

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Engrossed**

### **Senate Bill 419**

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 28, 2016;

Referred to the Committee on Finance.]



1 A BILL to amend and reenact §4-11A-18 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §11-13A-3b of said code; to amend and reenact §11-13V-4 of said  
3 code; and to amend and reenact §11-21-96 of said code, all relating to termination of  
4 Workers' Compensation Debt Reduction Act; specifying effective date of termination;  
5 authorizing sooner termination by Executive Order; reallocating deposits of revenues with  
6 relation to the Old Fund; authorizing redirection of deposits, by Executive Order, of  
7 specified revenues into the General Fund for a limited time period if budget shortfall  
8 exceeds specified amount; eliminating language relating to actuarial determination and  
9 executive certification of specified conditions; reestablishing severance tax on timber at a  
10 specified tax rate; specifying effective dates; and specifying dedication of revenues.

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

1 That §4-11A-18 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §11-13V-4 of said code be amended and reenacted; and that §11-21-96 of said  
3 code be amended and reenacted, all to read as follows:

## **CHAPTER 4. THE LEGISLATURE.**

### **ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.**

#### **§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.**

1 (a) There is hereby dedicated an annual amount of \$50,400,000 from annual collections  
2 of the tax imposed by article twenty-one, chapter eleven of this code as a portion of the revenue  
3 source dedicated to satisfy the Old Fund liabilities as they occur to provide a dollar for dollar  
4 replacement of the first \$30 million received pursuant to section IX(c)(1) of the master settlement  
5 agreement and the anticipated strategic compensation payments to be received pursuant to

6 section IX(c)(2) of the master settlement agreement as previously dedicated to the Old Fund prior  
7 to the sale of state's share to the Tobacco Settlement Finance Authority. No portion of this amount  
8 may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d,  
9 chapter twenty-three of this code.

10 (b) Notwithstanding any other provision of this code to the contrary, beginning immediately  
11 after the sale of the state's share to the Tobacco Settlement Finance Authority, \$50,400,000 from  
12 collections of the tax imposed by article twenty-one, chapter eleven of this code shall be deposited  
13 each calendar year to the credit of the Old Fund created in article two-d, chapter twenty-three of  
14 this code in accordance with the following schedule. Each calendar month, except for July, August  
15 and September each year, \$5,600,000 shall be transferred, on or before the twenty-eighth day of  
16 the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter  
17 twenty-three of this code. The transfers pursuant to this section are in addition to the transfers  
18 pursuant to section ninety-six, article twenty-one, chapter eleven of this code.

19 (c) *Expiration.* — The transfers required by this section shall ~~continue to be made until the~~  
20 ~~Governor certifies to the Legislature that an independent actuary study determined that the~~  
21 ~~unfunded liability of the Old fund, as defined in chapter twenty-three of this code, has been paid~~  
22 ~~or provided for in its entirety~~ cease on and after February 1, 2016. No transfer pursuant to this  
23 section shall be made thereafter.

## CHAPTER 11. TAXATION.

### ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

#### §11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing coal.* — Upon every person  
2 exercising the privilege of engaging within this state in severing, extracting, reducing to  
3 possession or producing coal for sale, profit or commercial use, there is hereby imposed an

4 additional annual severance tax for exercising the privilege after November 30, 2005. The tax  
5 shall be 56 cents per ton and the measure of the tax is tons of clean coal severed or produced in  
6 this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the  
7 taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of  
8 clean coal determined in accordance with rules promulgated by the Tax Commissioner as  
9 provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment  
10 before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax shall  
11 be in addition to all taxes imposed with respect to the severance and production of coal in this  
12 state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this  
13 chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-  
14 two of this code, if applicable.

15 (b) *Imposition of additional tax on privilege of severing natural gas.* — For the privilege of  
16 engaging or continuing within this state in the business of severing natural gas for sale, profit or  
17 commercial use, there is hereby levied and shall be collected from every person exercising this  
18 privilege an additional annual privilege tax. The rate of this additional tax shall be ~~\$.047~~ 4.7 cents  
19 per Mcf of natural gas and the measure of the tax is natural gas produced after November 30,  
20 2005, determined at the point where the production privilege ends for purposes of the tax imposed  
21 by section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by  
22 section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection  
23 shall be collected with respect to natural gas produced after November 30, 2005.

24 (c) *Imposition of additional tax on privilege of severing timber.* — For the privilege of  
25 engaging or continuing within this state in the business of severing timber for sale, profit or  
26 commercial use, there is hereby levied and shall be collected from every person exercising this  
27 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of  
28 the gross value of the timber produced, determined at the point where the production privilege  
29 ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon

30 which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax  
31 imposed by this subsection shall be collected with respect to timber produced after November 30,  
32 2005: *Provided*, That during the period of discontinuance of the tax as provided in subsection (d),  
33 section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection  
34 shall be determined as provided in this subsection in the same manner as if the tax described  
35 under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to  
36 the provisions of subsection (g) of this section.

37 (d) *No pyramiding of tax burden.* — Each ton of coal and each Mcf of natural gas severed  
38 in this state after the effective date of the taxes imposed by this section shall be included in the  
39 measure of a tax imposed by this section only one time.

40 (e) *Effect on utility rates.* — The Public Service Commission shall, upon the application of  
41 any public utility that, as of the effective date of the taxes imposed by this section, is not currently  
42 making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs  
43 because the mechanism historically used to make such periodic adjustments is suspended by an  
44 order of the commission, allow such utility to defer, for future recovery from its customers, any  
45 increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas  
46 severed in this state and utilized in the production of electricity generated or produced in this state  
47 and sold to customers in this state; coal and natural gas severed in this state and utilized in the  
48 production of electricity not generated or produced in this state that is sold to customers in this  
49 state; and natural gas severed in this state that is sold to customers in this state.

50 (f) *Dedication of new taxes.* —

51 (1) Subject to the provisions of subdivision (2) of this subsection, the The net amount of  
52 all moneys received by the Tax Commissioner from collection of the taxes imposed by this section,  
53 including any interest, additions to tax, or penalties collected with respect to these taxes pursuant  
54 to article ten, chapter eleven of this code, shall be deposited in the Workers' Compensation Debt  
55 Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section,

56 “net amount of all taxes received by the Tax Commissioner” means the gross amount received  
57 by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes  
58 imposed by this article, including the amount of any interest on the overpayment amount due the  
59 taxpayer under the provisions of section fourteen, article ten of this chapter.

60 (2) If the budget shortfall, as determined by the state Budget Office as of December 1,  
61 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits  
62 of revenues derived from taxes imposed under this article, for any period commencing after  
63 February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to  
64 the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or  
65 in any other provision of this code.

66 ~~(g) *Sunset expiration date of taxes.* — The new taxes imposed by this section shall expire~~  
67 ~~and not be imposed with respect to privileges exercised on and after the first day of the month~~  
68 ~~following the month in which the Governor certifies to the Legislature that: (1) The revenue bonds~~  
69 ~~issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment~~  
70 ~~of the debt service provided for; and (2) that an independent certified actuary has determined that~~  
71 ~~the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been~~  
72 ~~paid or provided for in its entirety. Expiration of the taxes imposed in this section as provided in~~  
73 ~~this subsection shall not relieve any person from payment of any tax imposed with respect to~~  
74 ~~privileges exercised before the expiration date.~~

75 (g) *Termination of taxes imposed by this article.* — The taxes imposed under this article  
76 shall cease, terminate and be of no further force or effect on and after July 1, 2016: *Provided,*  
77 That the Governor may, by Executive Order, cause the tax to terminate before July 1, 2016.  
78 Termination of the taxes imposed under this article shall not relieve any person of any liability or  
79 duty to pay tax imposed under this article with respect to privileges exercised before the effective  
80 date of such termination.

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-96. Dedication of personal income tax proceeds.**

1 (a) There is hereby dedicated an annual amount of \$45 million from annual collections of  
2 the tax imposed by this article for payment of the unfunded liability of the current Workers'  
3 Compensation Fund. No portion of this amount may be pledged for payment of debt service on  
4 revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

5 (b) Notwithstanding any other provision of this code to the contrary, beginning in January  
6 of 2006, \$45 million from collections of the tax imposed by this article shall be deposited each  
7 calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this  
8 code, in accordance with the following schedule. Each calendar month, except for July, August  
9 and September each year, \$5 million shall be transferred, on or before the twenty-eighth day of  
10 the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter  
11 twenty-three of this code.

12 (c) The transfers required by subsection (b) of this section shall ~~continue to be made until~~  
13 ~~the Governor certifies to the Legislature that an independent actuarial study determined that the~~  
14 ~~unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid~~  
15 ~~or provided for in its entirety~~ cease on and after February 1, 2016. For fiscal years beginning on  
16 and after July 1, 2016, an annual amount of ~~\$35~~ \$30 million from annual collections of the tax  
17 imposed by this article ~~and which were previously dedicated by this section for payment of the~~  
18 ~~unfunded liability of the Workers Compensation Fund shall be dedicated for payment of the~~  
19 ~~unfunded liability of the West Virginia Retiree Health Benefit Trust Fund and to provide funding~~  
20 ~~for the Post July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter~~  
21 ~~five of this code.~~ The ~~\$35~~ \$30 million transferred pursuant to this subsection ~~shall be transferred~~  
22 ~~in accordance with the following:~~

23 (1) ~~The annual amount of \$30 million shall be transferred into the West Virginia Retiree~~  
24 ~~Health Benefit Trust Fund by transferring \$5 million each month for the following months of each~~

25 year: October, November, December, January, February and March, until the Governor certifies  
26 to the Legislature that an independent actuarial study has determined that the unfunded liability  
27 of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d,  
28 chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is  
29 later: Provided, That no transfer shall be made under this subdivision in the months of February  
30 and March of fiscal year 2016. Transfers shall thereafter resume and be made in October,  
31 November, December, January, February and March of fiscal year 2017 and thereafter. No  
32 transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall  
33 be made after the Governor certifies to the Legislature that an independent actuarial study has  
34 determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as  
35 created in section two, article sixteen-d, chapter five of this code, has been provided for in its  
36 entirety or July 1, 2037, whichever date is later. thereafter; and

37 ~~(2) An annual amount of \$5 million shall be transferred into the Post-July 1, 2010,~~  
38 ~~Employee Trust Fund created by section five-b, article sixteen, chapter five of this code in April of~~  
39 ~~each year.~~