

COMMITTEE SUBSTITUTE

FOR

**H. B. 2953**

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(BY MR. SPEAKER, MR. THOMPSON)  
[BY REQUEST OF THE EXECUTIVE]

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(Originating in the Committee on Finance)  
[February 21, 2011]

A BILL to amend and reenact §11-13A-20a of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15A-16 of said code, all relating to dedication of coalbed methane severance tax proceeds; redirecting coalbed methane severance tax revenues from the Infrastructure Fund to county economic development authorities or county commissions; requiring moneys deposited in the Infrastructure Fund prior to July 1, 2011, be distributed to county economic development

authorities or county commissions; removing requirement that the Tax Commissioner provide Infrastructure and Jobs Development Council a breakdown of coalbed methane severance taxes paid and amount of coalbed methane produced by each county; providing calculation methods and specifying 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; providing for portional adjustments and redesignation for counties deemed nonproducing; providing that no distribution of moneys to exceed total amount of coalbed methane severance tax received in any fiscal year; setting forth the purposes for receiving and conditions of expending such funds by county economic development authorities and county commissions; requiring approval of respective county commissions and the Development Office prior to expending certain funds; prohibiting certain expenditures by counties or county economic development authorities; and authorizing and requiring the Development Office to promulgate legislative rules regarding use of certain funds, including emergency rules.

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

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

**CHAPTER 11. TAXATION.**

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

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

1 (a) The amount of taxes collected under this article from  
2 providers of health care items or services, including any  
3 interest, additions to tax and penalties collected under article  
4 ten of this chapter, less the amount of allowable refunds and  
5 any interest payable with respect to such refunds, shall be  
6 deposited into the special revenue fund created in the State  
7 Treasurer's Office and known as the Medicaid State Share  
8 Fund. Said fund shall have separate accounting for those  
9 health care providers as set forth in articles four-b and four-c,  
10 chapter nine of this code.

11 (b) Notwithstanding the provisions of subsection (a) of  
12 this section, for the remainder of fiscal year 1993 and for  
13 each succeeding fiscal year, no expenditures from taxes  
14 collected from providers of health care items or services are  
15 authorized except in accordance with appropriations by the  
16 Legislature.

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

25 (d) Notwithstanding any other provision of this code to  
26 the contrary, beginning January 1, 2009, there is hereby  
27 dedicated an annual amount not to exceed \$4 million from  
28 annual collections of the tax imposed by section three-d of  
29 this article to be deposited into the West Virginia

30 Infrastructure Fund, created in section nine, article fifteen-a,  
31 chapter thirty-one of this code.

32 (e) Beginning with the fiscal year ending June 30, 2009,  
33 and each fiscal year thereafter, the Tax Commissioner shall  
34 pay from the taxes imposed in section three-d of this article,  
35 on October 1, of each year, ~~into the West Virginia~~  
36 ~~Infrastructure Fund~~ to the respective county economic  
37 development authorities or county commissions as provided  
38 in subsections (f) through (h) of this section, an amount in  
39 the aggregate not to exceed \$4 million per fiscal year. Prior  
40 to making any such payment the commissioner shall deduct  
41 the amount of refunds lawfully paid and administrative costs  
42 authorized by this code. All moneys distributed to the West  
43 Virginia Infrastructure Fund pursuant to this section prior to  
44 July 1, 2011, shall be returned to the Tax Commissioner and  
45 distributed to the respective county economic development  
46 authorities or county commissions as provided in this section.

47 (f) ~~The Tax Commissioner shall provide to the West~~  
48 ~~Virginia Infrastructure and Jobs Development Council a~~

49 ~~breakdown of coalbed methane taxes paid and amount of~~  
50 ~~coalbed methane produced by county. The commissioner may~~  
51 ~~obtain any production or other necessary information not~~  
52 ~~currently reported to the commissioner from the owners or~~  
53 ~~operators of coalbed methane wells or from the Department of~~  
54 ~~Environmental Protection or both. Notwithstanding any~~  
55 ~~provision of this article to the contrary, prior to the deposit of~~  
56 ~~the proceeds of the tax on coalbed methane with each county~~  
57 ~~economic development authority or county commission~~  
58 ~~pursuant to subsection (e) of this section, the Tax~~  
59 ~~Commissioner shall undertake the following calculations:~~

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

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

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

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

74 (5) Portional adjustments.

75 (A) If, for any year, a coalbed methane producing  
76 county's share of money provisionally allocated to that  
77 county is computed to be an amount that is less than the  
78 amount provisionally allocated to each of the coalbed  
79 methane nonproducing counties, then for purposes of the  
80 computations set forth in this subsection, that coalbed  
81 methane producing county shall be redesignated a coalbed  
82 methane nonproducing county. The money that has been  
83 provisionally allocated to that coalbed methane producing  
84 county out of the seventy-five percent portion specified in  
85 subdivision (1) of this subsection shall be subtracted out of  
86 the seventy-five percent portion specified in that subdivision

87 and added to the twenty-five percent portion specified in  
88 subdivision (2) of this subsection.

89 (B) When the adjustment specified in paragraph (A),  
90 subdivision (4) of this subsection has been made for each  
91 coalbed methane producing county that has been redesignated  
92 as a coalbed methane nonproducing county, then the Tax  
93 Department shall finalize the calculations of the amounts to be  
94 made available for distribution to the respective county  
95 development authority or county commission of the coalbed  
96 methane producing counties that have not been redesignated  
97 as coalbed methane nonproducing counties under subdivision  
98 (4) of this subsection as follows: The amount remaining in the  
99 provisional seventy-five percent portion specified in  
100 subdivision (1) of this subsection, as adjusted in accordance  
101 with paragraph (A), subdivision (4) of this subsection, shall be  
102 allocated, in direct proportion to the amount that tax revenues  
103 derived from coalbed methane production in each such county  
104 not redesignated as a coalbed methane nonproducing county  
105 bears to the total amount of tax revenues derived from coalbed



106 methane production in all coalbed methane producing counties  
107 that have not been redesignated as a coalbed methane  
108 nonproducing county.

109 (C) The Tax Commissioner shall then finalize the  
110 calculation of the total amount in the twenty-five percent  
111 portion specified in subdivision (2) of this subsection, as  
112 adjusted in accordance with paragraph (A), subdivision (4)  
113 of this subsection equally among the coalbed methane  
114 nonproducing counties.

115 (g) In no case may the total amount distributed in any  
116 fiscal year to the aggregate of all coalbed methane producing  
117 counties and all coalbed methane nonproducing counties  
118 calculated by the Tax Commissioner exceed the total amount  
119 of tax on coalbed methane authorized to be remitted to the  
120 county economic development authority or county  
121 commission pursuant to subsection (e) of this section.

122 (h) Distribution of coalbed methane severance tax to  
123 county economic development authorities or county  
124 commissions is subject to the following:

125 (1) If the amount determined pursuant to subsections (f)  
126 and (g) of this section for a county is more than ten thousand  
127 dollars, the Tax Commissioner shall distribute the amount  
128 determined for that county to the economic development  
129 authority of that county created pursuant to article twelve,  
130 chapter seven of this code for the purposes of encouraging  
131 economic development in the county.

132 (2) Each county economic development authority shall  
133 use such funds for the following upon a finding by the county  
134 economic development authority that the cost of such  
135 projects are reasonably anticipated to lead to further  
136 economic development of the county:

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

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

141 (3) Prior to expending any coalbed methane severance  
142 tax moneys, each county economic development authority

143 must obtain the approval of its respective county commission  
144 in writing for the purpose of such expenditure.

145 (4) Prior to expending any coalbed methane severance  
146 tax moneys, each county economic development authority  
147 must obtain the approval of the development office in writing  
148 for the purpose of such expenditure. The Development  
149 Office shall approve all plans for use of the moneys if such  
150 plans are within the required uses provided in subdivision (2)  
151 of this subsection. The Director of the State Development  
152 Office shall promulgate legislative rules in accordance with  
153 article three, chapter twenty-nine-a of this code in order to set  
154 forth the required documentation to be submitted to the  
155 Development Office from the county economic development  
156 authorities to ensure that such funds are utilized as intended  
157 by the Legislature. The Director of the Development Office  
158 is authorized to promulgate emergency rules to implement  
159 the provisions of this section.

160 (5) A county or county economic development authority  
161 may not use such funds for the purposes of paying wages to

162 any employee of the county or any employee of a county  
163 economic development authority.

164 (6) If the amount determined pursuant to subsections (f)  
165 and (g) of this section for a county is ten thousand dollars or  
166 less, the Tax Commissioner shall distribute the amount  
167 determined for that county to the county commission. The  
168 county commission may then use the funds to offset its  
169 regional jail costs, costs of any community corrections  
170 programs in which it participates, expenses of a volunteer fire  
171 department that provides service within its county or  
172 expenses of any library that providing services within its  
173 county.

## **CHAPTER 31. CORPORATIONS.**

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

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

1 (a) There shall be dedicated an annual amount from the  
2 collections of the tax collected pursuant to article thirteen-a,  
3 chapter eleven of this code for the construction, extension,

4 expansion, rehabilitation, repair and improvement of water  
5 supply and sewage treatment systems and for the acquisition,  
6 preparation, construction and improvement of sites for  
7 economic development in this state as provided in this article.

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

20 (c) Notwithstanding any provision of subsection (b) of  
21 this section to the contrary: (1) None of the collections from  
22 the tax imposed pursuant to section six, article thirteen-a,

23 chapter eleven of this code shall be so dedicated or deposited;  
24 and (2) the portion of the tax imposed by article thirteen-a,  
25 chapter eleven and dedicated for purposes of Medicaid and  
26 the Division of Forestry pursuant to section twenty-a of said  
27 article thirteen-a shall remain dedicated for the purposes set  
28 forth in ~~said~~ that section twenty-a.

29 (d) On or before May 1 of each year, commencing May  
30 1, 1995, the council, by resolution, shall certify to the  
31 Treasurer and the Water Development Authority the  
32 principal and interest coverage ratio and amount for the  
33 following fiscal year on any infrastructure general obligation  
34 bonds issued pursuant to the provisions of article fifteen-b of  
35 this chapter.

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

41 (1) ~~Seventy-five percent of the moneys so deposited shall~~  
42 ~~be distributed for infrastructure projects in the various~~  
43 ~~counties of this state in which the coalbed methane was~~  
44 ~~produced, and~~

45 (2) ~~The remaining twenty-five percent of the moneys so~~  
46 ~~deposited shall be distributed equally to the various counties~~  
47 ~~of this state in which no coalbed methane was produced for~~  
48 ~~infrastructure projects. Moneys shall be distributed to each~~  
49 ~~coalbed methane producing county in direct proportion to the~~  
50 ~~amount of tax paid by the county using information provided~~  
51 ~~by the Tax Commissioner as required in section twenty-a,~~  
52 ~~article thirteen-a, chapter eleven of this code.~~