

Senate Bill No. 487

(By Senators Browning, Kessler (Mr. President), Klempa, Chafin
and Beach)

[Introduced February 2, 2012; referred to the Committee on
Economic Development; and then to the Committee on Finance.]

A BILL to amend and reenact §11-13A-20a of the Code of West
Virginia, 1931, as amended, relating to the distribution of
coalbed methane gas severance tax; establishing the Coalbed
Methane Gas Distribution Fund in the State Treasurer's Office;
making technical changes to correct subdivision references;
correcting the omission of the term "county economic
development corporation"; authorizing the Tax Commissioner to
deposit coalbed methane severance tax moneys into the Coalbed
Methane Gas Distribution Fund; directing the State Treasurer
to distribute coalbed methane severance tax moneys to
counties; authorizing distribution of moneys to the lead
economic development authority or corporation for the county
and designation thereof; authorizing distribution by the State

1 Treasurer of accumulated moneys from fiscal years 2009, 2010,
2 2011 and 2012 to the lead economic development authority or
3 corporation for the county and designation thereof; specifying
4 the permissible uses of Coalbed Methane Gas Distribution Fund
5 moneys received by county economic development authorities and
6 corporations; eliminating the requirement of Development
7 Office approval for use of funds; and creating a reporting
8 mechanism for accounting and use of Coalbed Methane Gas
9 Distribution Fund moneys.

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

11 That §11-13A-20a of the Code of West Virginia, 1931, as
12 amended, be amended and reenacted to read as follows:

13 **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

14 **11-13A-20a. Dedication of tax.**

15 (a) The amount of taxes collected under this article from
16 providers of health care items or services, including any interest,
17 additions to tax and penalties collected under article ten of this
18 chapter, less the amount of allowable refunds and any interest
19 payable with respect to such refunds, shall be deposited into the
20 special revenue fund created in the State Treasurer's Office and
21 known as the Medicaid State Share Fund. Said fund shall have
22 separate accounting for those health care providers as set forth in
23 articles four-b and four-c, chapter nine of this code.

1 (b) Notwithstanding the provisions of subsection (a) of this
2 section, for the remainder of fiscal year 1993 and for each
3 succeeding fiscal year, no expenditures from taxes collected from
4 providers of health care items or services are authorized except in
5 accordance with appropriations by the Legislature.

6 (c) The amount of taxes on the privilege of severing timber
7 collected under section three-b of this article, including any
8 interest, additions to tax and penalties collected under article
9 ten of this chapter, less the amount of allowable refunds and any
10 interest payable with respect to such refunds, shall be paid into
11 a special revenue account in the State Treasury to be appropriated
12 by the Legislature for purposes of the Division of Forestry.

13 (d) Notwithstanding any other provision of this code to the
14 contrary, beginning January 1, 2009, there is hereby dedicated an
15 annual amount not to exceed \$4 million from annual collections of
16 the tax imposed by section three-d of this article to be deposited
17 into the West Virginia Infrastructure Fund, created in section
18 nine, article fifteen-a, chapter thirty-one of this code.

19 (e) Beginning with the fiscal year ending June 30, 2009, and
20 each fiscal year thereafter, the Tax Commissioner shall pay from
21 the taxes imposed in section three-d of this article, on October 1,
22 of each year, to the respective county economic development
23 authorities or county commissions as provided in subsections (f)

1 through (h) of this section, an amount in the aggregate not to
2 exceed \$4 million per fiscal year: Provided, That on July 1, 2012,
3 the Tax Commissioner shall deposit the taxes imposed in section
4 three-d of this article into a special revenue fund, which is
5 hereby created in the State Treasurer's Office and known as the
6 "Coalbed Methane Gas Distribution Fund": Provided, however, That
7 such deposit of taxes shall not exceed in the aggregate \$4 million
8 per fiscal year and moneys therein shall be distributed by the
9 State Treasurer as herein directed. Prior to making any such
10 payment the commissioner shall deduct the amount of refunds
11 lawfully paid and administrative costs authorized by this code.
12 All moneys distributed to the West Virginia Infrastructure Fund
13 pursuant to this section prior to July 1, 2011, shall be returned
14 to the Tax Commissioner and distributed to the respective county
15 economic development authorities or corporations or county
16 commissions as provided in this section.

17 (f) Notwithstanding any provision of this article to the
18 contrary, prior to the deposit of the proceeds of the tax on
19 coalbed methane with each county economic development authority or
20 corporation or county commission pursuant to subsection (e) of this
21 section, the Tax Commissioner shall undertake the following
22 calculations:

23 (1) Seventy-five percent of the moneys to be deposited shall

1 be provisionally allocated for the various counties of this state
2 in which the coalbed methane was produced; and

3 (2) The remaining twenty-five percent of the moneys to be
4 deposited shall be provisionally allocated to the various counties
5 of this state in which no coalbed methane was produced for projects
6 in accordance with subsection (h) of this section.

7 (3) Moneys shall be provisionally allocated to each coalbed
8 methane producing county in direct proportion to the amount of tax
9 revenues derived from coalbed methane production in the county.

10 (4) Moneys shall be provisionally allocated to each coalbed
11 methane nonproducing county equally.

12 (5) Portional adjustments.

13 (A) If, for any year, a coalbed methane producing county's
14 share of money provisionally allocated to that county is computed
15 to be an amount that is less than the amount provisionally
16 allocated to each of the coalbed methane nonproducing counties,
17 then for purposes of the computations set forth in this subsection,
18 that coalbed methane producing county shall be redesignated a
19 coalbed methane nonproducing county. The money that has been
20 provisionally allocated to that coalbed methane producing county
21 out of the seventy-five percent portion specified in subdivision
22 (1) of this subsection shall be subtracted out of the seventy-five
23 percent portion specified in that subdivision and added to the

1 twenty-five percent portion specified in subdivision (2) of this
2 subsection.

3 (B) When the adjustment specified in paragraph (A),
4 subdivision ~~(4)~~ (5) of this subsection has been made for each
5 coalbed methane producing county that has been redesignated as a
6 coalbed methane nonproducing county, then the Tax Department shall
7 finalize the calculations of the amounts to be made available for
8 distribution to the respective county economic development
9 authority or corporation or county commission of the coalbed
10 methane producing counties that have not been redesignated as
11 coalbed methane nonproducing counties under paragraph (A),
12 subdivision ~~(4)~~ (5) of this subsection as follows: The amount
13 remaining in the provisional seventy-five percent portion specified
14 in subdivision (1) of this subsection, as adjusted in accordance
15 with paragraph (A), subdivision ~~(4)~~ (5) of this subsection, shall
16 be allocated, in direct proportion to the amount that tax revenues
17 derived from coalbed methane production in each such county not
18 redesignated as a coalbed methane nonproducing county bears to the
19 total amount of tax revenues derived from coalbed methane
20 production in all coalbed methane producing counties that have not
21 been redesignated as a coalbed methane nonproducing county.

22 (C) The Tax Commissioner shall then finalize the calculation
23 of the total amount in the twenty-five percent portion specified in

1 subdivision (2) of this subsection, as adjusted in accordance with
2 paragraph (A), subdivision ~~(4)~~ (5) of this subsection equally among
3 the coalbed methane nonproducing counties.

4 (D) The Tax Commissioner, upon completing the calculation of
5 the total amount of tax to be distributed to all coalbed methane
6 producing counties and to all coalbed methane nonproducing
7 counties, shall deposit an amount equal to the amount so calculated
8 in the Coalbed Methane Gas Distribution Fund, subject to the
9 limitations set forth in this section.

10 (g) In no case may the total amount distributed in any fiscal
11 year to the aggregate of all coalbed methane producing counties and
12 all coalbed methane nonproducing counties calculated by the Tax
13 Commissioner exceed the total amount of tax on coalbed methane
14 authorized to be remitted to the county economic development
15 authority or corporation or county commission pursuant to
16 subsection (e) of this section.

17 (h) Distribution of coalbed methane severance tax to county
18 economic development authorities or corporations or county
19 commissions is subject to the following:

20 (1) If the amount determined pursuant to subsections (f) and
21 (g) of this section for a county is more than, \$10,000 the ~~Tax~~
22 ~~Commissioner~~ State Treasurer shall distribute the amount determined
23 for that county to the county economic development authority ~~of~~

1 ~~that county created pursuant to~~ established as provided in article
2 twelve, chapter seven of this code, or other corporation designated
3 by resolution of the county commission of the county as the lead
4 entity for economic development activities for the purposes of
5 encouraging economic development in the county. The State
6 Treasurer is hereby authorized to distribute accumulated but
7 undistributed moneys from fiscal years 2009, 2010, 2011 and 2012 to
8 the lead economic development authority or corporation for the
9 county.

10 (2) Each county economic development authority or corporation
11 shall use such funds for economic development projects and
12 infrastructure projects. ~~the following upon a finding by the county~~
13 ~~economic development authority that the cost of such projects are~~
14 ~~reasonably anticipated to lead to further economic development of~~
15 ~~the county:~~

16 (i) ~~The cost of preparation of land sites for any public or~~
17 ~~private facility; or~~

18 (ii) ~~The cost of design or construction of water, sewer and~~
19 ~~stormwater infrastructure.~~

20 (3) For purposes of this section:

21 (A) "Economic development project" means a project in the
22 state which is likely to foster economic growth and development in
23 the area in which the project is developed for commercial,

1 industrial, community improvement or preservation or other proper
2 purposes.

3 (B) "Infrastructure project" means a project in the state
4 which is likely to foster infrastructure improvements and covers
5 post-mining land use, water or wastewater facilities, stormwater
6 systems, steam, gas, telephone and telecommunications, broadband
7 development, electric lines and installations, roads, bridges,
8 railroad spurs, drainage and flood control facilities, industrial
9 park development, road or buildings that promote job creation and
10 retention.

11 ~~(3) (4) Prior to expending any coalbed methane severance tax~~
12 ~~moneys, each county economic development authority must obtain the~~
13 ~~approval of its respective county commission in writing for the~~
14 ~~purpose of such expenditure.~~

15 ~~(4) Prior to expending any coalbed methane severance tax~~
16 ~~moneys, each county economic development authority must obtain the~~
17 ~~approval of the Development Office in writing for the purpose of~~
18 ~~such expenditure. The Development Office shall approve all plans~~
19 ~~for use of the moneys if such plans are within the required uses~~
20 ~~provided in subdivision (2) of this subsection. The Director of~~
21 ~~the state Development Office shall promulgate legislative rules in~~
22 ~~accordance with article three, chapter twenty nine a of this code~~
23 ~~in order to set forth the required documentation to be submitted to~~

1 ~~the Development Office from the county economic development~~
2 ~~authorities to ensure that such funds are utilized as intended by~~
3 ~~the Legislature. The Director of the Development Office is~~
4 ~~authorized to promulgate emergency rules to implement the~~
5 ~~provisions of this section.~~

6 (5) A county or county economic development authority or
7 corporation may not use such funds for the purposes of paying wages
8 to any employee of the county or any employee of a county economic
9 development authority or corporation.

10 (6) If the amount determined pursuant to subsections (f) and
11 (g) of this section for a county is \$10,000 or less, the ~~Tax~~
12 ~~Commissioner~~ State Treasurer shall distribute the amount determined
13 for that county to the county commission. The county commission
14 may then use the funds to offset its regional jail costs, costs of
15 any community corrections programs in which it participates,
16 expenses of a volunteer fire department that provides service
17 within its county or expenses of any library that provides services
18 within its county.

19 (i) On or before December 31, 2013, and December 1 of each
20 year thereafter, the county economic development authority or
21 corporation or county commission receiving a distribution of funds
22 under this section shall deliver to the Joint Committee on
23 Government and Finance a written report setting forth the specific

1 projects for which those funds were expended during the next
2 preceding fiscal year, a detailed account of those expenditures and
3 a showing that the expenditures were made for the purposes required
4 by this section.

5 (j) An audit of any funds distributed under this section may
6 be authorized at any time by the Joint Committee on Government and
7 Finance to be conducted by the Legislative Auditor at no cost to
8 the county economic development authority or corporation or county
9 commission audited.

NOTE: The purpose of this bill is to amend §11-13A-20a to establish the Coalbed Methane Gas Distribution Fund in the State Treasurer's Office, authorize the Tax Commissioner to deposit natural gas severance tax moneys into the fund, direct the State Treasurer to distribute moneys in the fund to county economic development authorities or corporations or county commissions and to authorize such distributions. The bill also corrects subdivision references and the omission of the term county economic development corporation. As well, the bill specifies the permissible uses of fund moneys, removes the requirement of Development Office approval of use of fund moneys and creates an accounting and reporting mechanism.

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