

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2673

FISCAL  
NOTE

BY DELEGATES HOUSEHOLDER, CRISS, HARSHBARGER,

ANDERSON AND KELLY, J.

[Introduced January 25, 2019; Referred  
to the Committee on Energy then Finance.]

1 A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; and  
 2 to amend said code by adding thereto a new section, designated §22-6-29a, all relating to  
 3 creating the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia  
 4 Department of Environmental Protection to plug abandoned oil and gas wells in West  
 5 Virginia; requiring fees to be deposited in the fund; providing specific purposes for use of  
 6 the fund; providing fees imposed for the fund may not be collected in certain instances;  
 7 providing for the termination of the fund and fees therefor; modifying imposition of the tax  
 8 on the privilege of severing natural gas or oil by marginal oil and gas wells; providing  
 9 exemptions from the tax; providing exclusions from filing oil and gas severance tax returns;  
 10 deleting a subsection of the code which expired by its own terms, and providing a short  
 11 title.

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

## **CHAPTER 11. TAXATION.**

### **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~~ the privilege an annual privilege tax at  
 4 the rate and measure provided in subsection (b) of this section: *Provided,* That effective for all  
 5 taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition  
 6 of the tax provided in this article on the following, and the following is not subject to the tax: (1)  
 7 Free natural gas provided to any surface owner; (2) natural gas produced from any well which  
 8 produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year  
 9 immediately preceding a given taxable period; (3) for all taxable periods beginning on or after

10 January 1, 2019, natural gas produced from any well which produced an average of 5,000 cubic  
11 feet of natural gas per day but less than 60,000 cubic feet of natural gas per day during the  
12 calendar year immediately preceding a given taxable period; (4) oil produced from any oil well  
13 which produced an average of less than one-half barrel of oil per day during the calendar year  
14 immediately preceding a given taxable period; and (4) (5) for all taxable periods beginning on or  
15 after January 1, 2019, oil produced from any well which produced an average one half barrel of  
16 oil per day but less than 10 barrels of oil per day during the calendar year immediately preceding  
17 a given taxable period; and (6) for a maximum period of 10 years, all natural gas or oil produced  
18 from any well which has not produced marketable quantities of natural gas or oil for five  
19 consecutive years immediately preceding the year in which a well is placed back into production  
20 and thereafter produces marketable quantities of natural gas or oil.

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

25 (c) *Tax in addition to other taxes.* -- The tax imposed by this section ~~shall apply~~ applies to  
26 all persons severing gas or oil in this state, and ~~shall be~~ is in addition to all other taxes imposed  
27 by law.

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

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

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

42 (d) Exemption from filing severance tax returns. -- Notwithstanding §11-13A-8 of this code  
43 or any other provisions of this chapter to the contrary, with respect to natural gas produced from  
44 any well which produced an average of less than 60,000 cubic feet of natural gas per day during  
45 any taxable year, no annual return is required to be filed in the immediately following taxable year,  
46 and with respect to oil produced from any well which produced an average of less than 10 barrels  
47 of oil per day during any taxable year, no annual return is required to be filed in the immediately  
48 following taxable year.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

#### § 22-6-29a. Oil and Gas Abandoned Well Plugging Fund.

1 (a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund  
2 Act. There is established within the Treasury of the State of West Virginia the special use fund  
3 known as the Oil and Gas Abandoned Well Plugging Fund. The Treasurer shall deposit to the  
4 credit of the Oil and Gas Abandoned Well Plugging Fund all fees collected under the provisions  
5 of subsection (c) of this section.

6 (2) The Oil and Gas Abandoned Well Plugging Fund shall be administered by the secretary  
7 solely for the purposes of carrying out the provisions of this section.

8 (3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end

9 of any state fiscal year does not revert to the General Revenue Fund but shall remain in the  
10 special revenue account and may be used only as provided in this section. The revenues  
11 deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as  
12 nonaligned state special revenue funds under §11B-2-32 of this code.

13 (b)(1) First using funds from the Oil and Gas Reclamation Fund, and then using funds  
14 from the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and then reclaim  
15 abandoned oil and gas wells so plugged, all in accordance with plans and specifications  
16 developed pursuant to the provisions of this article relating to the plugging and reclamation of  
17 wells, and the rules establishing well plugging standards adopted thereunder.

18 (2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug  
19 abandoned oil and gas wells and to reclaim the property disturbed from the plugging.

20 (3) The secretary shall avail the division of any federal funds provided on a matching basis  
21 that may be made available for reclaiming or plugging any wells.

22 (4) On or before July 1 of each calendar year, the secretary shall make an annual report  
23 to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging  
24 Fund. The report shall include the balance of the Oil and Gas Reclamation Fund on June 1 each  
25 year. The secretary's annual report shall set forth the number of wells reclaimed or plugged  
26 through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well  
27 Plugging Fund. The report shall identify each such reclamation and plugging project, state the  
28 number of wells plugged thereby, show the county in which the wells are located, make a detailed  
29 accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas  
30 Abandoned Well Plugging Fund. The secretary shall provide the report to the Governor and the  
31 Legislature.

32 (5) Wells shall be plugged and plugged wells reclaimed by contract entered into by the  
33 secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 et seq. of  
34 this code and the rules promulgated thereunder.

35 (c) On March 1 of each year, every operator of an oil and gas well which produced an  
36 average of more than 5,000 cubic feet of natural gas per day but less than 60,000 cubic feet of  
37 natural gas per day during the immediately preceding calendar year or an average of more than  
38 one half barrel of oil per day but less than 10 barrels of oil per day during the immediately  
39 preceding calendar year, shall pay to the secretary a fee equal to two and one half percent of the  
40 value of the natural gas or oil produced from the wells, as shown by the gross proceeds of the  
41 sale thereof by the operator, calculated in the manner and except as otherwise provided in §11-  
42 13A-1 et seq. of this code.

43 (d) If on June 1 of any fiscal year there exists in the Oil and Gas Abandoned Well Plugging  
44 Fund an amount equal to or exceeding the sum of \$4 million then the fee imposed by subsection  
45 (c) of this section is not due or payable in the immediately following calendar year and the operator  
46 is exempt from paying the fee for the immediately following calendar year.

47 (e) Any operator that fails to pay the fee required by subsection (c) of this section on or  
48 before March 31 of each year is subject to a civil penalty not exceeding \$1,500. Interest shall  
49 accrue on the penalty at the rate authorized by the West Virginia Supreme Court for interest on  
50 judgments. The penalty, including any interest which may accrue thereon, may be recovered in  
51 a civil action brought by the secretary, in the name of the state, in the circuit court of Kanawha  
52 County, West Virginia. Any penalty and interest collected shall be credited to the Oil and Gas  
53 Abandoned Well Plugging Fund.

NOTE: The purpose of this bill is to exempt low volume oil and gas wells from severance tax, and to provide for a special use fee on sales from oil and gas wells which produce more than 5,000 cubic feet of natural gas or one-half barrel of oil per day but less than 60,000 cubic feet of natural gas or 10 barrels of oil per day. The special use fee shall be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells.

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