

1 **H. B. 4458**

2
3 (By Delegates Cowles, Andes, Armstead, Cadle,
4 Ellington, Espinosa, Faircloth, Householder,
5 Lane, McCuskey and R. Smith)

6 [Introduced February 11, 2014; referred to the
7 Committee on Education then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend and reenact §11-13A-20a of the Code of West
11 Virginia, 1931, as amended, relating to taxation;
12 establishing the Tax Reduction Fund in the State Treasury;
13 directing a portion of annual revenue attributable to the
14 severance tax on natural gas be deposited into the Tax
15 Reduction Fund; providing for appropriation and distribution
16 of funds in the Tax Reduction Fund contingent upon the
17 adoption of a constitutional amendment of the Constitution of
18 the State of West Virginia permitting the elimination or
19 reduction of personal property tax on inventory and equipment
20 held for commercial or industrial use; use of funds for the
21 purpose of tax reduction; distribution of funds to each county
22 and county school board; requiring moneys directed to counties
23 to be applied to reduce the personal property tax rate applied
24 to certain personal property held or used for commercial or
25 industrial use.

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

2 That §11-13A-20a of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted to read as follows:

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

5 **§11-13A-20a. Dedication of tax.**

6 (a) The amount of taxes collected under this article from
7 providers of health care items or services, including any interest,
8 additions to tax and penalties collected under article ten of this
9 chapter, less the amount of allowable refunds and any interest
10 payable with respect to such refunds, shall be deposited into the
11 Special Revenue Fund created in the State Treasurer's Office and
12 known as the Medicaid State Share Fund. ~~Said~~ The fund shall have
13 separate accounting for those health care providers as set forth in
14 articles four-b and four-c, chapter nine of this code.

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

20 (c) The amount of taxes on the privilege of severing timber
21 collected under section three-b of this article, including any
22 interest, additions to tax and penalties collected under article
23 ten of this chapter, less the amount of allowable refunds and any
24 interest payable with respect to such refunds, shall be paid into

1 a special revenue account in the State Treasury to be appropriated
2 by the Legislature for purposes of the Division of Forestry.

3 (d) Notwithstanding any other provision of this code to the
4 contrary, beginning January 1, 2009, there is hereby dedicated an
5 annual amount not to exceed \$4 million from annual collections of
6 the tax imposed by section three-d of this article to be deposited
7 into the West Virginia Infrastructure Fund, created in section
8 nine, article fifteen-a, chapter thirty-one of this code.

9 (e) Beginning with the fiscal year ending June 30, 2009, and
10 each fiscal year thereafter, the Tax Commissioner shall pay from
11 the taxes imposed in section three-d of this article, on October 1,
12 of each year, to the county economic development entities, as this
13 term is defined in this subsection, or county commissions as
14 provided in subsections (f) through (h) of this section, an amount
15 in the aggregate not to exceed \$4 million per fiscal year:
16 *Provided*, That on July 1, 2012, the Tax Commissioner shall deposit
17 the taxes imposed in section three-d of this article into a Special
18 Revenue Fund, which is hereby created in the State Treasurer's
19 Office and known as the Coalbed Methane Gas Distribution Fund:
20 *Provided, however*, That such deposit of taxes shall not exceed in
21 the aggregate \$4 million per fiscal year and moneys therein shall
22 be distributed by the State Treasurer pursuant to this section.
23 Prior to making any such payment the commissioner shall deduct the
24 amount of refunds lawfully paid and administrative costs authorized

1 by this code. All moneys distributed to the West Virginia
2 Infrastructure Fund pursuant to this section prior to July 1, 2011,
3 shall be returned to the Tax Commissioner and distributed to the
4 county economic development entities, as this term is defined in
5 this subsection, or county commissions as provided in this section.
6 For purposes of this section, the term "county economic development
7 entity" refers to a county economic development authority
8 established pursuant to article twelve, chapter seven of this code
9 or if a county does not have a county economic development
10 authority established pursuant to article twelve, chapter seven of
11 this code, an entity designated by resolution of the county
12 commission of the county as the lead entity for economic
13 development activities for the purpose of encouraging economic
14 development in the county which entity may be, but is not limited
15 to being, redevelopment authorities created pursuant to article
16 eighteen, chapter sixteen of this code; county economic development
17 corporations; regional economic development councils, corporations
18 or partnerships.

19 (f) Notwithstanding any provision of this article to the
20 contrary, prior to the deposit of the proceeds of the tax on
21 coalbed methane with each, county economic development entity or
22 county commission pursuant to subsection (e) of this section, the
23 Tax Commissioner shall undertake the following calculations:

24 (1) Seventy-five percent of the moneys to be deposited shall

1 be provisionally allocated for the various counties of this state
2 in which the coalbed methane was produced; and

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

7 (3) Moneys shall be provisionally allocated to each coalbed
8 methane producing county in direct proportion to the amount of tax
9 revenues derived from coalbed methane production in the county.

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

12 (5) Portional adjustments.

13 (A) If, for any year, a coalbed methane producing county's
14 share of money provisionally allocated to that county is computed
15 to be an amount that is less than the amount provisionally
16 allocated to each of the coalbed methane nonproducing counties,
17 then for purposes of the computations set forth in this subsection,
18 that coalbed methane producing county shall be redesignated a
19 coalbed methane nonproducing county. The money that has been
20 provisionally allocated to that coalbed methane producing county
21 out of the seventy-five percent portion specified in subdivision
22 (1) of this subsection shall be subtracted out of the seventy-five
23 percent portion specified in that subdivision and added to the
24 twenty-five percent portion specified in subdivision (2) of this

1 subsection.

2 (B) When the adjustment specified in paragraph (A), of this
3 subdivision has been made for each coalbed methane producing county
4 that has been redesignated as a coalbed methane nonproducing
5 county, then the Tax Department shall finalize the calculations of
6 the amounts to be made available for distribution to the respective
7 county economic development entity or county commission of the
8 coalbed methane producing counties that have not been redesignated
9 as coalbed methane nonproducing counties under paragraph (A) of
10 this subdivision as follows: The amount remaining in the
11 provisional seventy-five percent portion specified in subdivision
12 (1) of this subsection, as adjusted in accordance with paragraph
13 (A) of this subdivision, shall be allocated, in direct proportion
14 to the amount that tax revenues derived from coalbed methane
15 production in each such county not redesignated as a coalbed
16 methane nonproducing county bears to the total amount of tax
17 revenues derived from coalbed methane production in all coalbed
18 methane producing counties that have not been redesignated as a
19 coalbed methane nonproducing county.

20 (C) The Tax Commissioner shall then finalize the calculation
21 of the total amount in the twenty-five percent portion specified in
22 subdivision (2) of this subsection, as adjusted in accordance with
23 paragraph (A) of this subdivision equally among the coalbed methane
24 nonproducing counties.

1 (D) The Tax Commissioner, upon completing the calculation of
2 the total amount of tax to be distributed to all coalbed methane
3 producing counties and to all coalbed methane nonproducing
4 counties, shall deposit an amount equal to the amount so calculated
5 in the Coalbed Methane Gas Distribution Fund, subject to the
6 limitations set forth in this section.

7 (g) In no case may the total amount distributed in any fiscal
8 year to the aggregate of all coalbed methane producing counties and
9 all coalbed methane nonproducing counties calculated by the Tax
10 Commissioner exceed the total amount of tax on coalbed methane
11 authorized to be remitted to the county economic development
12 entities and county commissions pursuant to subsection (e) of this
13 section.

14 (h) Distribution of coalbed methane severance tax to county
15 economic development entities or county commissions is subject to
16 the following:

17 (1) If the amount determined pursuant to subsections (f) and
18 (g) of this section for a county is more than \$10,000, the State
19 Treasurer shall distribute the amount determined for that county to
20 the county economic development entity. The State Treasurer is
21 hereby authorized to distribute accumulated but undistributed
22 moneys from fiscal years 2009, 2010, 2011 and 2012 to each county
23 economic development entity.

24 (2) Each county economic development entity shall use such

1 funds for economic development projects and infrastructure
2 projects.

3 (3) For purposes of this section:

4 (A) "Economic development project" means a project in the
5 state which is likely to foster economic growth and development in
6 the area in which the project is developed for commercial,
7 industrial, community improvement or preservation or other proper
8 purposes.

9 (B) "Infrastructure project" means a project in the state
10 which is likely to foster infrastructure improvements and covers
11 post mining land use, water or wastewater facilities, stormwater
12 systems, steam, gas, telephone and telecommunications, broadband
13 development, electric lines and installations, roads, bridges,
14 railroad spurs, drainage and flood control facilities, industrial
15 park development, road or buildings that promote job creation and
16 retention.

17 (4) Prior to expending any coalbed methane severance tax
18 moneys, each county economic development entity must obtain the
19 approval of its respective county commission, or the county
20 commission or commissions representing the county or counties where
21 the economic development or infrastructure project will be situate
22 if the county economic development entity is regional and
23 encompasses more than one county, in writing for the purpose of
24 such expenditure.

1 (5) A county commission or county economic development entity
2 may not use funds distributed to it pursuant to subsections (e),
3 (f), (g) and (h) of this section for the purposes of paying wages
4 to any employee of the county or any employee of a county economic
5 development entity.

6 (6) If the amount determined pursuant to subsections (f) and
7 (g) of this section for a county is \$10,000 or less, the State
8 Treasurer shall distribute the amount determined for that county to
9 the county commission. The county commission may then use the
10 funds to offset its regional jail costs, costs of any community
11 corrections programs in which it participates, expenses of a
12 volunteer fire department that provides service within its county
13 or expenses of any library that provides services within its
14 county.

15 (i) On or before December 1, 2013, and December 1 of each year
16 thereafter, the county economic development entity as defined in
17 this section or county commission receiving a distribution of funds
18 under this section shall deliver to the Joint Committee on
19 Government and Finance a written report setting forth the specific
20 projects for which those funds were expended during the next
21 preceding fiscal year, a detailed account of those expenditures and
22 a showing that the expenditures were made for the purposes required
23 by this section.

24 (j) An audit of any funds distributed under this section may

1 be authorized at any time by the Joint Committee on Government and
2 Finance to be conducted by the Legislative Auditor at no cost to
3 the county economic development entity or county commission
4 audited.

5 (k) (1) Notwithstanding any other provision of this code to
6 the contrary, beginning July 1, 2015, and in each succeeding fiscal
7 year, the revenue received during the fiscal year, attributable to
8 the tax imposed on the severance of natural gas in section three-a
9 of this article in excess of \$68 million and which is not dedicated
10 for the specific purposes as provided in section five-a of this
11 article, shall be deposited into a special fund known as the Tax
12 Reduction Fund which is hereby established in the State Treasury.
13 Other funds may be deposited in the fund from any other source,
14 including funds appropriated by the Legislature.

15 (2) Funds in the Tax Reduction Fund are hereby dedicated to be
16 appropriated or distributed as follows:

17 (A) Beginning with the fiscal year after June 30, 2016, and
18 for each succeeding fiscal year until the fiscal year, if any, in
19 which an amendment to the Constitution of the State of West
20 Virginia is ratified which permits elimination or reduction of the
21 ad valorem personal property tax on inventory and equipment held
22 for commercial or industrial use, the distributions from the fund
23 shall be made as appropriated by the Legislature for the purpose of
24 tax reduction for the benefit of the citizens of the State of West

1 Virginia as it considers appropriate: *Provided*, That no more than
2 fifty percent of each fiscal year's revenue deposited in the Tax
3 Reduction Fund may be so appropriated.

4 (B) Within sixty days of the beginning of the first fiscal
5 year following the ratification of an amendment to the
6 Constitution of the State of West Virginia which permits the
7 elimination or reduction of the ad valorem personal property tax on
8 inventory and equipment held for commercial or industrial use, and
9 in each fiscal year thereafter, the Treasurer shall annually
10 distribute from the balance of the Tax Reduction Fund on a
11 proportionate basis to each county and county school board of the
12 state an amount of moneys which shall be apportioned among the
13 levying units of the state in proportion to the levy laid upon the
14 Class III and Class IV personal property held for ongoing
15 commercial use within each levying unit as reported on the
16 certificate of valuation filed by each county with the Department
17 of Tax and Revenue for the preceding year.

NOTE: The purpose of this bill is to dedicate a portion of natural gas severance tax proceeds into the newly created Tax Reduction Fund. The bill permits up to 50% of moneys from that fund to be distributed for the purpose of tax reduction for the benefit of the citizens of West Virginia as the Legislature deems appropriate. The bill provides that, upon the ratification of a Constitutional Amendment that permits the elimination or reduction of the personal property tax on inventory and equipment held for commercial or industrial use, the fund then be annually distributed to counties and county school boards on a proportionate basis. The bill further sets forth how any moneys would be distributed to the

counties.

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