

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### Senate Bill 168

FISCAL  
NOTE

By Senators Phillips, Stuart, Hunt, and Chapman

[Introduced January 13, 2023; referred  
to the Committee on Energy, Industry, and Mining; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to providing an exemption from the state severance tax for coal sold to coal-fired power  
 3 plants located within the state of West Virginia.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

**§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or  
 furnishing certain health care services, effective dates therefor; reduction of  
 severance rate for coal mined by underground methods based on seam thickness.**

1 (a) Imposition of tax. — Upon every person exercising the privilege of engaging or  
 2 continuing within this state in the business of severing, extracting, reducing to possession and  
 3 producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of  
 4 furnishing certain health care services, there is hereby levied and shall be collected from every  
 5 person exercising such privilege an annual privilege tax.

6 (b) Rate and measure of tax. — Subject to the provisions of subsection (h) of this section,  
 7 the tax imposed in subsection (a) of this section is five percent of the gross value of the natural  
 8 resource produced or the health care service provided, as shown by the gross income derived  
 9 from the sale or furnishing thereof by the producer or the provider of the health care service,  
 10 except as otherwise provided in this article: *Provided*, That effective July 1, 2019, the tax rate  
 11 imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced  
 12 incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That  
 13 on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on  
 14 July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on  
 15 July 1, 2021, at the rate of 100 percent of the two percent reduction. In the case of coal, the rate of  
 16 tax includes the thirty-five one hundredths of one percent additional severance tax on coal  
 17 imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this  
 18 code and the additional severance tax on coal imposed by the state for the benefit of coal-

19 producing counties as provided in §11-13A-6a of this code.

20 (c) "Thermal or steam coal" defined. - For purposes of this section the term "thermal or  
21 steam coal" means coal sold for the purpose of generating electricity.

22 (d) "Certain health care services" defined. — For purposes of this section, the term "certain  
23 health care services" means, and is limited to, behavioral health services.

24 (e) Tax in addition to other taxes. — The tax imposed by this section applies to all persons  
25 severing or processing, or both severing and processing, in this state natural resources  
26 enumerated in subsection (a) of this section and to all persons providing certain health care  
27 services in this state as enumerated in subsection (d) of this section and shall be in addition to all  
28 other taxes imposed by law.

29 (f) Effective date. — This section, as amended in 1993, shall apply to gross proceeds  
30 derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall  
31 apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds,  
32 shall be fully and completely preserved.

33 (g) Reduction of severance tax rate. — For tax years beginning after the effective date of  
34 this subsection, any person exercising the privilege of engaging within this state in the business of  
35 severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced  
36 rate of tax on coal mined by underground methods in accordance with the following:

37 (1) For coal mined by underground methods from seams with an average thickness of 37  
38 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the  
39 gross value of the coal produced. For coal mined by underground methods from seams with an  
40 average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be  
41 one percent of the gross value of the coal produced. Gross value is determined from the sale of the  
42 mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent  
43 additional severance tax imposed by the state for the benefit of counties and municipalities as  
44 provided in §11-13A-6 of this code.

45 (2) This reduced rate of tax applies to any new underground mine producing coal after the  
46 effective date of this subsection, from seams of less than 45 inches in average thickness or any  
47 existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days  
48 immediately preceding the effective date of this subsection.

49 (3) The seam thickness shall be based on the weighted average isopach mapping of actual  
50 coal thickness by mine as certified by a professional engineer.

51 (h)(1) Termination and expiration of the behavioral health severance and business  
52 privilege tax. — The tax imposed upon providers of health care services under the provisions of  
53 this article shall expire, terminate and cease to be imposed with respect to privileges exercised on  
54 or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any  
55 person from payment of any tax imposed with respect to privileges exercised before the expiration  
56 date.

57 (2) Refunds made. — The Tax Commissioner shall issue a requisition on the Treasury for  
58 any amount finally, administratively or judicially determined to be an overpayment of the tax  
59 terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund  
60 requisitioned under this subsection payable to the taxpayer entitled to the refund, and the  
61 Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

62 (i) Termination and expiration of the privilege tax on limestone or sandstone. — The taxes  
63 imposed under this section for persons exercising the privilege of engaging or continuing within  
64 this state in the business of severing, extracting, reducing to possession and producing for sale,  
65 profit or commercial use limestone or sandstone shall cease, terminate and be of no further force  
66 or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not  
67 relieve any person of any liability or duty to pay tax imposed under this article with respect to  
68 privileges exercised before the effective date of the termination.

69 (j) Exemption for thermal or steam coal sold to in-State electric generating facilities—  
70 Thermal or steam coal severed after March 31, 2023, and sold for the purpose of generating

71 electricity to a coal-fired electric generating facility that is physically located within the State of  
72 West Virginia shall be exempt from the severance tax imposed by this section. This exemption  
73 does not extend to the thirty-five one hundredths of one percent additional severance tax on coal  
74 imposed by the State for the benefit of counties and municipalities as provided in §11-13A-6 of this  
75 code. Thus, for coal severed after March 31, 2023, and sold to a coal-fired generating facility  
76 physically located with the State of West Virginia, the applicable severance tax rate would be  
77 thirty-five one hundredths of one percent to be allocated for the benefit of counties and  
78 municipalities pursuant to §11-13A-6 of this code.

NOTE: The purpose of this bill is to encourage and incentivize the sale of thermal or steam coal to coal-fired electric generating facilities, which are located in West Virginia and that serve West Virginia residents, by exempting the sale of such coal from the severance tax, thereby providing cheaper electricity to the State's residents.

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