

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4341

BY DELEGATES MARCUM, THOMPSON, RODIGHIERO, R.

MILLER, ISNER, MOYE, HICKS, ELDRIDGE, E. EVANS,

DISERIO AND LYNCH

[Introduced January 29, 2018; Referred
to the Committee on Energy then Finance.]

1 A BILL to amend and reenact §11-13A-3a and §11-13A-5a of the Code of West Virginia, 1931,
 2 as amended, all relating to dedicating 33 percent of state tax on natural gas or oil to Public
 3 Employees Insurance Agency; dedicating 33 percent of the county and municipality share
 4 to fund PEIA; creating the PEIA Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

1 (a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the
 2 business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied
 3 and shall be collected from every person exercising such privilege an annual privilege tax:
 4 *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an
 5 exemption from the imposition of the tax provided in this article on the following: (1) Free natural
 6 gas provided to any surface owner; (2) natural gas produced from any well which produced an
 7 average of less than five thousand cubic feet of natural gas per day during the calendar year
 8 immediately preceding a given taxable period; (3) oil produced from any oil well which produced
 9 an average of less than one-half barrel of oil per day during the calendar year immediately
 10 preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil
 11 produced from any well which has not produced marketable quantities of natural gas or oil for five
 12 consecutive years immediately preceding the year in which a well is placed back into production
 13 and thereafter produces marketable quantities of natural gas or oil.

14 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be
 15 five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds
 16 derived from the sale thereof by the producer, except as otherwise provided in this article.

17 Effective July 1, 2018, 33 percent of the severed tax on natural gas shall be dedicated to Public
 18 Employees Insurance Agency.

19 (c) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all
20 persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

21 (d)(1) The Legislature finds that in addition to the production reports and financial records
22 which must be filed by oil and gas producers with the State Tax Commissioner in order to comply
23 with this section, oil and gas producers are required to file other production reports with other
24 agencies, including, but not limited to, the office of oil and gas, the Public Service Commission
25 and county assessors. The reports required to be filed are largely duplicative, the compiling of the
26 information in different formats is unnecessarily time consuming and costly, and the filing of one
27 report or the sharing of information by agencies of government would reduce the cost of
28 compliance for oil and gas producers.

29 (2) On or before July 1, 2003, the Tax Commissioner shall design a common form that
30 may be used for each of the reports regarding production that are required to be filed by oil and
31 gas producers, which form shall readily permit a filing without financial information when such
32 information is unnecessary. The commissioner shall also design such forms so as to permit filings
33 in different formats, including, but not limited to, electronic formats.

34 (3) Effective July 1, 2006, this subsection shall have no force or effect.

**§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties
and municipalities; distribution of major portion of such dedicated tax to oil and
gas producing counties; distribution of minor portion of such dedicated tax to all
counties and municipalities; reports; rules; special funds in the office of State
Treasurer; methods and formulae for distribution of such dedicated tax;
expenditure of funds by counties and municipalities for public purposes; and
requiring special county and municipal budgets and reports thereon.**

1 (a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and
2 gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties
3 and municipalities within this state and shall be distributed to the counties and municipalities as

4 provided in this section. Effective July 1, 1997, and thereafter, 10 percent of the tax attributable
5 to the severance of oil and gas imposed by §11-13A-3a of this code is hereby dedicated for the
6 use and benefit of counties and municipalities within this state and shall be distributed to the
7 counties and municipalities as provided in this section. Effective July 1, 2018, 35 percent of the
8 two percent severed tax on natural gas imposed by §11-13A-3a of this code is hereby dedicated
9 for the use and benefit of funding the Public Employees Insurance Agency. Thirty-three percent
10 of the seven and one half percent severed tax shall be placed into a fund called PEIA Fund
11 through the West Virginia Treasurer's office for the benefit of funding the West Virginia Public
12 Employees Insurance.

13 (b) Seventy-five percent of this dedicated tax shall be distributed by the State Treasurer
14 in the manner specified in this section to the various counties of this state in which the oil and gas
15 upon which this additional tax is imposed was located at the time it was removed from the ground.
16 Those counties are referred to in this section as the "oil and gas producing counties". The
17 remaining 25 percent of the net proceeds of this additional tax on oil and gas shall be distributed
18 among all the counties and municipalities of this state in the manner specified in this section.

19 (c) The Tax Commissioner is hereby granted plenary power and authority to promulgate
20 reasonable rules requiring the furnishing by oil and gas producers of such additional information
21 as may be necessary to compute the allocation required under the provisions of subsection (f) of
22 this section. The Tax Commissioner is also hereby granted plenary power and authority to
23 promulgate such other reasonable rules as may be necessary to implement the provisions of this
24 section.

25 (d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax
26 on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas
27 county revenue fund established in State Treasurer's office by chapter 242, Acts of the
28 Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the
29 Legislature, is hereby continued. In order to provide a procedure for the distribution of the

30 remaining 25 percent of the dedicated tax on oil and gas to all counties and municipalities of the
31 state, without regard to oil and gas having been produced in those counties or municipalities, the
32 special fund known as the all counties and municipalities revenue fund established in State
33 Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and
34 reenacted in the subsequent act of the Legislature, is hereby redesignated as the "all counties
35 and municipalities oil and gas revenue fund" and is hereby continued.

36 Seventy-five percent of the dedicated tax on oil and gas shall be deposited in the oil and
37 gas county revenue fund and 25 percent of the dedicated tax on oil and gas shall be deposited in
38 the all counties and municipalities oil and gas revenue fund, from time to time, as the proceeds
39 are received by the Tax Commissioner. The moneys in the funds shall be distributed to the
40 respective counties and municipalities entitled to the moneys in the manner set forth in subsection
41 (e) of this section.

42 (e) The moneys in the oil and gas county revenue fund and the moneys in the all counties
43 and municipalities oil and gas revenue fund shall be allocated among and distributed annually to
44 the counties and municipalities entitled to the moneys by the State Treasurer in the manner
45 specified in this section. On or before each distribution date, the State Treasurer shall determine
46 the total amount of moneys in each fund which will be available for distribution to the respective
47 counties and municipalities entitled to the moneys on that distribution date. The amount to which
48 an oil and gas producing county is entitled from the oil and gas county revenue fund shall be
49 determined in accordance with subsection (f) of this section, and the amount to which every
50 county and municipality shall be entitled from the all counties and municipalities oil and gas
51 revenue fund shall be determined in accordance with subsection (g) of this section. After
52 determining, as set forth in subsections (f) and (g) of this section, the amount each county and
53 municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor
54 for the sum due to the county or municipality shall issue and a check drawn thereon making
55 payment of the sum shall thereafter be distributed to the county or municipality.

56 (f) The amount to which an oil and gas producing county is entitled from the oil and gas
57 county revenue fund shall be determined by:

58 (1) In the case of moneys derived from tax on the severance of gas:

59 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of
60 gas then available for distribution by the total volume of cubic feet of gas extracted in this state
61 during the preceding year; and

62 (B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from
63 the ground in the county during the preceding year; and

64 (2) In the case of moneys derived from tax on the severance of oil:

65 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of
66 oil then available for distribution by the total number of barrels of oil extracted in this state during
67 the preceding year; and

68 (B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the
69 ground in the county during the preceding year.

70 (g) The amount to which each county and municipality is entitled from the all counties and
71 municipalities oil and gas revenue fund shall be determined in accordance with the provisions of
72 this subsection. For purposes of this subsection "population" means the population as determined
73 by the most recent decennial census taken under the authority of the United States:

74 (1) The treasurer shall first apportion the total amount of moneys available in the all
75 counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund
76 by the percentage which the population of each county bears to the total population of the state.
77 The amount thus apportioned for each county is the county's "base share".

78 (2) Each county's base share shall then be subdivided into two portions. One portion is
79 determined by multiplying the base share by that percentage which the total population of all
80 unincorporated areas within the county bears to the total population of the county, and the other
81 portion is determined by multiplying the base share by that percentage which the total population

82 of all municipalities within the county bears to the total population of the county. The former portion
83 shall be paid to the county and the latter portion shall be the “municipalities' portion” of the county's
84 base share. The percentage of the latter portion to which each municipality in the county is entitled
85 shall be determined by multiplying the total of the latter portion by the percentage which the
86 population of each municipality within the county bears to the total population of all municipalities
87 within the county.

88 (h) Moneys distributed to any county or municipality under the provisions of this section,
89 from either or both special funds, shall be deposited in the county or municipal general fund and
90 may be expended by the county commission or governing body of the municipality for such
91 purposes as the county commission or governing body shall determine to be in the best interest
92 of its respective county or municipality: *Provided*, That in counties with population in excess of
93 200,000, at least 75 percent of the funds received from the oil and gas county revenue fund shall
94 be apportioned to and expended within the oil and gas producing area or areas of the county, the
95 oil and gas producing areas of each county to be determined generally by the State Tax
96 Commissioner: *Provided, however*, That the moneys distributed to any county or municipality
97 under the provisions of this section shall not be budgeted for personal services in an amount to
98 exceed one fourth of the total amount of the moneys.

99 (i) On or before March 28, 1997, and each March 28, each county commission or
100 governing body of a municipality receiving any such moneys shall submit to the Tax
101 Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the
102 moneys are to be spent during the subsequent fiscal year. The budget shall be followed in
103 expending the moneys unless a subsequent budget is approved by the State Tax Commissioner.
104 All unexpended balances remaining in the county or municipality general fund at the close of a
105 fiscal year shall remain in the General Fund and may be expended by the county or municipality
106 without restriction.

107 (j) On or before December 15, 1996, and each December 15 thereafter, the Tax

108 Commissioner shall deliver to the Clerk of the Senate and the Clerk of the House of Delegates a
109 consolidated report of the budgets, created by subsection (i) of this section, for all county
110 commissions and municipalities as of July 15, of the current year.

111 (k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated
112 tax attributable to the severance of oil and gas the amount of \$35,000 annually as a fee for the
113 administration of the additional tax by the Tax Commissioner.

NOTE: The purpose of this bill is to dedicate certain severance taxes to fund PEIA.

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