

H. B. 2394

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(By Delegates R. Smith, R. Phillips, J. Nelson, Wagner, Summers,
Marcum, H. White, Arvon, L. Phillips, Kessinger and Storch)

[Introduced January 27, 2015; referred to the
Committee on Energy then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended, relating
to repealing the additional tax on the privilege of severing coal, effective July 1, 2015.

Be it enacted by the Legislature of West Virginia:

That §11-13V-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
to read as follows:

ARTICLE 13V. WORKERS’ COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

(a) *Imposition of additional tax on privilege of severing coal.* -- Upon every person exercising
the privilege of engaging within this state in severing, extracting, reducing to possession or
producing coal for sale, profit or commercial use, there is hereby imposed an additional annual
severance tax for exercising the privilege after November 30, 2005. The tax shall be \$.56 per ton
and the measure of the tax is tons of clean coal severed or produced in this state by the taxpayer after
November 30, 2005, for sale, profit or commercial use during the taxable year. When the person
mining the coal sells raw coal, the measure of tax shall be a ton of clean coal determined in

1 accordance with rules promulgated by the Tax Commissioner as provided in article three, chapter
2 twenty-nine-a of this code. If this rule is filed for public comment before July 1, 2005, the rule may
3 be promulgated as an emergency legislative rule. This tax shall be in addition to all taxes imposed
4 with respect to the severance and production of coal in this state including, but not limited to, the
5 taxes imposed by articles twelve-d and thirteen-a of this chapter and the taxes imposed by sections
6 eleven and thirty-two, article three, chapter twenty-two of this code, if applicable.

7 (b) *Imposition of additional tax on privilege of severing natural gas.* -- For the privilege of
8 engaging or continuing within this state in the business of severing natural gas for sale, profit or
9 commercial use, there is hereby levied and shall be collected from every person exercising this
10 privilege an additional annual privilege tax. The rate of this additional tax shall be \$.047 per mcf
11 of natural gas and the measure of the tax is natural gas produced after November 30, 2005,
12 determined at the point where the production privilege ends for purposes of the tax imposed by
13 section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by section
14 three-a of said article thirteen-a is paid. The additional tax imposed by this subsection shall be
15 collected with respect to natural gas produced after November 30, 2005.

16 (c) *Imposition of additional tax on privilege of severing timber.* -- For the privilege of
17 engaging or continuing within this state in the business of severing timber for sale, profit or
18 commercial use, there is hereby levied and shall be collected from every person exercising this
19 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of the
20 gross value of the timber produced, determined at the point where the production privilege ends for
21 purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon which the
22 tax imposed by section three-b of said article thirteen-a is paid. The additional tax imposed by this

1 subsection shall be collected with respect to timber produced after November 30, 2005: *Provided,*
2 That during the period of discontinuance of the tax as provided in subsection (d), section three-b,
3 article thirteen-a of this chapter, the additional tax imposed by this subsection shall be determined
4 as provided in this subsection in the same manner as if the tax described under section three-b, article
5 thirteen-a of this chapter is being imposed and collected, subject to the provisions of subsection (g)
6 of this section.

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

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

20 (f) *Dedication of new taxes.* -- The net amount of all moneys received by the Tax
21 Commissioner from collection of the taxes imposed by this section, including any interest, additions
22 to tax, or penalties collected with respect to these taxes pursuant to article ten, chapter eleven of this

1 code, shall be deposited in the Workers' Compensation Debt Reduction Fund created in article
2 two-d, chapter twenty-three of this code. As used in this section, "net amount of all taxes received
3 by the Tax Commissioner" means the gross amount received by the Tax Commissioner less the
4 amount of any refunds paid for overpayment of the taxes imposed by this article, including the
5 amount of any interest on the overpayment amount due the taxpayer under the provisions of section
6 fourteen, article ten of this chapter.

7 (g) *Sunset expiration date of taxes.* -- The new tax imposed by subsection (a) of this section
8 shall expire and not be imposed with respect to the privilege exercised on and after July 1, 2015.
9 The new taxes imposed by subsections (b) and (c) of this section shall expire and not be imposed
10 with respect to privileges exercised on and after the first day of the month following the month in
11 which the Governor certifies to the Legislature that: (1) The revenue bonds issued pursuant to article
12 two-d, chapter twenty-three of this code, have been retired, or payment of the debt service provided
13 for; and (2) that an independent certified actuary has determined that the unfunded liability of the
14 old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.
15 Expiration of the taxes imposed in this section as provided in this subsection shall not relieve any
16 person from payment of any tax imposed with respect to privileges exercised before the expiration
17 date.

NOTE: The purpose of this bill is to repeal the additional tax on coal effective July 1, 2015.

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