

1 **Senate Bill No. 372**

2 (By Senators Kessler (Acting President) and Hall, By request of
3 the Executive)

4 _____
5 [Introduced February 1, 2011; referred to the Committee on
6 Energy, Industry and Mining; and then to the Committee on
7 Finance.]

**FISCAL
NOTE**

8 _____
9
10
11 A BILL to amend and reenact §11-13A-20a of the Code of West
12 Virginia, 1931, as amended; and to amend and reenact
13 §31-15A-16 of said code, all relating to dedication of coalbed
14 methane severance tax proceeds; redirecting coalbed methane
15 severance tax revenues from the Infrastructure Fund to county
16 economic development authorities; requiring moneys deposited
17 in the Infrastructure Fund prior to July 1, 2011, be
18 distributed to county economic development authorities;
19 removing requirement that the Tax Commissioner provide
20 Infrastructure and Jobs Development Council a breakdown of
21 coalbed methane severance taxes paid and amount of coalbed
22 methane produced by each county; providing calculation
23 methods; specifying a minimum share of coalbed methane
24 severance tax revenue be distributed to producing counties in
25 an amount at least equal to the share received by nonproducing

1 counties; providing for portional adjustments and
 2 redesignation for counties deemed nonproducing; providing that
 3 no distribution of moneys to exceed total amount of coalbed
 4 methane severance tax received in any fiscal year; setting
 5 forth the purposes for receiving and conditions of expending
 6 such funds by county economic development authorities;
 7 requiring approval of respective county commissions and the
 8 Development Office prior to expending any funds; prohibiting
 9 certain expenditures by counties or county economic
 10 development authorities; and authorizing and requiring the
 11 Development Office to promulgate legislative rules regarding
 12 use of funds, including emergency rules.

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

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

17 **CHAPTER 11. TAXATION.**

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

19 **11-13A-20a. Dedication of tax; authorization of the development
 20 office to promulgate rules.**

21 (a) The amount of taxes collected under this article from
 22 providers of health care items or services, including any interest,
 23 additions to tax and penalties collected under article ten of this
 24 chapter, less the amount of allowable refunds and any interest

1 payable with respect to such refunds, shall be deposited into the
2 special revenue fund created in the State Treasurer's Office and
3 known as the Medicaid State Share Fund. Said fund shall have
4 separate accounting for those health care providers as set forth in
5 articles four-b and four-c, chapter nine of this code.

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

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

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

24 (e) Beginning with the fiscal year ending June 30, 2009, and
25 each fiscal year thereafter, the Tax Commissioner shall pay from

1 the taxes imposed in section three-d of this article, on October 1,
2 of each year, ~~into the West Virginia Infrastructure Fund to the~~
3 respective county economic development authorities as provided in
4 subsections (f) through (h) of this section, an amount in the
5 aggregate not to exceed \$4 million per fiscal year. Prior to
6 making any such payment the commissioner shall deduct the amount of
7 refunds lawfully paid and administrative costs authorized by this
8 code. All moneys distributed to the West Virginia Infrastructure
9 Fund pursuant to this section prior to July 1, 2011, shall be
10 returned to the Tax Commissioner and distributed to the respective
11 county economic development authorities as provided in this
12 section.

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

25 (1) Seventy-five percent of the moneys to be deposited shall

1 be provisionally allocated for the various counties of this state
2 in which the coalbed methane was produced; and

3 (2) The remaining twenty-five percent of the moneys to be
4 deposited shall be provisionally allocated to the various counties
5 of this state in which no coalbed methane was produced for projects
6 in accordance with subsection (h) of this section.

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

10 (4) Portional adjustments.

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

24 (B) When the adjustment specified in paragraph (A),
25 subdivision (4) of this subsection has been made for each coalbed

1 methane producing county that has been redesignated as a coalbed
2 methane nonproducing county, then the Tax Department shall finalize
3 the calculations of the amounts to be made available for
4 distribution to the respective county development authority of the
5 coalbed methane producing counties that have not been redesignated
6 as coalbed methane nonproducing counties under subdivision (4) of
7 this subsection as follows: The amount remaining in the provisional
8 seventy-five percent portion specified in subdivision (1) of this
9 subsection, as adjusted in accordance with paragraph (A),
10 subdivision (4) of this subsection, shall be allocated, in direct
11 proportion to the amount that tax revenues derived from coalbed
12 methane production in each such county not redesignated as a
13 coalbed methane nonproducing county bears to the total amount of
14 tax revenues derived from coalbed methane production in all coalbed
15 methane producing counties that have not been redesignated as a
16 coalbed methane nonproducing county.

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

21 (g) In no case may the total amount distributed in any fiscal
22 year to the aggregate of all coalbed methane producing counties and
23 all coalbed methane nonproducing counties calculated by the Tax
24 Commissioner exceed the total amount of tax on coalbed methane

1 authorized to be remitted to the county economic development
2 authority pursuant to subsection (e) of this section.

3 (h) Distribution of coalbed methane severance tax to county
4 economic development authorities is subject to the following:

5 (1) The Tax Commissioner shall distribute the provisional
6 amount for each county to the economic development authority of
7 such county created pursuant to article twelve, chapter seven of
8 this code for the purposes of encouraging economic development in
9 such county.

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

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

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

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

22 (4) Prior to expending any coalbed methane severance tax
23 moneys, each county economic development authority must obtain the
24 approval of the development office in writing for the purpose of

1 such expenditure. The Development Office shall approve all plans
2 for use of the moneys if such plans are within the required uses
3 provided in subdivision (2) of this subsection. The Director of
4 the State Development Office shall promulgate legislative rules in
5 accordance with article three, chapter twenty-nine-a of this code
6 in order to set forth the required documentation to be submitted to
7 the Development Office from the county economic development
8 authorities to ensure that such funds are utilized as intended by
9 the Legislature. The Director of the Development Office is
10 authorized to promulgate emergency rules to implement the
11 provisions of this section.

12 (5) A county or county economic development authority may not
13 use such funds for the purposes of paying wages to any employee of
14 the county or any employee of a county economic development
15 authority.

16 **CHAPTER 31. CORPORATIONS.**

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

18 **ACT.**

19 **§31-15A-16. Dedication of severance tax proceeds.**

20 (a) There shall be dedicated an annual amount from the
21 collections of the tax collected pursuant to article thirteen-a,
22 chapter eleven of this code for the construction, extension,
23 expansion, rehabilitation, repair and improvement of water supply
24 and sewage treatment systems and for the acquisition, preparation,

1 construction and improvement of sites for economic development in
2 this state as provided in this article.

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

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

23 (d) On or before May 1 of each year, commencing May 1, 1995,
24 the council, by resolution, shall certify to the Treasurer and the

1 Water Development Authority the principal and interest coverage
2 ratio and amount for the following fiscal year on any
3 infrastructure general obligation bonds issued pursuant to the
4 provisions of article fifteen-b of this chapter.

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

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

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

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