

HB 4041

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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4041**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 8, 2008

In Effect Ninety Days from Passage

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H. B. 4041

(BY MR. SPEAKER (MR. THOMPSON) AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §11-13A-3d and §11-13A-20a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-13V-4a; and to amend and reenact §31-15A-16 of said code, all relating to equalization of natural gas and coalbed methane taxation; terminating the severance and business privilege tax exemption for production of coalbed methane with certain limited exceptions; specifying that coalbed methane is taxed as natural gas for purposes of the Severance and Business Privilege Tax Act and the Workers' Compensation Debt Reduction Act with limited exceptions; authorizing Tax Commissioner to promulgate rules; requiring portion of tax be used for infrastructure projects; providing that seventy-five percent of dedicated funds be used in counties producing coalbed methane; providing that remaining twenty-five percent of dedicated funds be shared equally by counties not producing coalbed methane; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3d and §11-13A-20a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-13V-4a; and that §31-15A-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3d. Imposition of tax on privilege of severing coalbed methane.

1 (a) The Legislature hereby finds and declares the
2 following:

3 (1) That coalbed methane is underdeveloped and an
4 under-utilized resource within this state which, where
5 practicable, should be captured and not be vented or wasted;

6 (2) The health and safety of persons engaged in coal
7 mining is a paramount concern to the state. The Legislature
8 intends to preserve coal seams for future safe mining, to
9 facilitate the expeditious, safe evacuation of coalbed methane
10 from the coalbeds of this state, and to ensure the safety of
11 miners by encouraging the advance removal of coalbed
12 methane;

13 (3) The United States environmental protection agency's
14 coalbed methane outreach program encourages United States
15 coal mines in the United States to remove and use methane
16 that is otherwise wasted during mining. These projects have
17 important economic benefits for the mines and their local
18 economies while they also reduce emissions of methane; and

19 (4) The initial costs of development of coalbed methane
20 wells can be large in comparison to conventional wells and
21 deoxygenation and water removal increase development
22 expenditures.

23 The Legislature, therefore, concludes that an incentive to
24 coalbed methane development should be implemented to
25 encourage capture of methane gas that would otherwise be
26 vented to the atmosphere.

27 (b) *Imposition of tax.* — In lieu of the annual privilege tax
28 imposed on the severance of natural gas or oil pursuant to
29 section three-a, article thirteen-a, for the privilege of
30 engaging or continuing within this state in the business of
31 severing coalbed methane for sale, profit or commercial use,
32 there is hereby levied and shall be collected from every
33 person exercising such privilege an annual privilege tax:
34 *Provided*, That effective for taxable years beginning on or
35 after the first day of January, two thousand one, there is an
36 exemption from the imposition of the tax provided for in this
37 article for a maximum period of five years for all coalbed
38 methane produced from any coalbed methane well placed in
39 service after the first day of January, two thousand. For
40 purposes of this section, the terms "coalbed methane" and
41 "coalbed methane well" have the meaning ascribed to them
42 in section two, article twenty-one, chapter twenty-two of this
43 code. The exemption from tax provided by this section is
44 applicable to any coalbed methane well placed in service
45 before the first day of January, two thousand nine, subject to
46 the provisions of subsection (f) of this section.

47 (c) *Rate and measure of tax.* -- The tax imposed on
48 subsection (b) of this section is five percent of the gross value
49 of the coalbed methane produced, as shown by the gross
50 proceeds derived from the sale thereof by the producer,
51 except as otherwise provided in this article.

52 (d) *Tax in addition to other taxes.* -- The tax imposed by
53 this section applies to all persons severing coalbed methane
54 in this state, and is in addition to all other taxes imposed by
55 law.

56 (e) Except as specifically provided in this section,
57 application of the provisions of this article apply to coalbed
58 methane in the same manner and with like effect as the
59 provisions apply to natural gas.

60 (f) Notwithstanding any other provision of this code to
61 the contrary, on and after the first day of January, two
62 thousand nine, the exemption from the tax on the privilege of
63 severing coalbed methane created in this section will no
64 longer be applicable except that the privilege tax shall not be
65 collected on coalbed methane produced from any coalbed
66 methane well for the remainder of the five-year exemption
67 for any well that was placed in service, including the
68 commencement of actual drilling of the well, before the first
69 day of January, two thousand nine.

70 (g) Subject to the exceptions set forth in this section and
71 article thirteen-v of this chapter, on and after the first day of
72 January, two-thousand nine, coalbed methane and methane
73 produced from or by a coalbed methane well is taxable as
74 natural gas for purposes of the taxes imposed by this article
75 and the taxes imposed by article thirteen-v of this chapter.

76 (h) The Tax Commissioner shall promulgate emergency
77 and legislative rules, in accordance with the provisions of
78 article three, chapter twenty-nine-a of this code, as necessary
79 to effectuate the purposes of this article.

§11-13A-20a. Dedication of tax.

1 (a) The amount of taxes collected under this article from
2 providers of health care items or services, including any

3 interest, additions to tax and penalties collected under article
4 ten of this chapter, less the amount of allowable refunds and
5 any interest payable with respect to such refunds, shall be
6 deposited into the special revenue fund created in the State
7 Treasurer's Office and known as the Medicaid State Share
8 Fund. Said fund shall have separate accounting for those
9 health care providers as set forth in articles four-b and four-c,
10 chapter nine of this code.

11 (b) Notwithstanding the provisions of subsection (a) of
12 this section, for the remainder of fiscal year one thousand
13 nine hundred ninety-three and for each succeeding fiscal
14 year, no expenditures from taxes collected from providers of
15 health care items or services are authorized except in
16 accordance with appropriations by the Legislature.

17 (c) The amount of taxes on the privilege of severing
18 timber collected under section three-b of this article,
19 including any interest, additions to tax and penalties collected
20 under article ten of this chapter, less the amount of allowable
21 refunds and any interest payable with respect to such refunds,
22 shall be paid into a special revenue account in the State
23 Treasury to be appropriated by the Legislature for purposes
24 of the Division of Forestry.

25 (d) Notwithstanding any other provision of this code to
26 the contrary, beginning the first day of January, two thousand
27 nine, there is hereby dedicated an annual amount not to
28 exceed four million dollars from annual collections of the tax
29 imposed by section three-d of this article to be deposited into
30 the West Virginia Infrastructure Fund, created in section
31 nine, article fifteen-a, chapter thirty-one of this code.

32 (e) Beginning with the fiscal year ending the thirtieth day
33 of June, two thousand nine, and each fiscal year thereafter,
34 the Tax Commissioner shall pay from the taxes imposed in

35 section three-d of this article, on the first day of October of
36 each year, into the West Virginia Infrastructure Fund, an
37 amount not to exceed four million dollars per fiscal year.
38 Prior to making any such payment the commissioner shall
39 deduct the amount of refunds lawfully paid and
40 administrative costs authorized by this code.

41 (f) The Tax Commissioner shall provide to the West
42 Virginia Infrastructure and Jobs Development Council a
43 breakdown of coalbed methane taxes paid and amount of
44 coalbed methane produced by county. The commissioner
45 may obtain any production or other necessary information not
46 currently reported to the commissioner from the owners or
47 operators of coalbed methane wells or from the Department
48 of Environmental Protection or both.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-4a. Coalbed methane.

1 (a) Subject to the exceptions set forth in this section, on
2 and after the first day of January, two thousand nine, coalbed
3 methane and methane produced from or by a coalbed
4 methane well is taxable as natural gas for purposes of the
5 taxes imposed by this article. All coalbed methane produced
6 from any coalbed methane well placed in service, including
7 the commencement of actual drilling of the well, before the
8 first day of January, two thousand nine, shall be exempt from
9 the taxes imposed by this article for the remainder of the five-
10 year original exemption period set forth in section three-d,
11 article thirteen-a of this chapter and applicable to the coalbed
12 methane produced from that well.

13 (b) For purposes of this section, the terms "coalbed
14 methane" and "coalbed methane well" have the meaning

15 ascribed to them in section two, article twenty-one, chapter
16 twenty-two of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-16. Dedication of severance tax proceeds.

1 (a) There shall be dedicated an annual amount from the
2 collections of the tax collected pursuant to article thirteen-a,
3 chapter eleven of this code for the construction, extension,
4 expansion, rehabilitation, repair and improvement of water
5 supply and sewage treatment systems and for the acquisition,
6 preparation, construction and improvement of sites for
7 economic development in this state as provided in this article.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning on the first day of July, one thousand
10 nine hundred ninety-five, the first sixteen million dollars of
11 the tax collected pursuant to article thirteen-a, chapter eleven
12 of this code shall be deposited to the credit of the West
13 Virginia infrastructure general obligation debt service fund
14 created pursuant to section three, article fifteen-b of this
15 chapter: *Provided*, That beginning on the first day of July,
16 one thousand nine hundred ninety-eight, the first twenty-four
17 million dollars of the tax annually collected pursuant to
18 article thirteen-a of this code shall be deposited to the credit
19 of the West Virginia infrastructure general obligation debt
20 service fund created pursuant to section three, article fifteen-
21 b of this chapter.

22 (c) Notwithstanding any provision of subsection (b) of
23 this section to the contrary: (1) None of the collections from
24 the tax imposed pursuant to section six, article thirteen-a,

25 chapter eleven of this code shall be so dedicated or deposited;
26 and (2) the portion of the tax imposed by article thirteen-a,
27 chapter eleven and dedicated for purposes of medicaid and
28 the Division of Forestry pursuant to section twenty-a of said
29 article thirteen-a shall remain dedicated for the purposes set
30 forth in said section twenty-a.

31 (d) On or before the first day of May of each year,
32 commencing the first day of May, one thousand nine hundred
33 ninety-five, the council, by resolution, shall certify to the
34 treasurer and the water development authority the principal
35 and interest coverage ratio and amount for the following
36 fiscal year on any infrastructure general obligation bonds
37 issued pursuant to the provisions of article fifteen-b of this
38 chapter.

39 (e) Notwithstanding any provision of this article to the
40 contrary, the tax on coalbed methane remitted by the Tax
41 Commissioner for deposit in the West Virginia Infrastructure
42 Fund pursuant to section twenty-a, article thirteen-a, chapter
43 eleven of this code shall be distributed as follows: (1)
44 Seventy-five percent of the moneys so deposited shall be
45 distributed for infrastructure projects in the various counties
46 of this state in which the coalbed methane was produced, and
47 (2) the remaining twenty-five percent of the moneys so
48 deposited shall be distributed equally to the various counties
49 of this state in which no coalbed methane was produced for
50 infrastructure projects. Moneys shall be distributed to each
51 coalbed methane producing county in direct proportion to the
52 amount of tax paid by the county using information provided
53 by the Tax Commissioner as required in section twenty-a,
54 article thirteen-a, chapter eleven of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell E. Helms
Clerk of the Senate

Dugg D. Boy
Clerk of the House of Delegates

Carl Ray Kemble
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 28th
day of March, 2008.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2008

Time 2:10pm