

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4090

FISCAL  
NOTE

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[Introduced January 10, 2020; Referred to the  
Committee on Energy then Finance]

1 A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, and  
 2 to amend said code by adding thereto a new section, designated §22-6-29a, all relating to  
 3 creating the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia  
 4 Department of Environmental Protection to plug abandoned oil and gas wells without a  
 5 responsible operator; providing for administration of the fund; requiring severance tax to  
 6 be deposited in the fund; providing specific purposes and limitations for use of the fund;  
 7 modifying imposition of the tax on the privilege of severing natural gas or oil by marginal  
 8 oil and gas wells, other than wells utilizing horizontal drilling techniques targeting shale  
 9 formations; providing exemptions from the severance tax; deleting a subsection of the  
 10 code which expired by its own terms; providing reporting requirements for the Oil and Gas  
 11 Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; and providing a  
 12 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~~**

1 (a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the  
 2 business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied  
 3 and shall be collected from every person exercising such the privilege an annual privilege tax at  
 4 the rate and measure provided in subsection (b) of this section; *Provided*, That effective for all  
 5 taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition  
 6 of the tax provided in this article on the following: (1) Free natural gas provided to any surface  
 7 owner; (2) natural gas produced from any well which produced an average of less than 5,000  
 8 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable

9 period; (3) oil produced from any oil well which produced an average of less than one-half barrel  
10 of oil per day during the calendar year immediately preceding a given taxable period; and (4) for  
11 a maximum period of 10 years, all natural gas or oil produced from any well which has not  
12 produced marketable quantities of natural gas or oil for five consecutive years immediately  
13 preceding the year in which a well is placed back into production and thereafter produces  
14 marketable quantities of natural gas or oil.

15 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall  
16 be ~~is~~ five percent of the gross value of the natural gas or oil produced by the producer as shown  
17 by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided  
18 in this article: Provided, That effective for taxable periods beginning on or after January 1, 2020:

19 (1) For all natural gas produced from any well which produced an average in excess of  
20 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given  
21 taxable year, and for oil produced from any well which produced an average in excess of 10  
22 barrels of oil per day, during the calendar year immediately preceding the beginning date of a  
23 given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil  
24 produced as shown by the gross proceeds derived from the sale thereof by the producer; and

25 (2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling  
26 techniques targeting shale formations, which produced an average between 5,000 cubic feet of  
27 natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year  
28 immediately preceding the beginning date of a given taxable year, and for oil produced from any  
29 well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which  
30 produced an average between one-half barrel per day and 10 barrels per day, during the calendar  
31 year immediately preceding the beginning date of a given taxable year, the rate of tax is two and  
32 five tenths percent of the gross value of the natural gas or oil produced as shown by the gross  
33 proceeds derived from the sale thereof by the producer.

34 (c) *Tax in addition to other taxes.* -- The tax imposed by this section shall ~~apply~~ applies to

35 all persons severing gas or oil in this state, and shall be is in addition to all other taxes imposed  
36 by law.

37 ~~(d)(1) The Legislature finds that in addition to the production reports and financial records~~  
38 ~~which must be filed by oil and gas producers with the State Tax Commissioner in order to comply~~  
39 ~~with this section, oil and gas producers are required to file other production reports with other~~  
40 ~~agencies, including, but not limited to, the office of oil and gas, the Public Service Commission~~  
41 ~~and county assessors. The reports required to be filed are largely duplicative, the compiling of the~~  
42 ~~information in different formats is unnecessarily time consuming and costly, and the filing of one~~  
43 ~~report or the sharing of information by agencies of government would reduce the cost of~~  
44 ~~compliance for oil and gas producers.~~

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

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

51 (d) For purposes of this section, in determining the average amount of production of gas  
52 and oil in any given calendar year, a taxpayer must calculate the actual production of such well  
53 in the calendar year and divide the same by the number of days the well was in operation and  
54 producing gas or oil in such calendar year.

55 (e) The proceeds of the tax imposed at the rate prescribed under subdivision (2),  
56 subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund  
57 created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, or on June 1 of any year  
58 thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or  
59 exceeding the sum of \$6 million then the special rate of tax imposed under subdivision (2),  
60 subsection (b) of this section is reduced to zero for the taxable year beginning on and after the

61 next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July  
62 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the  
63 rate of tax on wells pursuant to this subsection.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.**

#### **§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.**

1 (a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund  
2 Act. There is established within the Treasury of the State of West Virginia the special use fund  
3 known as the Oil and Gas Abandoned Well Plugging Fund.

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

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

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

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

19 (3) On or before July 1 of each year, the secretary shall make an annual report to the

20 Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund  
21 and the Oil and Gas Reclamation Fund. The report shall include the balance in both funds on  
22 June 1 of each year. The secretary's annual report shall set forth the number of wells reclaimed  
23 or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned  
24 Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging  
25 project, state the number of wells plugged thereby, show the county in which the wells are located,  
26 and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and  
27 from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a five-  
28 year plan detailing current and future projects and activities to plug and reclaim wells.

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

NOTE: The purpose of this bill is to reduce the severance tax on marginal oil and natural gas wells, excluding wells utilizing horizontal drilling techniques targeting shale formations, to 2.5% from 5% and to provide that the 2.5% tax paid on such wells is to be used by the Secretary of the Department of Environmental Protection to plug abandoned oil and gas wells without a responsible operator through the use of a new fund called the Oil and Gas Abandoned Well Plugging Fund. The vertical oil and gas wells which are affected by the severance tax reduction produce on average more than 5,000 cubic feet of natural gas or one-half barrel of oil per day and on average less than 60,000 cubic feet of natural gas or 10 barrels of oil per day.

This bill was recommended for passage during the 2020 legislative session by the Joint Committee on Energy.

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