

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 167**

4 (By Senators Kessler (Mr. President), Unger, Snyder, Stollings,
5 Fitzsimmons, Miller, Laird, McCabe, Wells and D. Hall)

6 _____
7 [Originating in the Committee on Economic Development;
8 reported March 27, 2013.]

**FISCAL
NOTE**

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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §11-13A-5b, relating
14 to the use of oil and natural gas severance tax revenues;
15 setting a baseline of oil and natural gas severance tax
16 revenue collections; creating the West Virginia Future Fund;
17 providing for the distribution of funds collected in excess of
18 that baseline; providing for initial funding of West Virginia
19 Future Fund to consist of twenty-five percent of excess
20 proceeds from oil and natural gas severance taxes; expressing
21 legislative intent not to encumber or otherwise use any
22 principal or interest from the West Virginia Future Fund for
23 a term of twenty years; addressing use of the West Virginia
24 Future Fund; further dedicating three percent of all oil and

1 natural gas severance tax revenues annually to the oil- and
2 natural gas-producing counties of origin and their respective
3 municipalities; establishing state and local oil and gas
4 county reallocated severance tax funds and providing for
5 distribution of the moneys to the county commissions and
6 governing bodies of the municipalities by the State Treasurer;
7 establishing amounts each oil- and gas-producing county and
8 their respective municipalities are to receive; requiring the
9 creation of local funds into which moneys are to be deposited;
10 requiring moneys to be expended solely for economic
11 development projects and infrastructure projects; providing
12 definitions; providing restrictions on the expenditure of
13 moneys; providing duties of State Tax Commissioner; requiring
14 report of expenditures to Joint Committee on Government and
15 Finance; providing audits of distributed funds when authorized
16 by the Joint Committee on Government and Finance; and
17 authorizing legislative and emergency rules.

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

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new section, designated §11-13A-5b, to read as
21 follows:

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

23 **§11-13A-5b. Setting a baseline of severance tax revenue for**
24 **purposes of future tax severance allocation;**

1 **Creation of West Virginia Future Fund;**
2 **legislative intent; reallocation and dedication**
3 **of a percentage of total severance tax for**
4 **benefit of oil and gas producing counties and**
5 **their municipalities; permissible uses of**
6 **distributed revenues; duties of State Treasurer**
7 **and State Tax Commissioner; audits; rulemaking.**

8 (a) For fiscal years beginning July 1, 2013, a baseline for
9 collections of severance tax on the privilege of producing oil and
10 natural gas levied by section three-a of this article that are
11 deposited in the General Revenue Fund or that are distributed to
12 counties and municipalities, as provided in section five-a of this
13 article, is established at \$64.8 million.

14 (b) There is created in the State Treasury a special revenue
15 account, designated the "West Virginia Future Fund," which is an
16 interest-bearing account and may be invested by the West Virginia
17 Investment Management Board in the manner permitted by the
18 provisions of article six, chapter twelve of this code, with the
19 interest income a proper credit to the fund. Notwithstanding any
20 provision of this code to the contrary, twenty-five percent of the
21 excess proceeds, above the baseline set by subsection (a) of this
22 section, received on and after the effective date of this section
23 as state revenue pursuant to the provisions of section three-a,
24 article thirteen-a, chapter eleven of this code as a result of

1 Marcellus Shale production shall be deposited in this fund. The
2 Legislature may by general appropriation or by designation of other
3 funding sources to be deposited in the fund provide further funding
4 as it considers appropriate.

5 (c) The Legislature declares its intention to use the fund as
6 a means of conserving a portion of the state's revenue derived from
7 the increased revenue proceeds received by the state as a result of
8 any new oil production and Marcellus Shale and other new gas
9 formations as well as other funding sources as the Legislature may
10 designate in order to meet future needs. The Legislature further
11 declares its intention that the fund should maintain safety of
12 principal while maximizing total return and that principal and
13 interest not be used for any purpose other than to meet future
14 needs that may arise including diversification of the state's
15 economy, tax relief, enhancing education and workforce development
16 and for purposes which other funding sources are not available.
17 The principal and interest of the Future Fund may not be used for
18 a term of twenty years in order to allow the fund to reach maximum
19 accumulation except for the purposes enumerated in this section.

20 (d) (1) Effective July 1, 2014, one percent of the total tax
21 attributable to the severance of oil and gas imposed by section
22 three-a of this article, including any amount in excess of the
23 baseline set by subsection (a) of this section, shall be
24 transferred to the county commissions of the oil and gas producing

1 counties as provided in this subsection.

2 (2) Effective July 1, 2014, two percent of the total tax
3 attributable to the severance of oil and gas imposed by section
4 three-a of this article, including any amount in excess of the
5 baseline set by subsection (a) of this section, shall be
6 transferred to the governing bodies of municipalities within the
7 oil and gas producing counties as provided in this section.

8 (3) The proceeds dedicated in subdivisions (1) and (2) of this
9 subsection may not exceed the sum of \$20 million per year.

10 (e) The amounts of the tax dedicated in subsection (d) of this
11 section shall be deposited, from time to time, into a special fund
12 known as the Oil and Gas County and Municipality Reallocated
13 Severance Tax Fund, which is hereby established in the State
14 Treasury, as the proceeds are received by the State Tax
15 Commissioner.

16 (f) The net proceeds of the deposits made into the Oil and Gas
17 County and Municipality Reallocated Severance Tax Fund shall be
18 allocated among and distributed quarterly to the oil and gas
19 producing counties and their respective municipalities by the State
20 Treasurer in the manner specified in this section. On or before
21 each distribution date, the State Treasurer shall determine the
22 total amount of moneys that will be available for distribution to
23 the respective counties and municipalities entitled to the moneys
24 on that distribution date. The amount to which an oil and gas

1 producing county or municipality is entitled from the Oil and Gas
2 County and Municipality Reallocated Severance Tax Fund shall be
3 determined in accordance with subsection (g) of this section. After
4 determining the amount each oil and gas producing county and
5 municipality are entitled to receive from the fund, a warrant of
6 the State Auditor for the sum due to each oil and gas producing
7 county and municipality shall be issued and a check drawn thereon
8 making payment of that amount to the oil and gas producing county
9 and municipality by hand, mail commercial delivery or electronic
10 transmission.

11 (g) The amount to which an oil and gas producing county or
12 municipality is entitled from the Oil and Gas County and
13 Municipality Reallocated Severance Tax Fund shall be determined by:

14 (1) Dividing the total amount of moneys in the fund then
15 available for distribution by the total number of barrels of oil
16 and total number of cubic feet of gas produced in this state during
17 the preceding quarter; and

18 (2) Multiplying the quotient thus obtained of each by number
19 of barrels of oil and number of cubic feet of gas produced in the
20 county or municipality during the preceding quarter.

21 (h) (1) No distribution made to a county or municipality under
22 this section may be deposited into the county's or municipality's
23 General Revenue Fund. The county commission of each county and the
24 governing body of each municipality receiving a distribution under

1 this section shall establish a special account to be known as the
2 "(Name of County or Municipality) Oil and Gas County (or
3 Municipality) Reallocated Severance Tax Fund" into which all
4 distributions made to that county or municipality under this
5 section shall be deposited.

6 (2) Moneys in the county's and municipality's oil and gas
7 county reallocated severance tax fund shall be expended by the
8 county commission and governing body of the municipality solely for
9 economic development projects and infrastructure projects.

10 (3) For purposes of this section:

11 (A) "Economic development project" means a project in the
12 state which is likely to foster economic growth and development in
13 the area in which the project is developed for commercial,
14 industrial, community improvement or preservation or other proper
15 purposes.

16 (B) "Infrastructure project" means a project in the state
17 which is likely to foster infrastructure improvements including,
18 but not limited to, post-mining land use, water or wastewater
19 facilities or a part thereof, storm water systems, steam, gas,
20 telephone and telecommunications, broadband development, electric
21 lines and installations, roads, bridges, railroad spurs, drainage
22 and flood control facilities, industrial park development or
23 buildings that promote job creation and retention.

24 (4) A county commission or governing body of a municipality

1 may not expend any of the funds available in its oil and gas county
2 and municipality reallocated severance tax fund for personal
3 services, for the costs of issuing bonds or for the payment of bond
4 debt service. Total funds available shall be directed to project
5 development which may include the costs of architectural and
6 engineering plans, site assessments, site remediation,
7 specifications and surveys and other expenses necessary or
8 incidental to determining the feasibility or practicability of an
9 economic development project or infrastructure project.

10 (i) On or before December 31, 2015, and December 1 of each
11 year thereafter, the county commission of each county and governing
12 body of each municipality receiving a distribution of funds under
13 this section shall deliver to the Joint Committee on Government and
14 Finance a written report setting forth the specific projects for
15 which those funds were expended during the preceding fiscal year,
16 a detailed account of those expenditures and a showing that the
17 expenditures were made for the purposes required by this section.

18 (j) An audit of funds distributed under this section may be
19 authorized at any time by the Joint Committee on Government and
20 Finance to be conducted by the Legislative Auditor at no cost to
21 the county commission audited.

22 (k) The State Tax Commissioner shall propose for legislative
23 approval legislative rules pursuant to article three, chapter
24 twenty-nine-a of this code for the administration of the provisions

1 of this section, and is authorized to promulgate emergency rules for those purposes pursuant to that article.