

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 487

(SENATORS BROWNING, KESSLER (MR. PRESIDENT),
KLEMPA, CHAFIN AND BEACH, *original sponsors*)

[Passed March 10, 2012; in effect from passage.]

AN ACT 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; defining "county economic development entity"; 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 county commissions or county economic development entities; authorizing distribution by the State Treasurer of accumulated moneys from fiscal years 2009, 2010, 2011 and 2012 to county economic development entities; specifying the permissible uses of Coalbed Methane Gas Distribution Fund moneys received by county economic development entities; eliminating the requirement of Development Office approval for use of funds; requiring certain reporting to the Joint Committee on Government and Finance; and authorizing certain audits.

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 county economic develop-
36 ment entities, as this term is defined in this subsection, or
37 county commissions as provided in subsections (f) through
38 (h) of this section, an amount in the aggregate not to exceed
39 \$4 million per fiscal year: *Provided*, That on July 1, 2012, the
40 Tax Commissioner shall deposit the taxes imposed in section
41 three-d of this article into a special revenue fund, which is
42 hereby created in the State Treasurer's Office and known as
43 the Coalbed Methane Gas Distribution Fund: *Provided*,
44 *however*, That such deposit of taxes shall not exceed in the
45 aggregate \$4 million per fiscal year and moneys therein shall
46 be distributed by the State Treasurer pursuant to this
47 section. Prior to making any such payment the commissioner
48 shall deduct the amount of refunds lawfully paid and
49 administrative costs authorized by this code. All moneys
50 distributed to the West Virginia Infrastructure Fund pursu-
51 ant to this section prior to July 1, 2011, shall be returned to
52 the Tax Commissioner and distributed to the county eco-
53 nomic development entities, as this term is defined in this
54 subsection, or county commissions as provided in this
55 section. For purposes of this section, the term "county
56 economic development entity" refers to a county economic
57 development authority established pursuant to article
58 twelve, chapter seven of this code or if a county does not
59 have a county economic development authority established
60 pursuant to article twelve, chapter seven of this code, an
61 entity designated by resolution of the county commission of
62 the county as the lead entity for economic development
63 activities for the purpose of encouraging economic develop-
64 ment in the county which entity may be, but is not limited to
65 being, redevelopment authorities created pursuant to article
66 eighteen, chapter sixteen of this code; county economic
67 development corporations; regional economic development
68 councils, corporations or partnerships.

69 (f) Notwithstanding any provision of this article to the
70 contrary, prior to the deposit of the proceeds of the tax on
71 coalbed methane with each, county economic development
72 entity or county commission pursuant to subsection (e) of
73 this section, the Tax Commissioner shall undertake the
74 following calculations:

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

78 (2) The remaining twenty-five percent of the moneys to
79 be deposited shall be provisionally allocated to the various
80 counties of this state in which no coalbed methane was
81 produced for projects in accordance with subsection (h) of
82 this section.

83 (3) Moneys shall be provisionally allocated to each
84 coalbed methane producing county in direct proportion to
85 the amount of tax revenues derived from coalbed methane
86 production in the county.

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

89 (5) Portional adjustments.

90 (A) If, for any year, a coalbed methane producing
91 county's share of money provisionally allocated to that
92 county is computed to be an amount that is less than the
93 amount provisionally allocated to each of the coalbed
94 methane nonproducing counties, then for purposes of the
95 computations set forth in this subsection, that coalbed
96 methane producing county shall be redesignated a coalbed
97 methane nonproducing county. The money that has been
98 provisionally allocated to that coalbed methane producing
99 county out of the seventy-five percent portion specified in
100 subdivision (1) of this subsection shall be subtracted out of
101 the seventy-five percent portion specified in that subdivision
102 and added to the twenty-five percent portion specified in
103 subdivision (2) of this subsection.

104 (B) When the adjustment specified in paragraph (A), of
105 this subdivision has been made for each coalbed methane
106 producing county that has been redesignated as a coalbed
107 methane nonproducing county, then the Tax Department
108 shall finalize the calculations of the amounts to be made
109 available for distribution to the respective county economic
110 development entity or county commission of the coalbed
111 methane producing counties that have not been redesignated
112 as coalbed methane nonproducing counties under paragraph
113 (A) of this subdivision as follows: The amount remaining in
114 the provisional seventy-five percent portion specified in
115 subdivision (1) of this subsection, as adjusted in accordance
116 with paragraph (A) of this subdivision, shall be allocated, in
117 direct proportion to the amount that tax revenues derived
118 from coalbed methane production in each such county not
119 redesignated as a coalbed methane nonproducing county
120 bears to the total amount of tax revenues derived from
121 coalbed methane production in all coalbed methane produc-
122 ing counties that have not been redesignated as a coalbed
123 methane nonproducing county.

124 (C) The Tax Commissioner shall then finalize the calcula-
125 tion of the total amount in the twenty-five percent portion
126 specified in subdivision (2) of this subsection, as adjusted in
127 accordance with paragraph (A) of this subdivision equally
128 among the coalbed methane nonproducing counties.

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

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

141 county economic development entities and county commis-
142 sions pursuant to subsection (e) of this section.

143 (h) Distribution of coalbed methane severance tax to
144 county economic development entities or county commis-
145 sions is subject to the following:

146 (1) If the amount determined pursuant to subsections (f)
147 and (g) of this section for a county is more than, \$10,000 the
148 State Treasurer shall distribute the amount determined for
149 that county to the county economic development entity. The
150 State Treasurer is hereby authorized to distribute accumu-
151 lated but undistributed moneys from fiscal years 2009, 2010,
152 2011 and 2012 to each county economic development entity.

153 (2) Each county economic development entity shall use
154 such funds for economic development projects and infra-
155 structure projects.

156 (3) For purposes of this section:

157 (A) "Economic development project" means a project in
158 the state which is likely to foster economic growth and
159 development in the area in which the project is developed for
160 commercial, industrial, community improvement or preser-
161 vation or other proper purposes.

162 (B) "Infrastructure project" means a project in the state
163 which is likely to foster infrastructure improvements and
164 covers post mining land use, water or wastewater facilities,
165 stormwater systems, steam, gas, telephone and telecommuni-
166 cations, broadband development, electric lines and installa-
167 tions, roads, bridges, railroad spurs, drainage and flood
168 control facilities, industrial park development, road or
169 buildings that promote job creation and retention.

170 (4) Prior to expending any coalbed methane severance
171 tax moneys, each county economic development entity must
172 obtain the approval of its respective county commission, or
173 the county commission or commissions representing the
174 county or counties where the economic development or
175 infrastructure project will be situate if the county economic

176 development entity is regional and encompasses more than
177 one county, in writing for the purpose of such expenditure.

178 (5) A county commission or county economic develop-
179 ment entity may not use funds distributed to it pursuant to
180 subsections (e), (f), (g) and (h) of this section for the purposes
181 of paying wages to any employee of the county or any
182 employee of a county economic development entity.

183 (6) If the amount determined pursuant to subsections (f)
184 and (g) of this section for a county is \$10,000 or less, the
185 State Treasurer shall distribute the amount determined for
186 that county to the county commission. The county commis-
187 sion may then use the funds to offset its regional jail costs,
188 costs of any community corrections programs in which it
189 participates, expenses of a volunteer fire department that
190 provides service within its county or expenses of any library
191 that provides services within its county.

192 (i) On or before December 1, 2013, and December 1 of
193 each year thereafter, the county economic development
194 entity as defined in this section or county commission
195 receiving a distribution of funds under this section shall
196 deliver to the Joint Committee on Government and Finance
197 a written report setting forth the specific projects for which
198 those funds were expended during the next preceding fiscal
199 year, a detailed account of those expenditures and a showing
200 that the expenditures were made for the purposes required
201 by this section.

202 (j) An audit of any funds distributed under this section
203 may be authorized at any time by the Joint Committee on
204 Government and Finance to be conducted by the Legislative
205 Auditor at no cost to the county economic development
206 entity or county commission audited.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2012.

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Governor