

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 487**

(By Senators Browning, Kessler (Mr. President),  
Klempa, Chafin and Beach)

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[Originating in the Committee on Finance;  
reported February 27, 2012.]

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A BILL to amend and reenact §11-13A-20a of the Code of West Virginia, 1931, as amended, relating to the distribution of coalbed methane gas severance tax; establishing the Coalbed Methane Gas Distribution Fund in the State Treasurer's Office; making technical changes to correct subdivision references; correcting the omission of the term "county economic development corporation"; authorizing the Tax Commissioner to deposit coalbed methane severance tax moneys into the Coalbed Methane Gas Distribution Fund; directing the State Treasurer to distribute coalbed methane severance tax moneys to counties; authorizing distribution of moneys to the lead

economic development authority or economic development corporation for the county and designation thereof; authorizing distribution by the State Treasurer of accumulated moneys from fiscal years 2009, 2010, 2011 and 2012 to the lead economic development authority or economic development corporation for the county and designation thereof; specifying the permissible uses of Coalbed Methane Gas Distribution Fund moneys received by county economic development authorities and county economic development corporations; eliminating the requirement of Development Office approval for use of funds; and creating a reporting mechanism for accounting and use of Coalbed Methane Gas Distribution Fund moneys.

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

That §11-13A-20a 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-20a. Dedication of tax.**

- 1 (a) The amount of taxes collected under this article from
- 2 providers of health care items or services, including any
- 3 interest, additions to tax and penalties collected under
- 4 article ten of this chapter, less the amount of allowable

5 refunds and any interest payable with respect to such  
6 refunds, shall be deposited into the special revenue fund  
7 created in the State Treasurer's Office and known as the  
8 Medicaid State Share Fund. Said fund shall have separate  
9 accounting for those health care providers as set forth in  
10 articles four-b and four-c, chapter nine of this code.

11 (b) Notwithstanding the provisions of subsection (a) of  
12 this section, for the remainder of fiscal year 1993 and for  
13 each succeeding fiscal year, no expenditures from taxes  
14 collected from providers of health care items or services are  
15 authorized except in accordance with appropriations by the  
16 Legislature.

17 (c) The amount of taxes on the privilege of severing  
18 timber collected under section three-b of this article,  
19 including any interest, additions to tax and penalties  
20 collected under article ten of this chapter, less the amount of  
21 allowable refunds and any interest payable with respect to  
22 such refunds, shall be paid into a special revenue account in  
23 the State Treasury to be appropriated by the Legislature for  
24 purposes of the Division of Forestry.

25 (d) Notwithstanding any other provision of this code to  
26 the contrary, beginning January 1, 2009, there is hereby

27 dedicated an annual amount not to exceed \$4 million from  
28 annual collections of the tax imposed by section three-d of  
29 this article to be deposited into the West Virginia Infrastruc-  
30 ture Fund, created in section nine, article fifteen-a, chapter  
31 thirty-one of this code.

32 (e) Beginning with the fiscal year ending June 30, 2009,  
33 and each fiscal year thereafter, the Tax Commissioner shall  
34 pay from the taxes imposed in section three-d of this article,  
35 on October 1, of each year, to the respective county economic  
36 development authorities, county economic development  
37 corporations or county commissions as provided in subsec-  
38 tions (f) through (h) of this section, an amount in the aggre-  
39 gate not to exceed \$4 million per fiscal year: Provided, That  
40 on July 1, 2012, the Tax Commissioner shall deposit the taxes  
41 imposed in section three-d of this article into a special  
42 revenue fund, which is hereby created in the State Trea-  
43 surer's Office and known as the Coalbed Methane Gas  
44 Distribution Fund: Provided, however, That such deposit of  
45 taxes shall not exceed in the aggregate \$4 million per fiscal  
46 year and moneys therein shall be distributed by the State  
47 Treasurer as herein directed. Prior to making any such  
48 payment the commissioner shall deduct the amount of

49 refunds lawfully paid and administrative costs authorized by  
50 this code. All moneys distributed to the West Virginia  
51 Infrastructure Fund pursuant to this section prior to July 1,  
52 2011, shall be returned to the Tax Commissioner and  
53 distributed to the respective county economic development  
54 authorities, county economic development corporations or  
55 county commissions as provided in this section. For purposes  
56 of this section, the term “county economic development  
57 corporation” refers solely to a corporation designated by  
58 resolution of the county commission of the county as the lead  
59 entity for economic development activities for the purpose of  
60 encouraging economic development in the county.

61 (f) Notwithstanding any provision of this article to the  
62 contrary, prior to the deposit of the proceeds of the tax on  
63 coalbed methane with each county economic development  
64 authority, county economic development corporation or  
65 county commission pursuant to subsection (e) of this section,  
66 the Tax Commissioner shall undertake the following calcula-  
67 tions:

68 (1) Seventy-five percent of the moneys to be deposited  
69 shall be provisionally allocated for the various counties of  
70 this state in which the coalbed methane was produced; and

71 (2) The remaining twenty-five percent of the moneys to  
72 be deposited shall be provisionally allocated to the various  
73 counties of this state in which no coalbed methane was  
74 produced for projects in accordance with subsection (h) of  
75 this section.

76 (3) Moneys shall be provisionally allocated to each  
77 coalbed methane producing county in direct proportion to  
78 the amount of tax revenues derived from coalbed methane  
79 production in the county.

80 (4) Moneys shall be provisionally allocated to each  
81 coalbed methane nonproducing county equally.

82 (5) Portional adjustments.

83 (A) If, for any year, a coalbed methane producing  
84 county's share of money provisionally allocated to that  
85 county is computed to be an amount that is less than the  
86 amount provisionally allocated to each of the coalbed  
87 methane nonproducing counties, then for purposes of the  
88 computations set forth in this subsection, that coalbed  
89 methane producing county shall be redesignated a coalbed  
90 methane nonproducing county. The money that has been  
91 provisionally allocated to that coalbed methane producing  
92 county out of the seventy-five percent portion specified in

93 subdivision (1) of this subsection shall be subtracted out of  
94 the seventy-five percent portion specified in that subdivision  
95 and added to the twenty-five percent portion specified in  
96 subdivision (2) of this subsection.

97 (B) When the adjustment specified in paragraph (A),  
98 subdivision ~~(4)~~ (5) of this subsection has been made for each  
99 coalbed methane producing county that has been  
100 redesignated as a coalbed methane nonproducing county,  
101 then the Tax Department shall finalize the calculations of  
102 the amounts to be made available for distribution to the  
103 respective county economic development authority, county  
104 economic development corporation or county commission of  
105 the coalbed methane producing counties that have not been  
106 redesignated as coalbed methane nonproducing counties  
107 under paragraph (A), subdivision ~~(4)~~ (5) of this subsection as  
108 follows: The amount remaining in the provisional seventy-  
109 five percent portion specified in subdivision (1) of this  
110 subsection, as adjusted in accordance with paragraph (A),  
111 subdivision ~~(4)~~ (5) of this subsection, shall be allocated, in  
112 direct proportion to the amount that tax revenues derived  
113 from coalbed methane production in each such county not  
114 redesignated as a coalbed methane nonproducing county

115 bears to the total amount of tax revenues derived from  
116 coalbed methane production in all coalbed methane produc-  
117 ing counties that have not been redesignated as a coalbed  
118 methane nonproducing county.

119 (C) The Tax Commissioner shall then finalize the calcula-  
120 tion of the total amount in the twenty-five percent portion  
121 specified in subdivision (2) of this subsection, as adjusted in  
122 accordance with paragraph (A), subdivision ~~(4)~~ (5) of this  
123 subsection equally among the coalbed methane nonproduc-  
124 ing counties.

125 (D) The Tax Commissioner, upon completing the calcula-  
126 tion of the total amount of tax to be distributed to all  
127 coalbed methane producing counties and to all coalbed  
128 methane nonproducing counties, shall deposit an amount  
129 equal to the amount so calculated in the Coalbed Methane  
130 Gas Distribution Fund, subject to the limitations set forth in  
131 this section.

132 (g) In no case may the total amount distributed in any  
133 fiscal year to the aggregate of all coalbed methane producing  
134 counties and all coalbed methane nonproducing counties  
135 calculated by the Tax Commissioner exceed the total amount  
136 of tax on coalbed methane authorized to be remitted to the



137 county economic development authority, county economic  
138 development corporation or county commission pursuant to  
139 subsection (e) of this section.

140 (h) Distribution of coalbed methane severance tax to  
141 county economic development authorities, county economic  
142 development corporations or county commissions is subject  
143 to the following:

144 (1) If the amount determined pursuant to subsections (f)  
145 and (g) of this section for a county is more than, \$10,000 the  
146 ~~Tax Commissioner~~ State Treasurer shall distribute the  
147 amount determined for that county to the county economic  
148 development authority of that county created pursuant to  
149 established as provided in article twelve, chapter seven of  
150 this code, or other county economic development corporation  
151 designated by resolution of the county commission of the  
152 county as the lead entity for economic development activities  
153 for the purposes of encouraging economic development in the  
154 county. The State Treasurer is hereby authorized to distrib-  
155 ute accumulated but undistributed moneys from fiscal years  
156 2009, 2010, 2011 and 2012 to the lead economic development  
157 authority or county economic development corporation for  
158 the county.

159 (2) Each county economic development authority or  
160 county economic development corporation shall use such  
161 funds for economic development projects and infrastructure  
162 projects. ~~the following upon a finding by the county eco-~~  
163 ~~nomie development authority that the cost of such projects~~  
164 ~~are reasonably anticipated to lead to further economic~~  
165 ~~development of the county:~~

166 (i) ~~The cost of preparation of land sites for any public or~~  
167 ~~private facility, or~~

168 (ii) ~~The cost of design or construction of water, sewer and~~  
169 ~~stormwater infrastructure.~~

170 (3) For purposes of this section:

171 (A) “Economic development project” means a project in  
172 the state which is likely to foster economic growth and  
173 development in the area in which the project is developed for  
174 commercial, industrial, community improvement or preser-  
175 vation or other proper purposes.

176 (B) “Infrastructure project” means a project in the state  
177 which is likely to foster infrastructure improvements and  
178 covers post mining land use, water or wastewater facilities,  
179 stormwater systems, steam, gas, telephone and telecommuni-  
180 cations, broadband development, electric lines and installa-

181 tions, roads, bridges, railroad spurs, drainage and flood  
182 control facilities, industrial park development, road or  
183 buildings that promote job creation and retention.

184       (3) (4) Prior to expending any coalbed methane severance  
185 tax moneys, each county economic development authority or  
186 county economic development corporation must obtain the  
187 approval of its respective county commission in writing for  
188 the purpose of such expenditure.

189       ~~(4) Prior to expending any coalbed methane severance~~  
190 ~~tax moneys, each county economic development authority~~  
191 ~~must obtain the approval of the Development Office in~~  
192 ~~writing for the purpose of such expenditure. The Develop-~~  
193 ~~ment Office shall approve all plans for use of the moneys if~~  
194 ~~such plans are within the required uses provided in subdivi-~~  
195 ~~sion (2) of this subsection. The Director of the state Develop-~~  
196 ~~ment Office shall promulgate legislative rules in accordance~~  
197 ~~with article three, chapter twenty-nine-a of this code in~~  
198 ~~order to set forth the required documentation to be submit-~~  
199 ~~ted to the Development Office from the county economic~~  
200 ~~development authorities to ensure that such funds are~~  
201 ~~utilized as intended by the Legislature. The Director of the~~

202 ~~Development Office is authorized to promulgate emergency~~  
203 ~~rules to implement the provisions of this section.~~

204 (5) A county, ~~or~~ county economic development authority  
205 or county economic development corporation may not use  
206 such funds for the purposes of paying wages to any employee  
207 of the county or any employee of a county economic develop-  
208 ment authority or county economic development corporation.

209 (6) If the amount determined pursuant to subsections (f)  
210 and (g) of this section for a county is \$10,000 or less, the ~~Tax~~  
211 ~~Commissioner~~ State Treasurer shall distribute the amount  
212 determined for that county to the county commission. The  
213 county commission may then use the funds to offset its  
214 regional jail costs, costs of any community corrections  
215 programs in which it participates, expenses of a volunteer  
216 fire department that provides service within its county or  
217 expenses of any library that provides services within its  
218 county.

219 (i) On or before December 31, 2013, and December 1 of  
220 each year thereafter, the county economic development  
221 authority, county economic development corporation or  
222 county commission receiving a distribution of funds under  
223 this section shall deliver to the Joint Committee on Govern-

224 ment and Finance a written report setting forth the specific  
225 projects for which those funds were expended during the  
226 next preceding fiscal year, a detailed account of those  
227 expenditures and a showing that the expenditures were  
228 made for the purposes required by this section.

229 (j) An audit of any funds distributed under this section  
230 may be authorized at any time by the Joint Committee on  
231 Government and Finance to be conducted by the Legislative  
232 Auditor at no cost to the county economic development  
233 authority, county economic development corporation or  
234 county commission audited.