

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2953**

4 (By Delegate Mr. Speaker, Mr. Thompson)
5 [By Request of the Executive]

6 (Originating in the Committee on Finance)

7 [February 21, 2011]

8
9 A BILL to amend and reenact §11-13A-20a of the Code of West
10 Virginia, 1931, as amended; and to amend and reenact
11 §31-15A-16 of said code, all relating to dedication of coalbed
12 methane severance tax proceeds; redirecting coalbed methane
13 severance tax revenues from the Infrastructure Fund to county
14 economic development authorities or county commissions;
15 requiring moneys deposited in the Infrastructure Fund prior to
16 July 1, 2011, be distributed to county economic development
17 authorities or county commissions; removing requirement that
18 the Tax Commissioner provide Infrastructure and Jobs
19 Development Council a breakdown of coalbed methane severance
20 taxes paid and amount of coalbed methane produced by each
21 county; providing calculation methods and specifying a minimum
22 share of coalbed methane severance tax revenue be distributed
23 to producing counties in an amount at least equal to the share
24 received by nonproducing counties; providing for portional
25 adjustments and redesignation for counties deemed
26 nonproducing; providing that no distribution of moneys to

1 exceed total amount of coalbed methane severance tax received
2 in any fiscal year; setting forth the purposes for receiving
3 and conditions of expending such funds by county economic
4 development authorities and county commissions; requiring
5 approval of respective county commissions and the Development
6 Office prior to expending certain funds; prohibiting certain
7 expenditures by counties or county economic development
8 authorities; and authorizing and requiring the Development
9 Office to promulgate legislative rules regarding use of
10 certain funds, including emergency rules.

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

12 That §11-13A-20a of the Code of West Virginia, 1931, as
13 amended, be amended and reenacted; and that §31-15A-16 of said code
14 be amended and reenacted, all to read as follows:

15 **CHAPTER 11. TAXATION.**

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

17 **11-13A-20a. Dedication of tax; authorization of the development
18 office to promulgate rules.**

19 (a) The amount of taxes collected under this article from
20 providers of health care items or services, including any interest,
21 additions to tax and penalties collected under article ten of this
22 chapter, less the amount of allowable refunds and any interest
23 payable with respect to such refunds, shall be deposited into the
24 special revenue fund created in the State Treasurer's Office and
25 known as the Medicaid State Share Fund. Said fund shall have

1 separate accounting for those health care providers as set forth in
2 articles four-b and four-c, chapter nine of this code.

3 (b) Notwithstanding the provisions of subsection (a) of this
4 section, for the remainder of fiscal year 1993 and for each
5 succeeding fiscal year, no expenditures from taxes collected from
6 providers of health care items or services are authorized except in
7 accordance with appropriations by the Legislature.

8 (c) The amount of taxes on the privilege of severing timber
9 collected under section three-b of this article, including any
10 interest, additions to tax and penalties collected under article
11 ten of this chapter, less the amount of allowable refunds and any
12 interest payable with respect to such refunds, shall be paid into
13 a special revenue account in the State Treasury to be appropriated
14 by the Legislature for purposes of the Division of Forestry.

15 (d) Notwithstanding any other provision of this code to the
16 contrary, beginning January 1, 2009, there is hereby dedicated an
17 annual amount not to exceed \$4 million from annual collections of
18 the tax imposed by section three-d of this article to be deposited
19 into the West Virginia Infrastructure Fund, created in section
20 nine, article fifteen-a, chapter thirty-one of this code.

21 (e) Beginning with the fiscal year ending June 30, 2009, and
22 each fiscal year thereafter, the Tax Commissioner shall pay from
23 the taxes imposed in section three-d of this article, on October 1,
24 of each year, ~~into the West Virginia Infrastructure Fund~~ to the
25 respective county economic development authorities or county
26 commissions as provided in subsections (f) through (h) of this

1 section, an amount in the aggregate not to exceed \$4 million per
2 fiscal year. Prior to making any such payment the commissioner
3 shall deduct the amount of refunds lawfully paid and administrative
4 costs authorized by this code. All moneys distributed to the West
5 Virginia Infrastructure Fund pursuant to this section prior to July
6 1, 2011, shall be returned to the Tax Commissioner and distributed
7 to the respective county economic development authorities or county
8 commissions as provided in this section.

9 (f) ~~The Tax Commissioner shall provide to the West Virginia~~
10 ~~Infrastructure and Jobs Development Council a breakdown of coalbed~~
11 ~~methane taxes paid and amount of coalbed methane produced by~~
12 ~~county. The commissioner may obtain any production or other~~
13 ~~necessary information not currently reported to the commissioner~~
14 ~~from the owners or operators of coalbed methane wells or from the~~
15 ~~Department of Environmental Protection or both. Notwithstanding any~~
16 provision of this article to the contrary, prior to the deposit of
17 the proceeds of the tax on coalbed methane with each county
18 economic development authority or county commission pursuant to
19 subsection (e) of this section, the Tax Commissioner shall
20 undertake the following calculations:

21 (1) Seventy-five percent of the moneys to be deposited shall
22 be provisionally allocated for the various counties of this state
23 in which the coalbed methane was produced; and

24 (2) The remaining twenty-five percent of the moneys to be
25 deposited shall be provisionally allocated to the various counties
26 of this state in which no coalbed methane was produced for projects

1 in accordance with subsection (h) of this section.

2 (3) Moneys shall be provisionally allocated to each coalbed
3 methane producing county in direct proportion to the amount of tax
4 revenues derived from coalbed methane production in the county.

5 (4) Moneys shall be provisionally allocated to each coalbed
6 methane nonproducing county equally.

7 (5) Portional adjustments.

8 (A) If, for any year, a coalbed methane producing county's
9 share of money provisionally allocated to that county is computed
10 to be an amount that is less than the amount provisionally
11 allocated to each of the coalbed methane nonproducing counties,
12 then for purposes of the computations set forth in this subsection,
13 that coalbed methane producing county shall be redesignated a
14 coalbed methane nonproducing county. The money that has been
15 provisionally allocated to that coalbed methane producing county
16 out of the seventy-five percent portion specified in subdivision
17 (1) of this subsection shall be subtracted out of the seventy-five
18 percent portion specified in that subdivision and added to the
19 twenty-five percent portion specified in subdivision (2) of this
20 subsection.

21 (B) When the adjustment specified in paragraph (A),
22 subdivision (4) of this subsection has been made for each coalbed
23 methane producing county that has been redesignated as a coalbed
24 methane nonproducing county, then the Tax Department shall finalize
25 the calculations of the amounts to be made available for
26 distribution to the respective county development authority or

1 county commission of the coalbed methane producing counties that
2 have not been redesignated as coalbed methane nonproducing counties
3 under subdivision (4) of this subsection as follows: The amount
4 remaining in the provisional seventy-five percent portion specified
5 in subdivision (1) of this subsection, as adjusted in accordance
6 with paragraph (A), subdivision (4) of this subsection, shall be
7 allocated, in direct proportion to the amount that tax revenues
8 derived from coalbed methane production in each such county not
9 redesignated as a coalbed methane nonproducing county bears to the
10 total amount of tax revenues derived from coalbed methane
11 production in all coalbed methane producing counties that have not
12 been redesignated as a coalbed methane nonproducing county.

13 (C) The Tax Commissioner shall then finalize the calculation
14 of the total amount in the twenty-five percent portion specified in
15 subdivision (2) of this subsection, as adjusted in accordance with
16 paragraph (A), subdivision (4) of this subsection equally among the
17 coalbed methane nonproducing counties.

18 (g) In no case may the total amount distributed in any fiscal
19 year to the aggregate of all coalbed methane producing counties and
20 all coalbed methane nonproducing counties calculated by the Tax
21 Commissioner exceed the total amount of tax on coalbed methane
22 authorized to be remitted to the county economic development
23 authority or county commission pursuant to subsection (e) of this
24 section.

25 (h) Distribution of coalbed methane severance tax to county
26 economic development authorities or county commissions is subject

1 to the following:

2 (1) If the amount determined pursuant to subsections (f) and
3 (g) of this section for a county is more than ten thousand dollars,
4 the Tax Commissioner shall distribute the amount determined for
5 that county to the economic development authority of that county
6 created pursuant to article twelve, chapter seven of this code for
7 the purposes of encouraging economic development in the county.

8 (2) Each county economic development authority shall use such
9 funds for the following upon a finding by the county economic
10 development authority that the cost of such projects are reasonably
11 anticipated to lead to further economic development of the county:

12 (i) The cost of preparation of land sites for any public or
13 private facility; or

14 (ii) The cost of design or construction of water, sewer and
15 stormwater infrastructure.

16 (3) Prior to expending any coalbed methane severance tax
17 moneys, each county economic development authority must obtain the
18 approval of its respective county commission in writing for the
19 purpose of such expenditure.

20 (4) Prior to expending any coalbed methane severance tax
21 moneys, each county economic development authority must obtain the
22 approval of the development office in writing for the purpose of
23 such expenditure. The Development Office shall approve all plans
24 for use of the moneys if such plans are within the required uses
25 provided in subdivision (2) of this subsection. The Director of
26 the State Development Office shall promulgate legislative rules in

1 accordance with article three, chapter twenty-nine-a of this code
2 in order to set forth the required documentation to be submitted to
3 the Development Office from the county economic development
4 authorities to ensure that such funds are utilized as intended by
5 the Legislature. The Director of the Development Office is
6 authorized to promulgate emergency rules to implement the
7 provisions of this section.

8 (5) A county or county economic development authority may not
9 use such funds for the purposes of paying wages to any employee of
10 the county or any employee of a county economic development
11 authority.

12 (6) If the amount determined pursuant to subsections (f) and
13 (g) of this section for a county is ten thousand dollars or less,
14 the Tax Commissioner shall distribute the amount determined for
15 that county to the county commission. The county commission may
16 then use the funds to offset its regional jail costs, costs of any
17 community corrections programs in which it participates, expenses
18 of a volunteer fire department that provides service within its
19 county or expenses of any library that providing services within
20 its county.

21 **CHAPTER 31. CORPORATIONS.**

22 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**
23 **ACT.**

24 **§31-15A-16. Dedication of severance tax proceeds.**

25 (a) There shall be dedicated an annual amount from the

1 collections of the tax collected pursuant to article thirteen-a,
2 chapter eleven of this code for the construction, extension,
3 expansion, rehabilitation, repair and improvement of water supply
4 and sewage treatment systems and for the acquisition, preparation,
5 construction and improvement of sites for economic development in
6 this state as provided in this article.

7 (b) Notwithstanding any other provision of this code to the
8 contrary, beginning on July 1, 1995, the first \$16 million of the
9 tax collected pursuant to article thirteen-a, chapter eleven of
10 this code shall be deposited to the credit of the West Virginia
11 Infrastructure General Obligation Debt Service Fund created
12 pursuant to section three, article fifteen-b of this chapter:
13 *Provided*, That beginning on July 1, 1998, the first \$24 million of
14 the tax annually collected pursuant to article thirteen-a of this
15 code shall be deposited to the credit of the West Virginia
16 Infrastructure General Obligation Debt Service Fund created
17 pursuant to section three, article fifteen-b of this chapter.

18 (c) Notwithstanding any provision of subsection (b) of this
19 section to the contrary: (1) None of the collections from the tax
20 imposed pursuant to section six, article thirteen-a, chapter eleven
21 of this code shall be so dedicated or deposited; and (2) the
22 portion of the tax imposed by article thirteen-a, chapter eleven
23 and dedicated for purposes of Medicaid and the Division of Forestry
24 pursuant to section twenty-a of said article thirteen-a shall
25 remain dedicated for the purposes set forth in ~~said~~ that section
26 twenty-a.

1 (d) On or before May 1 of each year, commencing May 1, 1995,
2 the council, by resolution, shall certify to the Treasurer and the
3 Water Development Authority the principal and interest coverage
4 ratio and amount for the following fiscal year on any
5 infrastructure general obligation bonds issued pursuant to the
6 provisions of article fifteen-b of this chapter.

7 ~~(e) Notwithstanding any provision of this article to the~~
8 ~~contrary, the tax on coalbed methane remitted by the Tax~~
9 ~~Commissioner for deposit in the West Virginia Infrastructure Fund~~
10 ~~pursuant to section twenty-a, article thirteen-a, chapter eleven of~~
11 ~~this code, shall be distributed as follows:~~

12 ~~(1) Seventy-five percent of the moneys so deposited shall be~~
13 ~~distributed for infrastructure projects in the various counties of~~
14 ~~this state in which the coalbed methane was produced; and~~

15 ~~(2) The remaining twenty-five percent of the moneys so~~
16 ~~deposited shall be distributed equally to the various counties of~~
17 ~~this state in which no coalbed methane was produced for~~
18 ~~infrastructure projects. Moneys shall be distributed to each~~
19 ~~coalbed methane producing county in direct proportion to the amount~~
20 ~~of tax paid by the county using information provided by the Tax~~
21 ~~Commissioner as required in section twenty-a, article thirteen-a,~~
22 ~~chapter eleven of this code.~~