

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 372**

4 (By Senators Kessler (Acting President) and Hall, By request of
5 the Executive)

6 _____
7 [Originating in the Committee on Energy, Industry and Mining;
8 reported February 25, 2011.]
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11
12 A BILL to amend and reenact §11-13A-20a of the Code of West
13 Virginia, 1931, as amended; and to amend and reenact
14 §31-15A-16 of said code, all relating to dedication of coalbed
15 methane severance tax proceeds; redirecting coalbed methane
16 severance tax revenues from the Infrastructure Fund to the
17 Coalbed Methane Severance Tax Fund; requiring moneys deposited
18 in the Infrastructure Fund prior to July 1, 2011, be
19 distributed to the Coalbed Methane Severance Tax Fund;
20 providing calculation methods; specifying a minimum share of
21 coalbed methane severance tax revenue be provisionally
22 allocated to producing counties in an amount at least equal to
23 the share received by nonproducing counties; providing for
24 portional adjustments and redesignation for counties deemed
25 nonproducing; providing that no distribution of moneys to
26 exceed total amount of coalbed methane severance tax received

1 in any fiscal year; creating the Coalbed Methane Severance Tax
2 Revenue Fund to be administered by the Development Office;
3 requiring county commissions to apply to the Development
4 Office to obtain grants from such funds; requiring approval of
5 respective county commissions and the Development Office prior
6 to expending any funds; and authorizing and requiring the
7 Development Office to promulgate legislative rules regarding
8 use of funds, including emergency rules.

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

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

13 **CHAPTER 11. TAXATION.**

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

15 **11-13A-20a. Dedication of tax; authorization of the development**
16 **office to promulgate rules.**

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

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

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

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

19 (e) Beginning with the fiscal year ending June 30, 2009, and
20 each fiscal year thereafter, the Tax Commissioner shall pay from
21 the taxes imposed in section three-d of this article, on October 1,
22 of each year, ~~into the West Virginia Infrastructure Fund~~ in the
23 Coalbed Methane Severance Tax Revenue Fund as provided in
24 subsections (f) through (h) of this section, an amount in the
25 aggregate not to exceed \$4 million per fiscal year. Prior to
26 making any such payment the commissioner shall deduct the amount of

1 refunds lawfully paid and administrative costs authorized by this
2 code. All moneys distributed in the West Virginia Infrastructure
3 Fund pursuant to this section prior to July 1, 2011, shall be
4 deposited in the Coalbed Methane Severance Tax Revenue Fund as
5 provided in this section.

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

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

21 (2) The remaining twenty-five percent of the moneys to be
22 deposited shall be provisionally allocated equally to the various
23 counties of this state in which no coalbed methane was produced for
24 projects in accordance with subsection (i) of this section.

25 (3) Moneys shall be provisionally allocated to each coalbed
26 methane producing county in direct proportion to the amount of tax

1 revenues derived from coalbed methane production in the county.

2 (4) Portional adjustments.

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

16 (B) When the adjustment specified in paragraph (A),
17 subdivision (4) of this subsection has been made for each coalbed
18 methane producing county that has been redesignated as a coalbed
19 methane nonproducing county, then the Tax Department shall finalize
20 the calculations of the amounts to be made available for
21 distribution to the respective county of the coalbed methane
22 producing counties that have not been redesignated as coalbed
23 methane nonproducing counties under subdivision (4) of this
24 subsection as follows: The amount remaining in the provisional
25 seventy-five percent portion specified in subdivision (1) of this
26 subsection, as adjusted in accordance with paragraph (A),

1 subdivision (4) of this subsection, shall be allocated, in direct
2 proportion to the amount that tax revenues derived from coalbed
3 methane production in each such county not redesignated as a
4 coalbed methane nonproducing county bears to the total amount of
5 tax revenues derived from coalbed methane production in all coalbed
6 methane producing counties that have not been redesignated as a
7 coalbed methane nonproducing county.

8 (C) The Tax Commissioner shall then finalize the calculation
9 of the total amount in the twenty-five percent portion specified in
10 subdivision (2) of this subsection, as adjusted in accordance with
11 paragraph (A), subdivision (4) of this subsection.

12 (g) In no case may the total amount distributed in any fiscal
13 year to the aggregate of all coalbed methane producing counties and
14 all coalbed methane nonproducing counties calculated by the Tax
15 Commissioner exceed the total amount of tax on coalbed methane
16 authorized to be remitted to the Coalbed Methane Severance Tax
17 Revenue Fund pursuant to subsection (e) of this section.

18 (h) *Creation of the Coalbed Methane Severance Tax Revenue*
19 *Fund.*

20 (1) There is hereby created a fund in the State Treasury on
21 behalf of the Development Office entitled the Coalbed Methane
22 Severance Tax Revenue Fund which shall be a revolving fund that
23 shall carry over each fiscal year and shall not lapse to the
24 General Fund. Moneys in the Coalbed Methane Severance Tax Revenue
25 Fund shall be dedicated to and distributed among the counties as

1 provided in this section. Appropriation of the Coalbed Methane
2 Severance Tax Revenue Fund is authorized by collection.

3 (i) Administration of the Coalbed Methane Severance Tax
4 Revenue Fund.

5 The Director of the Development Office is hereby authorized
6 and empowered to administer the distribution of moneys in the
7 Coalbed Methane Severance Tax Revenue Fund.

8 (A) On or before the plan submission due date prescribed by
9 the Director of the Development Office, a county commission may
10 annually, or with such frequency as may be prescribed by the
11 Director of the Development Office, submit a plan to the Director
12 of the Development Office for use of the county's share of the
13 Coalbed Methane Severance Tax Revenue Fund.

14 (B) A grant of moneys out of the Coalbed Methane Severance Tax
15 Revenue Fund shall only be distributed to a county after approval
16 by the Director of the Development Office of the plan for use of
17 the county's share of the fund, submitted to the Director of the
18 Development Office by the county commission. The Director of the
19 Development Office shall approve the county's plan for use if the
20 plan for use reasonably conforms to the requirements of this
21 section and the legislative rules authorized thereto: Provided,
22 That for funds attributable to coalbed methane producing counties,
23 the Director of the Development Office shall distribute the moneys
24 in the form of grants to each of those counties in accordance with
25 the calculations provided by the Tax Commissioner in subsection (f)

1 of this section for economic development projects approved by the
2 Director: *Provided*, however, That for funds attributable to coalbed
3 methane non-producing counties after subsection (f) adjustments,
4 the Director of the Development Office shall make the total amount
5 of moneys calculated pursuant to subsection (f) of this section
6 available in the form of grants to one or more of the coalbed
7 methane non-producing counties for economic development projects
8 approved by the Director: *Provided* further, That the Director may
9 award all or part of the amounts available for one or more economic
10 development and infrastructure projects, based on applications made
11 by the counties pursuant to the provisions of this section.

12 (C) If the county's plan is approved, the Director of the
13 Development Office may authorize a grant of money out of the
14 Coalbed Methane Severance Tax Revenue Fund to the county to be used
15 by the county for economic development and infrastructure projects
16 as specified in the approved plan for use.

17 (D) The Director of the Development Office may authorize
18 distribution of any amount for the use of a county and carried over
19 from a prior period in accordance with applicable plans for use
20 previously approved.

21 (E) The Director of the Development Office may authorize
22 expenditures for any county of moneys in the Coalbed Methane
23 Severance Tax Revenue Fund, up to the amount of the county's share
24 for the fiscal year, for one or more qualified economic development
25 and infrastructure projects specified in the county's plan for use

1 if the county's approved plan for use of the moneys sets forth a
2 qualified use for the county's share over a period of several
3 fiscal years or a qualified use of the moneys calling for
4 accumulation and distribution to the county in one or more
5 subsequent fiscal years. Previously approved funds may carry over
6 to succeeding fiscal years and may be used to accumulate reserves
7 over a period of time for use by a county.

8 (j) The moneys remitted by the tax Commissioner for
9 infrastructure projects in 2009 and 2010 in non-producing coalbed
10 methane counties that have not been distributed shall not be
11 distributed to those counties but instead shall be available for
12 distribution for economic development projects pursuant to the
13 provisions of subsection (i) of this section.

14 (o) Promulgation of rules by the Director of the Development
15 Office authorized. - The Director of the Development Office, in
16 his or her discretion, may promulgate an emergency rule as provided
17 in article three, chapter twenty-nine-a of this code that
18 clarifies, explains or implements the provisions of this section
19 and the distribution of moneys out of the Coalbed Methane Severance
20 Tax Revenue Fund. The Director of the Development Office is hereby
21 granted continuing authority to promulgate in accordance with
22 article three, chapter twenty-nine-a of this code such
23 interpretive, legislative or procedural rules, or any combination
24 thereof, for administration of the Coalbed Methane Severance Tax
25 Revenue Fund as the Director of the Development Office may find

1 necessary and appropriate including any reporting requirements as
2 deemed necessary to ensure that such funds are utilized as intended
3 by the Legislature. The Director of the Development Office may
4 prescribe criteria for qualification under the economic development
5 project requirement of this section.

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CHAPTER 31. CORPORATIONS.

8 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**

9

ACT.

10 **§31-15A-16. Dedication of severance tax proceeds.**

11 (a) There shall be dedicated an annual amount from the
12 collections of the tax collected pursuant to article thirteen-a,
13 chapter eleven of this code for the construction, extension,
14 expansion, rehabilitation, repair and improvement of water supply
15 and sewage treatment systems and for the acquisition, preparation,
16 construction and improvement of sites for economic development in
17 this state as provided in this article.

18 (b) Notwithstanding any other provision of this code to the
19 contrary, beginning on July 1, 1995, the first \$16 million of the
20 tax collected pursuant to article thirteen-a, chapter eleven of
21 this code shall be deposited to the credit of the West Virginia
22 Infrastructure General Obligation Debt Service Fund created
23 pursuant to section three, article fifteen-b of this chapter:
24 *Provided*, That beginning on July 1, 1998, the first \$24 million of
25 the tax annually collected pursuant to article thirteen-a of this

1 code shall be deposited to the credit of the West Virginia
2 Infrastructure General Obligation Debt Service Fund created
3 pursuant to section three, article fifteen-b of this chapter.

4 (c) Notwithstanding any provision of subsection (b) of this
5 section to the contrary: (1) None of the collections from the tax
6 imposed pursuant to section six, article thirteen-a, chapter eleven
7 of this code shall be so dedicated or deposited; and (2) the
8 portion of the tax imposed by article thirteen-a, chapter eleven
9 and dedicated for purposes of Medicaid and the Division of Forestry
10 pursuant to section twenty-a of said article thirteen-a shall
11 remain dedicated for the purposes set forth in ~~said~~ that section
12 twenty-a.

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

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

1 ~~(1) Seventy-five percent of the moneys so deposited shall be~~
2 ~~distributed for infrastructure projects in the various counties of~~
3 ~~this state in which the coalbed methane was produced; and~~
4 ~~(2) The remaining twenty-five percent of the moneys so~~
5 ~~deposited shall be distributed equally to the various counties of~~
6 ~~this state in which no coalbed methane was produced for~~
7 ~~infrastructure projects. Moneys shall be distributed to each~~
8 ~~coalbed methane producing county in direct proportion to the amount~~
9 ~~of tax paid by the county using information provided by the Tax~~
10 ~~Commissioner as required in section twenty-a, article thirteen-a,~~
11 ~~chapter eleven of this code.~~

NOTE: The purpose of this bill is to specify that a minimum share of coalbed methane severance tax revenue be distributed to producing counties in an amount at least equal to the share received by nonproducing counties. The bill also amends the code to direct the severance tax revenues for coalbed methane producing and nonproducing counties be deposited in the newly created coalbed methane severance tax revenue fund, in lieu of the infrastructure fund, and to be distributed by the development office.

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