WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2673

BY DELEGATES HOUSEHOLDER, CRISS, HARSHBARGER, ANDERSON AND KELLY, J.

[Originating in the Committee on Finance, February 8, 2019.]

A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-6-29a, all relating to creating the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator; providing for administration of the fund; requiring fees to be deposited in the fund; providing for civil penalties for late payment of fees; providing specific purposes and limitations for use of the fund; providing fees imposed for the fund may not be collected in certain instances; modifying imposition of the tax on the privilege of severing natural gas or oil by marginal oil and gas wells; providing exemptions from the severance tax; providing exclusions from filing oil and gas severance tax returns; deleting a subsection of the code which expired by its own terms; providing reporting requirements for the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; and providing a short 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~~.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is ~~hereby~~ levied and shall be collected from every person exercising ~~such~~ the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) for all taxable periods beginning on or after January 1, 2019, natural gas produced from any well which produced an average of 5,000 cubic feet or more of natural gas per day but less than 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (4) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; ~~and (4)~~ (5) for all taxable periods beginning on or after January 1, 2019, oil produced from any well which produced an average one half barrel or more of oil per day but less than 10 barrels of oil per day during the calendar year immediately preceding a given taxable period; and (6) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

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

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

~~(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one~~

~~report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.~~

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

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

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

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

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

<u>(3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account and may be used only as provided in this section. The revenues deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.</u>

<u>(b)(1) Using funds from the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and reclaim abandoned oil and gas wells without a responsible operator all in accordance with plans and specifications developed pursuant to the provisions of this article relating to the plugging and reclamation of wells, and the rules establishing well plugging standards adopted thereunder.</u>

<u>(2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug abandoned oil and gas wells without a responsible operator and to reclaim the property disturbed from the plugging.</u>

<u>(3) On or before July 1 of each calendar year, the secretary shall make an annual report to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund and the Oil and Gas Reclamation Fund. The report shall include the balance of both funds on June 1 of each year. The secretary’s annual report shall set forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging project, state the number of wells plugged thereby, show the county in which the wells are located, and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a 5-year plan detailing current and future projects and activities to plug and reclaim wells.</u>

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

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

(d) If on June 1, 2021, or on June 1 of any year thereafter there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of $4 million then the fee imposed by subsection (c) of this section is not due or payable in the immediately following calendar year and the operator is exempt from paying the fee for the immediately following calendar year.

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