

# 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.]

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

2020 MAR 23 P 5:14

FILED

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1 AN ACT 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 and funding the Oil and Gas Abandoned Well Plugging Fund for use by the West  
4 Virginia Department of Environmental Protection to plug abandoned oil and gas wells  
5 without responsible operators; lowering the severance tax collected on production from  
6 certain defined marginal oil and natural gas wells; requiring the collected lower severance  
7 taxes to be deposited in the fund; providing for a cap on the balance of the fund which can  
8 trigger a further reduction in the severance taxes on these certain defined marginal wells;  
9 providing an effective date for the lower tax rate; maintaining prior exemptions from the  
10 severance tax; providing for administration of the fund; providing specific purposes and  
11 limitations for use of the fund; providing reporting requirements for two funds, the Oil and  
12 Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; deleting a  
13 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.**

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

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

15 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five  
16 percent of the gross value of the natural gas or oil produced by the producer as shown by the  
17 gross proceeds derived from the sale thereof by the producer, except as otherwise provided in  
18 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;

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; and

34 (3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting  
35 shale formations, which produced an average between 5,000 cubic feet of natural gas per day  
36 and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the  
37 beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling  
38 techniques targeting shale formations, which produced an average between one-half barrel per  
39 day and 10 barrels per day, during the calendar year immediately preceding the beginning date  
40 of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil  
41 produced as shown by the gross proceeds derived from the sale thereof by the producer.

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

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

48 (e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the  
49 tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are  
50 dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this  
51 code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the  
52 Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6  
53 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is  
54 reduced to zero for the taxable year beginning on and after the next succeeding January 1. The  
55 Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the  
56 balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant  
57 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.

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

*Nore Capito*  
.....  
Chairman, House Committee

*Mark Warner*  
.....  
Chairman, Senate Committee

FILED  
2020 MAR 23 P 5:14  
OFFICE OF THE CLERK OF THE SENATE  
SECRETARY OF STATE

Originating in the House.

In effect ninety days from passage.

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Jee Linn*  
.....  
Clerk of the Senate

*Lee Zaehner*  
.....  
Speaker of the House of Delegates

*Mark B. Lummis*  
.....  
President of the Senate

The within *is approved* this the *23rd*  
*March*  
day of ..... 2020.

*James I. Good*  
.....  
Governor



PRESENTED TO THE GOVERNOR

MAR 12 2020

Time 2:30 pm