

H. B. 4320

(By Delegates Hamilton, A. Evans, Hartman, Campbell, R. Smith, Sponaugle, Walker, Hamrick, Ireland and Romine)

[Introduced January 24, 2014; referred 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 privilege tax.

(b) Rate and measure of tax. -- The tax imposed in subsection

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

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

13 (d) *Elimination of tax.* -- Beginning in the tax year 2010 and
14 continuing until the imposition of the additional tax on the
15 privilege of severing timber imposed by subsection (c), section
16 four, article thirteen-v of this chapter expires under the
17 authority of subsection (g), section four, article thirteen-v of
18 this chapter, the tax imposed by this section is discontinued. ~~On~~
19 ~~and after expiration of the additional tax on the privilege of~~
20 ~~severing timber imposed by subsection (c), section four, article~~
21 ~~thirteen-v of this chapter, the tax imposed by this section~~
22 ~~resumes, and shall apply to all persons severing timber in this~~
23 ~~state at the rate of one and twenty-two hundredths percent of the~~
24 ~~gross value of the timber produced, as shown by the gross proceeds~~

1 ~~derived from the sale thereof by the producer, except as otherwise~~
2 ~~provided in this article.~~

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

4 **§11-13V-4. Imposition of tax.**

5 (a) *Imposition of additional tax on privilege of severing*
6 *coal.* -- Upon every person exercising the privilege of engaging
7 within this state in severing, extracting, reducing to possession
8 or producing coal for sale, profit or commercial use, there is
9 hereby imposed an additional annual severance tax for exercising
10 the privilege after November 30, 2005. The tax shall be \$.56 per
11 ton and the measure of the tax is tons of clean coal severed or
12 produced in this state by the taxpayer after November 30, 2005, for
13 sale, profit or commercial use during the taxable year. When the
14 person mining the coal sells raw coal, the measure of tax shall be
15 ton of clean coal determined in accordance with rules promulgated
16 by the Tax Commissioner as provided in article three, chapter
17 twenty-nine-a of this code. If this rule is filed for public
18 comment before July 1, 2005, the rule may be promulgated as an
19 emergency legislative rule. This tax shall be in addition to all
20 taxes imposed with respect to the severance and production of coal
21 in this state including, but not limited to, the taxes imposed by
22 articles twelve-d and thirteen-a of this chapter and the taxes
23 imposed by sections eleven and thirty-two, article three, chapter
24 twenty-two of this code, if applicable.

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

15 (c) *Imposition of additional tax on privilege of severing*
16 *timber.* -- For the privilege of engaging or continuing within this
17 state in the business of severing timber for sale, profit or
18 commercial use, there is hereby levied and shall be collected from
19 every person exercising this privilege an additional annual
20 privilege tax equal to two and seventy-eight hundredths percent of
21 the gross value of the timber produced, determined at the point
22 where the production privilege ends for purposes of the tax imposed
23 by section three-b, article thirteen-a of this chapter and upon
24 which the tax imposed by section three-b of said article thirteen-a

1 is paid. The additional tax imposed by this subsection shall be
2 collected with respect to timber produced after November 30, 2005:
3 *Provided*, That during the period of discontinuance of the tax as
4 provided in subsection (d), section three-b, article thirteen-a of
5 this chapter, the additional tax imposed by this subsection shall
6 be determined as provided in this subsection in the same manner as
7 if the tax described under section three-b, article thirteen-a of
8 this chapter is being imposed and collected, subject to the
9 provisions of subsection (g) of this section.

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

14 (e) *Effect on utility rates.* -- The Public Service Commission
15 shall, upon the application of any public utility that, as of the
16 effective date of the taxes imposed by this section, is not
17 currently making periodic adjustments to its approved rates and
18 charges to reflect changes in its fuel costs because the mechanism
19 historically used to make such periodic adjustments is suspended by
20 an order of the commission, allow such utility to defer, for future
21 recovery from its customers, any increase in its costs attributable
22 to the taxes imposed by this section upon: Coal and natural gas
23 severed in this state and utilized in the production of electricity
24 generated or produced in this state and sold to customers in this

1 state; coal and natural gas severed in this state and utilized in
2 the production of electricity not generated or produced in this
3 state that is sold to customers in this state; and natural gas
4 severed in this state that is sold to customers in this state.

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

18 (g) *Sunset expiration date of taxes.* -- The new taxes imposed
19 by this section shall expire and not be imposed with respect to
20 privileges exercised on and after the first day of the month
21 following the month in which the Governor certifies to the
22 Legislature that: (1) The revenue bonds issued pursuant to article
23 two-d, chapter twenty-three of this code, have been retired, or
24 payment of the debt service provided for; and (2) that an

1 independent certified actuary has determined that the unfunded
2 liability of the old fund, as defined in chapter twenty-three of
3 this code, has been paid or provided for in its entirety: Provided,
4 That the severance tax imposed by this section and by section
5 three-b, article thirteen-a of this chapter for the privilege of
6 engaging or continuing within this state in the business of
7 severing timber for sale, profit or commercial use, shall terminate
8 and expire on the effective date of the enactment of the amendment
9 to this section. Expiration of the taxes imposed in this section
10 as provided in this subsection shall not relieve any person from
11 payment of any tax imposed with respect to privileges exercised
12 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.