Senate Bill No. 353

(By Senators Klempa, Beach, Yost and Sypolt)

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[Introduced January 31, 2011; referred to the Committee on Energy, Industry and Mining; and then to the Committee on Finance .]

FISCAL NOTE

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A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, relating to imposition of severance tax on privilege of severing natural gas or oil; providing for an increase of the tax on gas severed from Marcellus Shale or by fracturing if sold or transported out of the state; and providing for disposition of the increased taxes.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.

(e) *Imposition of tax on gas from the Marcellus Shale or from fracturing.* -- For the privilege of engaging or continuing within this state in the business of severing natural gas from the Marcellus Shale or from fracturing a well for sale, profit or commercial use outside the state, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(f) *Rate and measure of tax.* -- The tax imposed in subsection (e) of this section shall be ten percent of the gross value of the natural gas produced, from the Marcellus Shale or from fracturing a well as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(g) *Dedication of tax.* – - The amount of taxes collected under this section from persons engaging or continuing within this state in the business of severing natural gas from the Marcellus Shale or from fracturing a well for sale, profit or commercial use outside the state, including any interest, additions to tax and penalties collected under the the provisions of article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to the refunds, shall be distributed as follows: (1) Ten percent of the taxes collected to local county economic development; (2) ten percent for water and sewer; (3) twenty percent for roads and bridges; (4) ten percent for post-employment benefits (OPEB debt; and fifty percent to the general revenue fund.

NOTE: The purpose of this bill is to increase the tax on gas severed from Marcellus Shale or by fracturing if sold or transported out of the state to 10 percent. The bill provides for disposition of the increased taxes collected:(1) One percent of the taxes collected to local county economic development; (2) one percent for water and sewer; (3) two percent for roads and bridges; and (4) one percent for other post-employment benefits (OPEB) debt.

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