

**Senate Bill No. 459**

(By Senators Tucker, Williams, Cookman and Jenkins)

[Introduced January 31, 2014; referred to the Committee on Natural Resources; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-4 of said code, all relating to removing the severance tax on timber.

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

That §11-13A-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13V-4 of said code be amended and reenacted, all to read as follows:

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

**§11-13A-3b. Imposition of tax on privilege of severing timber.**

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual

1 privilege tax.

2       (b) *Rate and measure of tax.* -- The tax imposed in subsection  
3 (a) of this section shall be three and twenty-two hundredths  
4 percent of the gross value of the timber produced, as shown by the  
5 gross proceeds derived from the sale thereof by the producer,  
6 except as otherwise provided in this article: *Provided*, That as to  
7 timber produced after December 31, 2006 the rate of the tax imposed  
8 in subsection (a) of this section shall be one and twenty-two  
9 hundredths percent of the gross value of the timber produced, as  
10 shown by the gross proceeds derived from the sale thereof by the  
11 producer, except as otherwise provided in this article.

12       (c) *Tax in addition to other taxes.* -- The tax imposed by this  
13 section shall apply to all persons severing timber in this state  
14 and shall be in addition to all other taxes imposed by law.

15       (d) *Elimination of tax.* -- Beginning in the tax year 2010 and  
16 continuing until the imposition of the additional tax on the  
17 privilege of severing timber imposed by subsection (c), section  
18 four, article thirteen-v of this chapter expires under the  
19 authority of subsection (g), section four, article thirteen-v of  
20 this chapter, the tax imposed by this section is discontinued. ~~On~~  
21 ~~and after expiration of the additional tax on the privilege of~~  
22 ~~severing timber imposed by subsection (c), section four, article~~  
23 ~~thirteen-v of this chapter, the tax imposed by this section~~

1 ~~resumes, and shall apply to all persons severing timber in this~~  
2 ~~state at the rate of one and twenty-two hundredths percent of the~~  
3 ~~gross value of the timber produced, as shown by the gross proceeds~~  
4 ~~derived from the sale thereof by the producer, except as otherwise~~  
5 ~~provided in this article.~~

6 **ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.**

7 **§11-13V-4. Imposition of tax.**

8 (a) *Imposition of additional tax on privilege of severing*  
9 *coal.* -- Upon every person exercising the privilege of engaging  
10 within this state in severing, extracting, reducing to possession  
11 or producing coal for sale, profit or commercial use, there is  
12 hereby imposed an additional annual severance tax for exercising  
13 the privilege after November 30, 2005. The tax shall be \$.56 per  
14 ton and the measure of the tax is tons of clean coal severed or  
15 produced in this state by the taxpayer after November 30, 2005, for  
16 sale, profit or commercial use during the taxable year. When the  
17 person mining the coal sells raw coal, the measure of tax shall be  
18 ton of clean coal determined in accordance with rules promulgated  
19 by the Tax Commissioner as provided in article three, chapter  
20 twenty-nine-a of this code. If this rule is filed for public  
21 comment before July 1, 2005, the rule may be promulgated as an  
22 emergency legislative rule. This tax shall be in addition to all  
23 taxes imposed with respect to the severance and production of coal

1 in this state including, but not limited to, the taxes imposed by  
2 articles twelve-d and thirteen-a of this chapter and the taxes  
3 imposed by sections eleven and thirty-two, article three, chapter  
4 twenty-two of this code, if applicable.

5       (b) *Imposition of additional tax on privilege of severing*  
6 *natural gas.* -- For the privilege of engaging or continuing within  
7 this state in the business of severing natural gas for sale, profit  
8 or commercial use, there is hereby levied and shall be collected  
9 from every person exercising this privilege an additional annual  
10 privilege tax. The rate of this additional tax shall be \$.047 per  
11 mcf of natural gas and the measure of the tax is natural gas  
12 produced after November 30, 2005, determined at the point where the  
13 production privilege ends for purposes of the tax imposed by  
14 section three-a, article thirteen-a of this chapter, and with  
15 respect to which the tax imposed by section three-a of said article  
16 thirteen-a is paid. The additional tax imposed by this subsection  
17 shall be collected with respect to natural gas produced after  
18 November 30, 2005.

19       (c) *Imposition of additional tax on privilege of severing*  
20 *timber.* -- For the privilege of engaging or continuing within this  
21 state in the business of severing timber for sale, profit or  
22 commercial use, there is hereby levied and shall be collected from  
23 every person exercising this privilege an additional annual

1 privilege tax equal to two and seventy-eight hundredths percent of  
2 the gross value of the timber produced, determined at the point  
3 where the production privilege ends for purposes of the tax imposed  
4 by section three-b, article thirteen-a of this chapter and upon  
5 which the tax imposed by section three-b of said article thirteen-a  
6 is paid. The additional tax imposed by this subsection shall be  
7 collected with respect to timber produced after November 30, 2005:  
8 *Provided*, That during the period of discontinuance of the tax as  
9 provided in subsection (d), section three-b, article thirteen-a of  
10 this chapter, the additional tax imposed by this subsection shall  
11 be determined as provided in this subsection in the same manner as  
12 if the tax described under section three-b, article thirteen-a of  
13 this chapter is being imposed and collected, subject to the  
14 provisions of subsection (g) of this section.

15 (d) *No pyramiding of tax burden.* -- Each ton of coal and each  
16 mcf of natural gas severed in this state after the effective date  
17 of the taxes imposed by this section shall be included in the  
18 measure of a tax imposed by this section only one time.

19 (e) *Effect on utility rates.* -- The Public Service Commission  
20 shall, upon the application of any public utility that, as of the  
21 effective date of the taxes imposed by this section, is not  
22 currently making periodic adjustments to its approved rates and  
23 charges to reflect changes in its fuel costs because the mechanism

1 historically used to make such periodic adjustments is suspended by  
2 an order of the commission, allow such utility to defer, for future  
3 recovery from its customers, any increase in its costs attributable  
4 to the taxes imposed by this section upon: Coal and natural gas  
5 severed in this state and utilized in the production of electricity  
6 generated or produced in this state and sold to customers in this  
7 state; coal and natural gas severed in this state and utilized in  
8 the production of electricity not generated or produced in this  
9 state that is sold to customers in this state; and natural gas  
10 severed in this state that is sold to customers in this state.

11 (f) *Dedication of new taxes.* -- The net amount of all moneys  
12 received by the Tax Commissioner from collection of the taxes  
13 imposed by this section, including any interest, additions to tax,  
14 or penalties collected with respect to these taxes pursuant to  
15 article ten, chapter eleven of this code, shall be deposited in the  
16 Workers' Compensation Debt Reduction Fund created in article two-d,  
17 chapter twenty-three of this code. As used in this section, "net  
18 amount of all taxes received by the Tax Commissioner" means the  
19 gross amount received by the Tax Commissioner less the amount of  
20 any refunds paid for overpayment of the taxes imposed by this  
21 article, including the amount of any interest on the overpayment  
22 amount due the taxpayer under the provisions of section fourteen,  
23 article ten of this chapter.

1           (g) *Sunset expiration date of taxes.* -- The new taxes imposed  
2 by this section shall expire and not be imposed with respect to  
3 privileges exercised on and after the first day of the month  
4 following the month in which the Governor certifies to the  
5 Legislature that: (1) The revenue bonds issued pursuant to article  
6 two-d, chapter twenty-three of this code, have been retired, or  
7 payment of the debt service provided for; and (2) that an  
8 independent certified actuary has determined that the unfunded  
9 liability of the old fund, as defined in chapter twenty-three of  
10 this code, has been paid or provided for in its entirety: Provided,  
11 That the severance tax imposed by this section and by section  
12 three-b, article thirteen-a of this chapter for the privilege of  
13 engaging or continuing within this state in the business of  
14 severing timber for sale, profit or commercial use, shall terminate  
15 and expire on the effective date of the enactment of the amendment  
16 to this section. Expiration of the taxes imposed in this section  
17 as provided in this subsection shall not relieve any person from  
18 payment of any tax imposed with respect to privileges exercised  
19 before the expiration date.

NOTE: The purpose of this bill is to remove the severance tax on timber.

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