

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4668

(BY DELEGATES BYRD, J. NELSON, MARCUM, PHILLIPS,
ROWE, MCCUSKEY, STANSBURY, B. WHITE, E. NELSON,
GUTHRIE AND PUSHKIN)

[Originating in the Committee on Finance,
February 27, 2016.]

1 A BILL to amend and reenact §11-13A-6 of the Code of West Virginia, 1931, as amended, relating
2 to raising the allowable threshold of the coal severance tax revenue fund budgeted for
3 personal services from one fourth to one half; and directing State Auditor report of county
4 special budgets to Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

1 That §11-13A-6 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

**§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication
of additional tax for benefit of counties and municipalities; distribution of
major portion of such additional tax to coal-producing counties; distribution
of minor portion of such additional tax to all counties and municipalities;
reports; rules; special funds in office of State Treasurer; method and
formulas for distribution of such additional tax; expenditure of funds by
counties and municipalities for public purposes; special funds in counties
and municipalities; and requiring special county and municipal budgets and
reports thereon.**

1 (a) *Additional coal severance tax.* — Upon every person exercising the privilege of
2 engaging or continuing within this state in the business of severing coal, or preparing coal (or both
3 severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an
4 additional severance tax, the amount of which shall be equal to the value of the coal severed or
5 prepared (or both severed and prepared), against which the tax imposed by section three of this
6 article is measured as shown by the gross proceeds derived from the sale of the coal by the
7 producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this
8 subsection is in addition to the tax imposed by section three of this article, and this additional tax
9 is referred to in this section as the “additional tax on coal”.

10 (b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article
11 ten of the West Virginia Constitution. Seventy-five percent of the net proceeds of this additional
12 tax on coal shall be distributed by the State Treasurer in the manner specified in this section to
13 the various counties of this state in which the coal upon which this additional tax is imposed was
14 located at the time it was severed from the ground. Those counties are referred to in this section
15 as the “coal-producing counties”. The remaining twenty-five percent of the net proceeds of this
16 additional tax on coal shall be distributed among all the counties and municipalities of this state
17 in the manner specified in this section.

18 (c) The additional tax on coal shall be due and payable, reported and remitted as
19 elsewhere provided in this article for the tax imposed by section three of this article, and all of the
20 enforcement and other provisions of this article shall apply to the additional tax. In addition to the
21 reports and other information required under the provisions of this article and the tonnage reports
22 required to be filed under the provisions of section seventy-seven, article two, chapter twenty-
23 two-a of this code, the Tax Commissioner is hereby granted plenary power and authority to
24 promulgate reasonable rules requiring the furnishing by producers of such additional information
25 as may be necessary to compute the allocation required under the provisions of subsection (f) of
26 this section. The Tax Commissioner is also hereby granted plenary power and authority to
27 promulgate such other reasonable rules as may be necessary to implement the provisions of this
28 section: *Provided*, That notwithstanding any language contained in this code to the contrary, the
29 gross amount of additional tax on coal collected under this article shall be paid over and distributed
30 without the application of any credits against the tax imposed by this section.

31 (d) In order to provide a procedure for the distribution of seventy-five percent of the net
32 proceeds of the additional tax on coal to the coal-producing counties, the special fund known as
33 the “county coal revenue fund” established in the State Treasurer’s office by chapter one hundred
34 sixty-two, Acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent
35 acts of the Legislature, is hereby continued. In order to provide a procedure for the distribution of

36 the remaining twenty-five percent of the net proceeds of the additional tax on coal to all counties
37 and municipalities of the state, without regard to coal having been produced therein, the special
38 fund known as the "all counties and municipalities revenue fund" established in the State
39 Treasurer's office by chapter one hundred sixty-two, Acts of the Legislature, 1985 regular session,
40 as amended and reenacted in subsequent acts of the Legislature, is hereby redesignated as the
41 "all counties and municipalities coal revenue fund" and is hereby continued.

42 Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited
43 in the county coal revenue fund and twenty-five percent of the net proceeds shall be deposited in
44 the all counties and municipalities coal revenue fund, from time to time, as the proceeds are
45 received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective
46 counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this
47 section.

48 (e) The moneys in the county coal revenue fund and the moneys in the all counties and
49 municipalities coal revenue fund shall be allocated among and distributed quarterly to the counties
50 and municipalities entitled to the moneys by the State Treasurer in the manner specified in this
51 section. On or before each distribution date, the State Treasurer shall determine the total amount
52 of moneys in each fund which will be available for distribution to the respective counties and
53 municipalities entitled to the moneys on that distribution date. The amount to which a coal-
54 producing county is entitled from the county coal revenue fund shall be determined in accordance
55 with subsection (f) of this section, and the amount to which every county and municipality is
56 entitled from the all counties and municipalities coal revenue fund shall be determined in
57 accordance with subsection (g) of this section. After determining as set forth in subsection (f) and
58 subsection (g) of this section the amount each county and municipality is entitled to receive from
59 the respective fund or funds, a warrant of the State Auditor for the sum due to each county or
60 municipality shall issue and a check drawn thereon making payment of such amount shall
61 thereafter be distributed to each such county or municipality.

62 (f) The amount to which a coal-producing county is entitled from the county coal revenue
63 fund shall be determined by: (1) Dividing the total amount of moneys in the fund then available
64 for distribution by the total number of tons of coal mined in this state during the preceding quarter;
65 and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the
66 ground in the county during the preceding quarter.

67 (g) The amount to which each county and municipality is entitled from the all counties and
68 municipalities coal revenue fund shall be determined in accordance with the provisions of this
69 subsection. For purposes of this subsection "population" means the population as determined by
70 the most recent decennial census taken under the authority of the United States:

71 (1) The Treasurer shall first apportion the total amount of moneys available in the all
72 counties and municipalities coal revenue fund by multiplying the total amount in the fund by the
73 percentage which the population of each county bears to the total population of the state. The
74 amount thus apportioned for each county is the county's "base share".

75 (2) Each county's base share shall then be subdivided into two portions. One portion is
76 determined by multiplying the base share by that percentage which the total population of all
77 unincorporated areas within the county bears to the total population of the county, and the other
78 portion is determined by multiplying the base share by that percentage which the total population
79 of all municipalities within the county bears to the total population of the county. The former portion
80 shall be paid to the county and the latter portion is the "municipalities' portion" of the county's
81 base share. The percentage of the latter portion to which each municipality in the county is entitled
82 shall be determined by multiplying the total of the latter portion by the percentage which the
83 population of each municipality within the county bears to the total population of all municipalities
84 within the county.

85 (h) All counties and municipalities shall create a "coal severance tax revenue fund" which
86 shall be the depository for moneys distributed to any county or municipality under the provisions
87 of this section, from either or both special funds. Moneys in the coal severance tax revenue fund,

88 in compliance with subsection (i) of this section, may be expended by the county commission or
89 governing body of the municipality for such public purposes as the county commission or
90 governing body shall determine to be in the best interest of the people of its respective county or
91 municipality: *Provided*, That in counties with population in excess of two hundred thousand, at
92 least seventy-five percent of the funds received from the county coal revenue fund shall be
93 apportioned to, and expended within the coal-producing area or areas of the county, said coal-
94 producing areas of each county to be determined generally by the State Tax Commissioner:
95 *Provided, however*, That the coal severance tax revenue fund moneys shall not be budgeted for
96 personal services in an amount to exceed ~~one-fourth~~ one half of the total funds available in such
97 fund.

98 (i) On or before March 28, 1986, and each March 28 thereafter, each county commission
99 or governing body of a municipality receiving such revenue shall submit to the ~~Tax Commissioner~~
100 State Auditor on forms provided by the ~~Tax Commissioner~~ State Auditor a special budget,
101 detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall
102 be followed in expending the revenue unless a subsequent budget is approved by the State Tax
103 Commissioner. All unexpended balances remaining in coal severance tax revenue fund at the
104 close of a fiscal year shall be reappropriated to the budget of the county commission or governing
105 body for the subsequent fiscal year. The reappropriation shall be entered as an amendment to
106 the new budget and submitted to the Tax Commissioner on or before July 15, of the current budget
107 year.

108 (j) On or before December 15, 1986, and each December 15 thereafter, the ~~Tax~~
109 ~~Commissioner~~ State Auditor shall deliver to the clerk of the ~~Senate and the Clerk of the House of~~
110 ~~Delegates~~ Joint Committee on Government and Finance, a consolidated report of the special
111 budgets, created by subsection (i) of this section, for all county commissions and municipalities
112 as of July 15, of the current year.

113 (k) The State Tax Commissioner shall retain for the benefit of the state from the additional
114 taxes on coal collected the amount of \$35,000 annually as a fee for the administration of such
115 additional tax by the Tax Commissioner.