

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4003**

BY DELEGATES E. NELSON, SHOTT, HANSHAW, IRELAND,

R. SMITH, STORCH, R. PHILLIPS, B. WHITE, MCCUSKEY,

WAXMAN AND SUMMERS

[Introduced January 13, 2016; Referred

to the Committee on Finance.]

1 A BILL to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended, relating  
2 to expiring certain severance taxes that are dedicated to the Workers' Compensation Debt  
3 Reduction Fund effective no later than February 1, 2016; and removing expired provisions

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

1 That §11-13V-4 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

### **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~~ is \$.56 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 is 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~~ is \$.047 per

19 mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005,  
20 determined at the point where the production privilege ends for purposes of the tax imposed by  
21 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.* -- The net amount of all moneys received by the Tax  
51 Commissioner from collection of the taxes imposed by this section, including any interest,  
52 additions to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter  
53 eleven of this code, shall be deposited in the Workers' Compensation Debt Reduction Fund  
54 created in article two-d, chapter twenty-three of this code. As used in this section, "net amount of  
55 all taxes received by the Tax Commissioner" means the gross amount received by the Tax  
56 Commissioner less the amount of any refunds paid for overpayment of the taxes imposed by this  
57 article, including the amount of any interest on the overpayment amount due the taxpayer under  
58 the provisions of section fourteen, article ten of this chapter.

59 (g) *Sunset expiration date of taxes.* -- The new taxes imposed by this section shall expire  
60 and not be imposed with respect to privileges exercised on and after either the first day of the  
61 month following the month in which the Governor certifies to the Legislature that: (1) The revenue  
62 bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired, or  
63 payment of the debt service provided for; and (2) that an independent certified actuary has  
64 determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this  
65 code, has been paid or provided for in its entirety, or February 1, 2016, whichever occurs first:  
66 Provided, That if February 1, 2016, occurs first, and the effective date of the amendments to this  
67 section made during 2016 occurs after that date, the amendments are expressly made  
68 retrospective to February 1, 2016. Expiration of the taxes imposed in this section as provided in  
69 this subsection shall not relieve any person from payment of any tax imposed with respect to  
70 privileges exercised before the expiration date.

NOTE: The purpose of this bill is to eliminate the severance taxes imposed on coal, natural gas and timber for Workers' Compensation debt reduction purposes effective February 1, 2016, if the Governor has not yet provided the certification necessary to expire them earlier.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.