

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 487**

5 (SENATORS BROWNING, KESSLER (MR. PRESIDENT), KLEMPA, CHAFIN AND BEACH,
6 *original sponsors*)

7 _____
8 [Passed March 10, 2012; in effect from passage.]
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12 AN ACT to amend and reenact §11-13A-20a of the Code of West
13 Virginia, 1931, as amended, relating to the distribution of
14 coalbed methane gas severance tax; establishing the Coalbed
15 Methane Gas Distribution Fund in the State Treasurer's Office;
16 defining "county economic development entity"; authorizing the
17 Tax Commissioner to deposit coalbed methane severance tax
18 moneys into the Coalbed Methane Gas Distribution Fund;
19 directing the State Treasurer to distribute coalbed methane
20 severance tax moneys to county commissions or county economic
21 development entities; authorizing distribution by the State
22 Treasurer of accumulated moneys from fiscal years 2009, 2010,
23 2011 and 2012 to county economic development entities;
24 specifying the permissible uses of Coalbed Methane Gas

1 Distribution Fund moneys received by county economic
2 development entities; eliminating the requirement of
3 Development Office approval for use of funds; requiring
4 certain reporting to the Joint Committee on Government and
5 Finance; and authorizing certain audits.

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

7 That §11-13A-20a of the Code of West Virginia, 1931, as
8 amended, be amended and reenacted to read as follows:

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

10 **11-13A-20a. Dedication of tax.**

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

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

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

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

14 (e) Beginning with the fiscal year ending June 30, 2009, and
15 each fiscal year thereafter, the Tax Commissioner shall pay from
16 the taxes imposed in section three-d of this article, on October 1,
17 of each year, to the county economic development entities, as this
18 term is defined in this subsection, or county commissions as
19 provided in subsections (f) through (h) of this section, an amount
20 in the aggregate not to exceed \$4 million per fiscal year:
21 *Provided*, That on July 1, 2012, the Tax Commissioner shall deposit
22 the taxes imposed in section three-d of this article into a special
23 revenue fund, which is hereby created in the State Treasurer's
24 Office and known as the Coalbed Methane Gas Distribution Fund:

1 *Provided, however,* That such deposit of taxes shall not exceed in
2 the aggregate \$4 million per fiscal year and moneys therein shall
3 be distributed by the State Treasurer pursuant to this section.
4 Prior to making any such payment the commissioner shall deduct the
5 amount of refunds lawfully paid and administrative costs authorized
6 by this code. All moneys distributed to the West Virginia
7 Infrastructure Fund pursuant to this section prior to July 1, 2011,
8 shall be returned to the Tax Commissioner and distributed to the
9 county economic development entities, as this term is defined in
10 this subsection, or county commissions as provided in this section.
11 For purposes of this section, the term "county economic development
12 entity" refers to a county economic development authority
13 established pursuant to article twelve, chapter seven of this code
14 or if a county does not have a county economic development
15 authority established pursuant to article twelve, chapter seven of
16 this code, an entity designated by resolution of the county
17 commission of the county as the lead entity for economic
18 development activities for the purpose of encouraging economic
19 development in the county which entity may be, but is not limited
20 to being, redevelopment authorities created pursuant to article
21 eighteen, chapter sixteen of this code; county economic development
22 corporations; regional economic development councils, corporations
23 or partnerships.

24 (f) Notwithstanding any provision of this article to the

1 contrary, prior to the deposit of the proceeds of the tax on
2 coalbed methane with each county economic development entity or
3 county commission pursuant to subsection (e) of this section, the
4 Tax Commissioner shall undertake the following calculations:

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

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

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

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

17 (5) Portional adjustments.

18 (A) If, for any year, a coalbed methane producing county's
19 share of money provisionally allocated to that county is computed
20 to be an amount that is less than the amount provisionally
21 allocated to each of the coalbed methane nonproducing counties,
22 then for purposes of the computations set forth in this subsection,
23 that coalbed methane producing county shall be redesignated a
24 coalbed methane nonproducing county. The money that has been

1 provisionally allocated to that coalbed methane producing county
2 out of the seventy-five percent portion specified in subdivision
3 (1) of this subsection shall be subtracted out of the seventy-five
4 percent portion specified in that subdivision and added to the
5 twenty-five percent portion specified in subdivision (2) of this
6 subsection.

7 (B) When the adjustment specified in paragraph (A), of this
8 subdivision has been made for each coalbed methane producing county
9 that has been redesignated as a coalbed methane nonproducing
10 county, then the Tax Department shall finalize the calculations of
11 the amounts to be made available for distribution to the respective
12 county economic development entity or county commission of the
13 coalbed methane producing counties that have not been redesignated
14 as coalbed methane nonproducing counties under paragraph (A) of
15 this subdivision as follows: The amount remaining in the
16 provisional seventy-five percent portion specified in subdivision
17 (1) of this subsection, as adjusted in accordance with paragraph
18 (A) of this subdivision, shall be allocated, in direct proportion
19 to the amount that tax revenues derived from coalbed methane
20 production in each such county not redesignated as a coalbed
21 methane nonproducing county bears to the total amount of tax
22 revenues derived from coalbed methane production in all coalbed
23 methane producing counties that have not been redesignated as a
24 coalbed methane nonproducing county.

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

6 (D) The Tax Commissioner, upon completing the calculation of
7 the total amount of tax to be distributed to all coalbed methane
8 producing counties and to all coalbed methane nonproducing
9 counties, shall deposit an amount equal to the amount so calculated
10 in the Coalbed Methane Gas Distribution Fund, subject to the
11 limitations set forth in this section.

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 county economic development
17 entities and county commissions pursuant to subsection (e) of this
18 section.

19 (h) Distribution of coalbed methane severance tax to county
20 economic development entities or county commissions is subject to
21 the following:

22 (1) If the amount determined pursuant to subsections (f) and
23 (g) of this section for a county is more than \$10,000 the State
24 Treasurer shall distribute the amount determined for that county to

1 the county economic development entity. The State Treasurer is
2 hereby authorized to distribute accumulated but undistributed
3 moneys from fiscal years 2009, 2010, 2011 and 2012 to each county
4 economic development entity.

5 (2) Each county economic development entity shall use such
6 funds for economic development projects and infrastructure
7 projects.

8 (3) For purposes of this section:

9 (A) "Economic development project" means a project in the
10 state which is likely to foster economic growth and development in
11 the area in which the project is developed for commercial,
12 industrial, community improvement or preservation or other proper
13 purposes.

14 (B) "Infrastructure project" means a project in the state
15 which is likely to foster infrastructure improvements and covers
16 post mining land use, water or wastewater facilities, stormwater
17 systems, steam, gas, telephone and telecommunications, broadband
18 development, electric lines and installations, roads, bridges,
19 railroad spurs, drainage and flood control facilities, industrial
20 park development, road or buildings that promote job creation and
21 retention.

22 (4) Prior to expending any coalbed methane severance tax
23 moneys, each county economic development entity must obtain the
24 approval of its respective county commission, or the county

1 commission or commissions representing the county or counties where
2 the economic development or infrastructure project will be situate
3 if the county economic development entity is regional and
4 encompasses more than one county, in writing for the purpose of
5 such expenditure.

6 (5) A county commission or county economic development entity
7 may not use funds distributed to it pursuant to subsections (e),
8 (f), (g) and (h) of this section for the purposes of paying wages
9 to any employee of the county or any employee of a county economic
10 development entity.

11 (6) If the amount determined pursuant to subsections (f) and
12 (g) of this section for a county is \$10,000 or less, the State
13 Treasurer shall distribute the amount determined for that county to
14 the county commission. The county commission may then use the
15 funds to offset its regional jail costs, costs of any community
16 corrections programs in which it participates, expenses of a
17 volunteer fire department that provides service within its county
18 or expenses of any library that provides services within its
19 county.

20 (i) On or before December 1, 2013, and December 1 of each year
21 thereafter, the county economic development entity as defined in
22 this section or county commission receiving a distribution of funds
23 under this section shall deliver to the Joint Committee on
24 Government and Finance a written report setting forth the specific

1 projects for which those funds were expended during the next
2 preceding fiscal year, a detailed account of those expenditures and
3 a showing that the expenditures were made for the purposes required
4 by this section.

5 (j) An audit of any funds distributed under this section may
6 be authorized at any time by the Joint Committee on Government and
7 Finance to be conducted by the Legislative Auditor at no cost to
8 the county economic development entity or county commission
9 audited.