COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 242

(By Senators Stollings, Foster, McCabe, Kessler
(Acting President), Miller, Laird, Fanning and Klempa)

[Originating in the Committee on the Judiciary;
reported February 3, 2011.]

A BILL to amend and reenact §11-13A-5a of the Code of West Virginia, 1931, as amended, relating to dedicating five percent of coal severance tax to the county of origin; providing for a five-year phase-in at one percent per year; providing permissible uses for the moneys; providing for Development Office to administer distribution of moneys; directing Development Office to promulgate rules for manner of distribution; and establishing County Severance Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §11-13A-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of five percent of severance tax for benefit of counties of origin with five-year phase-in at one percent per year; expenditures of funds; dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the Office of State Treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Five percent of the tax attributable to the severance of coal imposed by section three of this article is dedicated, subject to the five year phase-in below, for the use and benefit of counties from which those taxes were generated and shall be distributed to each county as provided in this section. Effective July 1, 2011, the amount dedicated for the use and benefit of such counties shall be one percent and shall increase incrementally by one percent on July 1 of each successive year until capping at five percent on July 1, 2015. The dedicated tax shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the coal upon which this tax is imposed was located at the time it was removed from the ground. The moneys shall be distributed to the county commissions and used only for:

(1) Economic development Projects;

(2) Infrastructure Projects;

(3) Job creation; and

(4) Road repair.

The director of the West Virginia development office is authorized to administer the distribution of moneys in the county revenue severance fund established in subsection (e) of this section. The director of the development office shall promulgate an emergency and legislative rule pursuant to article three, chapter twenty-nine-a of this code that clarifies, explains or implements the provisions of this subsection (a).

~~(a)~~ (b) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is ~~hereby~~ dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective ~~the~~ July 1, 1997, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is ~~hereby~~ dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section.

~~(b)~~ (c) Seventy-five percent of this dedicated tax shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

~~(c)~~ (d) The Tax Commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of ~~such~~ additional information as may be necessary to compute the allocation required under the provisions of subsection ~~(f)~~ (h) of this section. The Tax Commissioner is also ~~hereby~~ granted plenary power and authority to promulgate ~~such~~ other reasonable rules as may be necessary to implement the provisions of this section.

(e) To provide a procedure for the distribution to counties of the dedicated tax attributable to the severance of coal imposed by section three of this article, a special fund known as the "County Severance Revenue Fund" is established. The moneys in the fund shall be distributed to the respective county entitled to the moneys in the manner and for the purposes provided in subsection (a) of this section.

~~(d)~~ (f) In order to provide a procedure for the distribution of seventy-five percent of the dedicated tax on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in the State Treasurer's office by chapter two hundred forty-two, Acts of the Legislature, regular session, 1995, as amended and reenacted in the subsequent Act of the Legislature, is ~~hereby~~ continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the "All Counties and Municipalities Revenue Fund" established in the State Treasurer's office by chapter two hundred forty-two, Acts of the Legislature, regular session, 1995, as amended and reenacted in the subsequent Act of the Legislature, is ~~hereby~~ redesignated as the "All Counties and Municipalities Oil and Gas Revenue Fund" and is hereby continued.

Seventy-five percent of the dedicated tax on oil and gas shall be deposited in the "Oil and Gas County Revenue Fund" and twenty-five percent of the dedicated tax on oil and gas shall be deposited in the "All Counties and Municipalities Oil and Gas Revenue Fund," from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection ~~(e)~~ (g) of this section.

~~(e)~~ (g) The moneys in the "Oil and Gas County Revenue Fund" and the moneys in the "All Counties and Municipalities Oil and Gas Revenue Fund" shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the "Oil and Gas County Revenue Fund" shall be determined in accordance with subsection ~~(f)~~ (h) of this section, and the amount to which every county and municipality shall be entitled from the "All Counties and Municipalities Oil and Gas Revenue Fund" shall be determined in accordance with subsection ~~(g)~~ (i) of this section. After determining, as set forth in subsections ~~(f) and (g)~~ (h) and (i) of this section, the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

~~(f)~~ (h) The amount to which an oil and gas producing county is entitled from the Oil and Gas County Revenue Fund shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

~~(g)~~ <u>(i)</u> The amount to which each county and municipality is entitled from the "All Counties and Municipalities Oil and Gas Revenue Fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The Treasurer shall first apportion the total amount of moneys available in the all counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county’s “base share”.

(2) Each county’s base share shall then be subdivided into two portions. One portion is determined by multiplying the base share by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the base share by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the “municipalities’ portion” of the county’s base share. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the

population of each municipality within the county bears to the total population of all municipalities within the county.

~~(h)~~ <u>(j)</u> Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: *Provided,* That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the Oil and Gas County Revenue Fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the State Tax Commissioner: *Provided, however,* That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

~~(i)~~ <u>(k)</u> On or before March 28, 1997, and each March 28 thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the State Tax Commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the General Fund and may be expended by the county or municipality without restriction.

~~(j)~~ (l) On or before December 15, 1996, and each December 15 thereafter, the Tax Commissioner shall deliver to the Clerk of the Senate and the Clerk of the House of Delegates a consolidated report of the budgets, created by subsection ~~(i)~~ (k) of this section, for all county commissions and municipalities as of July 15 of the current year.

~~(k)~~ (m) The State Tax Commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of $35,000 annually as a fee for the administration of the additional tax by the Tax Commissioner.

(NOTE: The purpose of this bill is to dedicate five percent of the coal severance tax to the counties where the coal was located at the time it was removed from the ground, upon which the coal severance tax is based. The amount dedicated to these counties will be phased in over five years in one percent increments. The bill also provides that the dedicated moneys will go to the county commissions, and provides specific uses for the moneys.

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