

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 487**

4 (By Senators Browning, Kessler (Mr. President), Klempa, Chafin
5 and Beach)

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7 [Originating in the Committee on Finance;
8 reported February 27, 2012.]
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13 A BILL to amend and reenact §11-13A-20a of the Code of West
14 Virginia, 1931, as amended, relating to the distribution of
15 coalbed methane gas severance tax; establishing the Coalbed
16 Methane Gas Distribution Fund in the State Treasurer's Office;
17 making technical changes to correct subdivision references;
18 correcting the omission of the term "county economic
19 development corporation"; authorizing the Tax Commissioner to
20 deposit coalbed methane severance tax moneys into the Coalbed
21 Methane Gas Distribution Fund; directing the State Treasurer
22 to distribute coalbed methane severance tax moneys to
23 counties; authorizing distribution of moneys to the lead
24 economic development authority or economic development

1 corporation for the county and designation thereof;
2 authorizing distribution by the State Treasurer of accumulated
3 moneys from fiscal years 2009, 2010, 2011 and 2012 to the lead
4 economic development authority or economic development
5 corporation for the county and designation thereof; specifying
6 the permissible uses of Coalbed Methane Gas Distribution Fund
7 moneys received by county economic development authorities and
8 county economic development corporations; eliminating the
9 requirement of Development Office approval for use of funds;
10 and creating a reporting mechanism for accounting and use of
11 Coalbed Methane Gas Distribution Fund moneys.

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

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

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

16 **11-13A-20a. Dedication of tax.**

17 (a) The amount of taxes collected under this article from
18 providers of health care items or services, including any interest,
19 additions to tax and penalties collected under article ten of this
20 chapter, less the amount of allowable refunds and any interest
21 payable with respect to such refunds, shall be deposited into the
22 special revenue fund created in the State Treasurer's Office and
23 known as the Medicaid State Share Fund. Said fund shall have
24 separate accounting for those health care providers as set forth in

1 articles four-b and four-c, chapter nine of this code.

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

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

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

20 (e) Beginning with the fiscal year ending June 30, 2009, and
21 each fiscal year thereafter, the Tax Commissioner shall pay from
22 the taxes imposed in section three-d of this article, on October 1,
23 of each year, to the respective county economic development
24 authorities, county economic development corporations or county

1 commissions as provided in subsections (f) through (h) of this
2 section, an amount in the aggregate not to exceed \$4 million per
3 fiscal year: Provided, That on July 1, 2012, the Tax Commissioner
4 shall deposit the taxes imposed in section three-d of this article
5 into a special revenue fund, which is hereby created in the State
6 Treasurer's Office and known as the Coalbed Methane Gas
7 Distribution Fund: Provided, however, That such deposit of taxes
8 shall not exceed in the aggregate \$4 million per fiscal year and
9 moneys therein shall be distributed by the State Treasurer as
10 herein directed. Prior to making any such payment the commissioner
11 shall deduct the amount of refunds lawfully paid and administrative
12 costs authorized by this code. All moneys distributed to the West
13 Virginia Infrastructure Fund pursuant to this section prior to July
14 1, 2011, shall be returned to the Tax Commissioner and distributed
15 to the respective county economic development authorities, county
16 economic development corporations or county commissions as provided
17 in this section. For purposes of this section, the term "county
18 economic development corporation" refers solely to a corporation
19 designated by resolution of the county commission of the county as
20 the lead entity for economic development activities for the purpose
21 of encouraging economic development in the county.

22 (f) Notwithstanding any provision of this article to the
23 contrary, prior to the deposit of the proceeds of the tax on
24 coalbed methane with each county economic development authority,

1 county economic development corporation or county commission
2 pursuant to subsection (e) of this section, the Tax Commissioner
3 shall undertake the following calculations:

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

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

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

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

16 (5) Portional adjustments.

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

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

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

1 nonproducing county.

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

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

13 (g) In no case may the total amount distributed in any fiscal
14 year to the aggregate of all coalbed methane producing counties and
15 all coalbed methane nonproducing counties calculated by the Tax
16 Commissioner exceed the total amount of tax on coalbed methane
17 authorized to be remitted to the county economic development
18 authority, county economic development corporation or county
19 commission pursuant to subsection (e) of this section.

20 (h) Distribution of coalbed methane severance tax to county
21 economic development authorities, county economic development
22 corporations or county commissions is subject to the following:

23 (1) If the amount determined pursuant to subsections (f) and
24 (g) of this section for a county is more than, \$10,000 the ~~Tax~~

1 ~~Commissioner~~ State Treasurer shall distribute the amount determined
2 for that county to the county economic development authority ~~of~~
3 ~~that county created pursuant to~~ established as provided in article
4 twelve, chapter seven of this code, or other county economic
5 development corporation designated by resolution of the county
6 commission of the county as the lead entity for economic
7 development activities for the purposes of encouraging economic
8 development in the county. The State Treasurer is hereby
9 authorized to distribute accumulated but undistributed moneys from
10 fiscal years 2009, 2010, 2011 and 2012 to the lead economic
11 development authority or county economic development corporation
12 for the county.

13 (2) Each county economic development authority or county
14 economic development corporation shall use such funds for economic
15 development projects and infrastructure projects. ~~the following~~
16 ~~upon a finding by the county economic development authority that~~
17 ~~the cost of such projects are reasonably anticipated to lead to~~
18 ~~further economic development of the county:~~

19 ~~(i) The cost of preparation of land sites for any public or~~
20 ~~private facility; or~~

21 ~~(ii) The cost of design or construction of water, sewer and~~
22 ~~stormwater infrastructure.~~

23 (3) For purposes of this section:

24 (A) "Economic development project" means a project in the

1 state which is likely to foster economic growth and development in
2 the area in which the project is developed for commercial,
3 industrial, community improvement or preservation or other proper
4 purposes.

5 (B) "Infrastructure project" means a project in the state
6 which is likely to foster infrastructure improvements and covers
7 post mining land use, water or wastewater facilities, stormwater
8 systems, steam, gas, telephone and telecommunications, broadband
9 development, electric lines and installations, roads, bridges,
10 railroad spurs, drainage and flood control facilities, industrial
11 park development, road or buildings that promote job creation and
12 retention.

13 ~~(3)~~ (4) Prior to expending any coalbed methane severance tax
14 moneys, each county economic development authority or county
15 economic development corporation must obtain the approval of its
16 respective county commission in writing for the purpose of such
17 expenditure.

18 ~~(4)~~ ~~Prior to expending any coalbed methane severance tax~~
19 ~~moneys, each county economic development authority must obtain the~~
20 ~~approval of the Development Office in writing for the purpose of~~
21 ~~such expenditure. The Development Office shall approve all plans~~
22 ~~for use of the moneys if such plans are within the required uses~~
23 ~~provided in subdivision (2) of this subsection. The Director of~~
24 ~~the state Development Office shall promulgate legislative rules in~~

1 ~~accordance with article three, chapter twenty-nine-a of this code~~
2 ~~in order to set forth the required documentation to be submitted to~~
3 ~~the Development Office from the county economic development~~
4 ~~authorities to ensure that such funds are utilized as intended by~~
5 ~~the Legislature. The Director of the Development Office is~~
6 ~~authorized to promulgate emergency rules to implement the~~
7 ~~provisions of this section.~~

8 (5) A county, ~~or~~ county economic development authority or
9 county economic development corporation may not use such funds for
10 the purposes of paying wages to any employee of the county or any
11 employee of a county economic development authority or county
12 economic development corporation.

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

22 (i) On or before December 31, 2013, and December 1 of each
23 year thereafter, the county economic development authority, county
24 economic development corporation or county commission receiving a

1 distribution of funds under this section shall deliver to the Joint
2 Committee on Government and Finance a written report setting forth
3 the specific projects for which those funds were expended during
4 the next preceding fiscal year, a detailed account of those
5 expenditures and a showing that the expenditures were made for the
6 purposes required by this section.

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