

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*)

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8 [Passed March 10, 2012; in effect from passage.]  
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11  
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.