H. B. 4446

(By Delegates Varner, Ferns, Cann, Perdue,
Marshall, Boggs, White, Ferro, Pethtel and Storch)

[Introduced February 7, 2012; referred to the
Committee on the Judiciary then Finance.]

FISCAL NOTE

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-5b, relating generally to severance taxes collected for privilege of producing oil or natural gas; setting a baseline of tax collections; providing for the distribution of funds collected in excess of that baseline; providing how those funds may be used; creating the Marcellus Development Account; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-13A-5b, to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

<u>§11-13A-5b. Establishing a baseline of tax collections; Marcellus Development Account; distribution and use; definitions.</u>

(a) For fiscal years beginning July 1, 2012, a baseline for collections of severance tax on the privilege of producing oil and gas levied by section five of this article that are deposited in the General Revenue Fund or that are distributed to counties and municipalities, as provided in section five-a of this article, is established at $64.8 million.

(b) The State Treasurer shall apportion any net collections during the fiscal year of this state in excess of the baseline specified in subsection (a) of this section as follows:

(1) Ten percent of the excess shall be deposited and distributed as provided in section five-a of this article; and

(2) The remaining balance after the distribution provided by subdivision (1) of this subsection shall be equally divided between the General Revenue Fund and the Marcellus Development Account hereby created in the State Treasury and deposited into those fund accounts. Moneys from the Marcellus Development Account shall periodically be distributed on a pro rata basis by the State Treasurer to county commissions of the counties with wells producing gas from either the marcellus or utica shale, or from both formations, based on the ratio of that shale gas produced in the particular county during the state's fiscal year beginning on or after the effective date of this section has to the total volume of shale gas produced in the state during that same fiscal year. Distributions of severance taxes to a county commission pursuant to

this subdivision shall be treated as a special revenue of the county, which is separate and apart from its general revenue, and may be expended by the county commission only for the cost of infrastructure projects.

(c) *Definitions.* -- For purposes of subdivision (2), subsection (b) of this section:

(1) "Construction" means construction, acquisition, reconstruction, enlargement, improvement and providing furnishings or equipment.

(2) "Cost" means, as applied to infrastructure projects, the cost of acquisition, repair, renovation and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the county or municipality for the acquisition, renovation, repair or construction; the cost of demolishing or removing any buildings or structures on acquired land, including the cost of acquiring any lands where buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easement therefor; the cost of all machinery, furnishings and equipment; all finance changes and interest prior to and during the construction and for no more than eighteen months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital

and other expenses necessary or incident to determining the feasibility or practicability of acquiring, renovating, repairing or construction any such project; the financing of the acquisition, renovation, repair or construction, including the amount authorized in the resolution of the county commission, or its designee with statutory to issue revenue bonds, providing for the issuance of infrastructure revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of an infrastructure project in operation, if necessary. Any obligations or expenses incurred after the effective date of this section by any county commission or its designee, with the approval of the county commission, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition, renovation, repair or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of infrastructure revenue bonds or from severance taxes as authorized by this section.

(3) “Infrastructure project” means a project of a public nature in this state which the county commission or its designee determines is likely to foster and enhance economic growth and development in the area of the county where the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, but not limited to, tourism and recreational housing, land, air or water

transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, but not limited to:

(A) The process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part or interest; and

(B) Preparing land for construction and making, installing or constructing improvement on the land, including, but not limited to, water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks and drainage and flood control facilities, whether on or off the site.

(4) "Owner" means all persons having any title or interest in any property rights, easements and interests authorized to be acquired by this section.

(5) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of the United States, this state or any other state or country; a federal or state governmental agency; a political subdivision; a county commission; lead county or regional economic

development authority or corporation designated by the county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group of persons or individuals acting individually or as a group or any other legal entity whatever.

(6) “Project” means any infrastructure project constructed or operated or to be constructed or operated by a project sponsor.

(7) “Project costs” means capital costs, costs of financing, planning, designing, constructing, expanding, improving, maintaining or controlling an infrastructure project, the cost of land, equipment, machinery, installation of utilities and other similar expenditures and all other charges or expenses necessary, appurtenant or incidental to these costs.

(8) “Project sponsor” means any county commission, county or regional economic development organization, whether a government agency or nonprofit entity, or other governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project.

(9) “Wastewater facility” means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, but not limited to, facilities for the treatment and disposal of sewage, industrial wastes or other

wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection system, whether on the surface or underground, designed to transport wastewater together with any associated equipment and furnishings and any appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(10) “Water facility” means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

NOTE: The purpose of this bill is to provide a source of funding for infrastructure projects in those counties that produce natural gas from the marcellus or utica shale formations. The bill sets a baseline of tax collections at $64.8 million from oil and gas. The bill provides that ten percent of those funds collected in excess of that baseline will continue to be for the benefit of counties and municipalities. The bill provides that the remaining ninety percent be deposited equally between the General Revenue Fund and the newly created Marcellus Development Account. The moneys from the Marcellus Development Account shall be distributed to counties based on their pro rata share of the gas produced from the marcellus or utica shale formations. The bill provides that funds from the Marcellus Development Account may only be used for infrastructure projects.

This section is new; therefore, it has been completely underscored.