

H. B. 2268

(By Delegates Hamilton, A. Evans, Lynch, Wagner, J. Nelson,
Campbell, Hartman, Sponaugle, Canterbury, Williams and Ashley)

[Introduced January 23, 2015; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended; and to
amend and reenact §11-13V-4 of said code, all relating to removing the severance tax on
timber.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3b of the Code of West Virginia, 1931, as amended, be amended and
reenacted; and that §11-13V-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3b. Imposition of tax on privilege of severing timber.

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the
business of severing timber for sale, profit or commercial use, there is hereby levied and shall be
collected from every person exercising such privilege, an annual privilege tax.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be three
and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross
proceeds derived from the sale thereof by the producer, except as otherwise provided in this article:

1 *Provided*, That as to timber produced after December 31, 2006 the rate of the tax imposed in
 2 subsection (a) of this section shall be one and twenty-two hundredths percent of the gross value of
 3 the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer,
 4 except as otherwise provided in this article.

5 (c) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all persons
 6 severing timber in this state and shall be in addition to all other taxes imposed by law.

7 (d) *Elimination of tax.* -- ~~Beginning in the tax year 2010 and continuing until the imposition~~
 8 ~~of the additional tax on the privilege of severing timber imposed by subsection (c), section four,~~
 9 ~~article thirteen-v of this chapter expires under the authority of subsection (g), section four, article~~
 10 ~~thirteen-v of this chapter, the tax imposed by this section is discontinued. On and after expiration of~~
 11 ~~the additional tax on the privilege of severing timber imposed by subsection (c), section four, article~~
 12 ~~thirteen-v of this chapter, the tax imposed by this section resumes, and shall apply to all persons~~
 13 ~~severing timber in this state at the rate of one and twenty-two hundredths percent of the gross value~~
 14 ~~of the timber produced, as shown by the gross proceeds derived from the sale thereof by the~~
 15 ~~producer, except as otherwise provided in this article. Beginning in the tax year 2015 the tax~~
 16 ~~imposed by this section shall terminate and expire.~~

17 **ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.**

18 **§11-13V-4. Imposition of tax.**

19 (a) *Imposition of additional tax on privilege of severing coal.* -- Upon every person exercising
 20 the privilege of engaging within this state in severing, extracting, reducing to possession or
 21 producing coal for sale, profit or commercial use, there is hereby imposed an additional annual
 22 severance tax for exercising the privilege after November 30, 2005. The tax shall be \$.56 per ton

1 and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after
2 November 30, 2005, for sale, profit or commercial use during the taxable year. When the person
3 mining the coal sells raw coal, the measure of tax shall be ton of clean coal determined in accordance
4 with rules promulgated by the Tax Commissioner as provided in article three, chapter twenty-nine-a
5 of this code. If this rule is filed for public comment before July 1, 2005, the rule may be
6 promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed with
7 respect to the severance and production of coal in this state including, but not limited to, the taxes
8 imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections eleven
9 and thirty-two, article three, chapter twenty-two of this code, if applicable.

10 (b) *Imposition of additional tax on privilege of severing natural gas.* -- For the privilege of
11 engaging or continuing within this state in the business of severing natural gas for sale, profit or
12 commercial use, there is hereby levied and shall be collected from every person exercising this
13 privilege an additional annual privilege tax. The rate of this additional tax shall be \$. 47 per mcf of
14 natural gas and the measure of the tax is natural gas produced after November 30, 2005, determined
15 at the point where the production privilege ends for purposes of the tax imposed by section three-a,
16 article thirteen-a of this chapter, and with respect to which the tax imposed by section three-a of said
17 article thirteen-a is paid. The additional tax imposed by this subsection shall be collected with
18 respect to natural gas produced after November 30, 2005.

19 (c) *Imposition of additional tax on privilege of severing timber.* -- For the privilege of
20 engaging or continuing within this state in the business of severing timber for sale, profit or
21 commercial use, there is hereby levied and shall be collected from every person exercising this
22 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the

1 gross value of the timber produced, determined at the point where the production privilege ends for
2 purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the
3 tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this
4 subsection shall be collected with respect to timber produced after November 30, 2005: *Provided,*
5 That during the period of discontinuance of the tax as provided in subsection (d), section three-b,
6 article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined
7 as provided in this subsection in the same manner as if the tax described under section three-b, article
8 thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g)
9 of this section.

10 (d) *No pyramiding of tax burden.* -- Each ton of coal and each mcf of natural gas severed in
11 this state after the effective date of the taxes imposed by this section shall be included in the measure
12 of a tax imposed by this section only one time.

13 (e) *Effect on utility rates.* -- The Public Service Commission shall, upon the application of
14 any public utility that, as of the effective date of the taxes imposed by this section, is not currently
15 making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs
16 because the mechanism historically used to make such periodic adjustments is suspended by an order
17 of the commission, allow such utility to defer, for future recovery from its customers, any increase
18 in its costs attributable to the taxes imposed by this section upon: Coal and natural gas severed in
19 this state and utilized in the production of electricity generated or produced in this state and sold to
20 customers in this state; coal and natural gas severed in this state and utilized in the production of
21 electricity not generated or produced in this state that is sold to customers in this state; and natural
22 gas severed in this state that is sold to customers in this state.

1 (f) *Dedication of new taxes.* -- The net amount of all moneys received by the Tax
2 Commissioner from collection of the taxes imposed by this section, including any interest, additions
3 to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this
4 code, shall be deposited in the Workers' Compensation Debt Reduction Fund created in article two-
5 d, chapter twenty-three of this code. As used in this section, "net amount of all taxes received by the
6 Tax Commissioner" means the gross amount received by the Tax Commissioner less the amount of
7 any refunds paid for overpayment of the taxes imposed by this article, including the amount of any
8 interest on the overpayment amount due the taxpayer under the provisions of section fourteen, article
9 ten of this chapter.

10 (g) *Sunset expiration date of taxes.* -- The new taxes imposed by this section shall expire and
11 not be imposed with respect to privileges exercised on and after the first day of the month following
12 the month in which the Governor certifies to the Legislature that: (1) The revenue bonds issued
13 pursuant to article two-d, chapter twenty-three of this code, have been retired, or payment of the debt
14 service provided for; and (2) that an independent certified actuary has determined that the unfunded
15 liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided
16 for in its entirety: Provided, That the severance tax imposed by this section and by section three-b,
17 article thirteen-a of this chapter for the privilege of engaging or continuing within this state in the
18 business of severing timber for sale, profit or commercial use, shall terminate and expire on the
19 effective date of the enactment of the amendment to this section. Expiration of the taxes imposed
20 in this section as provided in this subsection shall not relieve any person from payment of any tax
21 imposed with respect to privileges exercised before the expiration date.

NOTE: The purpose of this bill is to remove the severance tax on timber.

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