

H. B. 2435

(By Delegates Ferro, Pethtel, Diserio, Skaff, Ferns, Jones, Swartzmiller, Storch, Hamilton, Miley and White)

[Introduced February 14, 2013; 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.

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

1 (a) For fiscal years beginning July 1, 2013, a baseline for
2 collections of severance tax on the privilege of producing oil and
3 gas levied by section five of this article that are deposited in the
4 General Revenue Fund or that are distributed to counties and
5 municipalities, as provided in section five-a of this article, is
6 established at \$64.8 million.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (10) "Water facility" means all facilities, land and equipment
9 used for or in connection with the collection and/or storage of
10 water, both surface and underground, transportation of water,
11 storage of water, treatment of water and distribution of water all
12 for the purpose of providing potable, sanitary water suitable for
13 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.