WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4090

BY DELEGATES ANDERSON, J. KELLY, GRAVES, BOGGS, PETHTEL, HARTMAN, EVANS, PORTERFIELD, HOTT, NELSON AND CADLE

[Passed March 3, 2020; in effect ninety days from passage.]

AN ACT 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 and funding 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 responsible operators; lowering the severance tax collected on production from certain defined marginal oil and natural gas wells; requiring the collected lower severance taxes to be deposited in the fund; providing for a cap on the balance of the fund which can trigger a further reduction in the severance taxes on these certain defined marginal wells; providing an effective date for the lower tax rate; maintaining prior exemptions from the severance tax; providing for administration of the fund; providing specific purposes and limitations for use of the fund; providing reporting requirements for two funds, the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; deleting a subsection of the code which expired by its own terms; 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.

(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 levied and shall be collected from every person exercising 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) 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) 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 is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax 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;

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is two and five tenths 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; and

(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax 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.

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

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

(e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, 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 $6 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the 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.

(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.

(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.

(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.

(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 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.

(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.

(3) On or before July 1 of each 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 in 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 five-year plan detailing current and future projects and activities to plug and reclaim wells.

(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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within .... this the..

day of ...., 2020.

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Governor