of the tax
23 attributable to the severance of coal imposed by section three of
24 this article is dedicated and shall be distributed for the use and

1 benefit of the coal-producing counties as provided in this section.
2 Effective July 1, 2013, two percent of the tax attributable to the
3 severance of coal imposed by section three of this article is
4 dedicated and shall be distributed for the use and benefit of the
5 coal-producing counties as provided in this section. Effective
6 July 1, 2014, three percent of the tax attributable to the
7 severance of coal imposed by section three of this article is
8 dedicated and shall be distributed for the use and benefit of the
9 coal-producing counties as provided in this section. Effective
10 July 1, 2015, four percent of the tax attributable to the severance
11 of coal imposed by section three of this article is dedicated and
12 shall be distributed for the use and benefit of the coal-producing
13 counties as provided in this section. Effective July 1, 2016, and
14 thereafter, five percent of the tax attributable to the severance
15 of coal imposed by section three of this article is dedicated and
16 shall be distributed for the use and benefit of the coal-producing
17 counties as provided in this section.

18 (2) In no fiscal year may the proceeds dedicated in
19 subdivision (1) of this subsection exceed the sum of \$20 million.

20 (3) For purposes of this subsection, the tax attributable to
21 the severance of coal imposed by section three of this article does
22 not include the thirty-five one hundredths of one percent
23 additional severance tax on coal imposed by the state for the
24 benefit of counties and municipalities as provided in section six
25 of this article.

1 (c) The amounts of the tax dedicated in subsection (b) of this
2 section shall be deposited from time to time into a special fund
3 known as the "Coal County Reallocated Severance Tax Fund," which is
4 hereby established in the State Treasury, as the proceeds are
5 received by the State Tax Commissioner.

6 (d) The net proceeds of the deposits made into the Coal County
7 Reallocated Severance Tax Fund shall be allocated among and
8 distributed quarterly to the coal-producing counties by the State
9 Treasurer in the manner specified in this section. On or before
10 each distribution date, the State Treasurer shall determine the
11 total amount of moneys that will be available for distribution to
12 the respective counties entitled to the moneys on that distribution
13 date. The amount to which a coal-producing county is entitled from
14 the Coal County Reallocated Severance Tax Fund shall be determined
15 in accordance with subsection (e) of this section. After
16 determining as set forth in subsection (e) of this section the
17 amount each coal-producing county is entitled to receive from the
18 fund, a warrant of the State Auditor for the sum due to each coal-
19 producing county shall be issued and a check drawn thereon making
20 payment of that amount shall thereafter be distributed to each such
21 coal-producing county by hand, mail commercial delivery or
22 electronic transmission.

23 (e) The amount to which a coal-producing county is entitled
24 from the Coal County Reallocated Severance Tax Fund shall be
25 determined by:

1 (1) Dividing the total amount of moneys in the fund then
2 available for distribution by the total number of tons of coal
3 mined in this state during the preceding quarter; and

4 (2) Multiplying the quotient thus obtained by the number of
5 tons of coal removed from the ground in the county during the
6 preceding quarter.

7 (f) (1) No distribution made to a county under this section may
8 be deposited into the county's general revenue fund. The county
9 commission of each county receiving a distribution under this
10 section shall establish a special account to be known as the "(Name
11 of County) Coal County Reallocated Severance Tax Fund" into which
12 all distributions made to that county under this section shall be
13 deposited.

14 (2) Moneys in the county's coal county reallocated severance
15 tax fund shall be expended by the county commission solely for
16 economic development projects and infrastructure projects.

17 (3) For purposes of this section:

18 (A) "Economic development project" means a project in the
19 state which is likely to foster economic growth and development in
20 the area in which the project is developed for commercial,
21 industrial, community improvement or preservation or other proper
22 purposes.

23 (B) "Infrastructure project" means a project in the state
24 which is likely to foster infrastructure improvements including,
25 but not limited to, any water or wastewater facilities or any part

1 thereof, storm water systems, steam, gas, telephone and
2 telecommunications, broadband development, electric lines and
3 installations, roads, bridges, railroad spurs, drainage and flood
4 control facilities, industrial park development or buildings that
5 promote job creation and retention.

6 (4) A county commission may not expend any of the funds
7 available in its coal county reallocated severance tax fund for
8 personal services, and shall direct the total funds available in
9 its coal county reallocated severance tax fund to project
10 development. For purposes of this subsection, "project
11 development" means costs of architectural and engineering plans,
12 site assessments, site remediation, specifications and surveys, and
13 any other expenses necessary or incidental to determining the
14 feasibility or practicability of any economic development project
15 or infrastructure project.

16 (g) An audit of any funds distributed under this section may
17 be authorized at any time by the Joint Committee on Government and
18 Finance to be conducted by the Legislative Auditor at no cost to
19 the county commission or county commissions audited.

20 (h) The State Tax Commissioner shall propose for promulgation
21 legislative rules pursuant to article three, chapter twenty-nine-a
22 of this code for the administration of the provisions of this
23 section, and is authorized to promulgate emergency rules for those
24 purposes pursuant to that article.

25 (I) The State Tax Commissioner shall retain for the benefit of

1 the state from the deposits made into the Coal County Reallocated
2 Severance Tax Fund pursuant to subsection (c) of this section the
3 amount of \$35,000 annually as a fee for the administration of the
4 provisions of this section by the Tax Commissioner.

Note: The purpose of the bill is to reallocate and distribute up to 5% of the severance tax on coal to the counties from which the coal is produced up to \$20 million per fiscal year. The percentages will be phased in at 1% per year beginning July 1, 2012 until the full 5% is to be distributed beginning July 1, 2016. The distributed funds may only be used by the county commission for economic development projects and infrastructure projects.

This is a new section; therefore, underscoring and strike-throughs have been omitted.