

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 5398

By Delegates Anderson, Zatezalo, Fehrenbacher,

Jeffries, Eldridge, and Riley

[Originating in the Committee on Finance, February

27, 2026]

1 A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended,
2 relating to dates and deposits for oil and gas well plugging; limiting the unencumbered
3 balance of the Oil and Gas Abandoned Well Plugging Fund; requiring that amounts in
4 excess of \$6 million be encumbered pursuant to binding contracts to plug specific wells
5 within 12 months; requiring the Department of Environmental Protection to publish an
6 annual report detailing fund revenue, balance, wells plugged, average cost, and funds
7 under contract; capping the fund at \$9 million; and allowing for the receipt of federal
8 moneys for abandoned well plugging.

Be it enacted by the Legislature of West Virginia:

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 gross
17 proceeds derived from the sale thereof by the producer, except as otherwise provided in this
18 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 given
23 taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as
24 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 and
36 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 of

40 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 in
46 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~~, June 1, 2024, or June
52 1, 2025, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or
53 exceeding the sum of \$6 million; or if on September 30, 2026, or on September 30 of any year
54 thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or
55 exceeding the sum of \$6 million that has not been encumbered by the Office of Oil and Gas in
56 accordance with the provisions of this article, then the special rate of tax imposed under
57 subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on
58 and after the next succeeding January 1. ~~The~~ Starting in 2026, the Tax Commissioner shall issue
59 an Administrative Notice ~~by July 1 of each year indicating~~ within 30 days of determining the
60 amount of the balance in the fund as of the immediately preceding June 1 September 30 and the
61 rate of tax on wells pursuant to this subsection. In no event may the total fund balance exceed \$9
62 million (150 percent of the baseline).

63 (f) Notwithstanding any provision of this code to the contrary, the Oil and Gas Abandoned
64 Well Plugging Fund may exceed \$6 million only if every dollar above \$6 million is encumbered

65 pursuant to a binding, executed contract to plug specific wells with a term not exceeding 12
66 months.

67 (g) The Department of Environmental Protection shall publish on its publicly accessible
68 website an annual report that details: (1) revenue into the Oil and Gas Abandoned Well Plugging
69 Fund for the year; (2) the fund balance at the end of the year; (3) the wells plugged by the fund in
70 the year; (4) the average cost to plug wells during the year; and (5) the dollar amount of binding
71 funds under contract but not yet paid at the end of the year.