WEST VIRGINIA LEGISLATURE

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Introduced

Senate Bill 486

FISCAL NOTE

BY SENATORS OJEDA, BALDWIN, BEACH, FACEMIRE,

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AND UNGER

[Introduced February 5, 2018; Referred

to the Committee on Banking and Insurance; and then to

the Committee on Finance]

A BILL to amend and reenact §11-13A-3a and §11-13A-5a of the Code of West Virginia, 1931, as amended, all relating to stabilizing Public Employees Insurance Agency (PEIA) benefits; dedicating a portion of the severance tax on natural gas to the benefit of public employee and retiree health care; creating a special fund account entitled the PEIA Fund; and requiring the increase in the severance tax on natural gas to be deposited into the PEIA Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit, or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

<u>Effective July 1, 2018, 33 per cent of the severed tax on natural gas shall be dedicated to the Public Employees Insurance Agency.</u>

(c) *Tax in addition to other taxes.* -- The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission, and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; <u>distribution of a portion of such dedicated tax to the Public Employees Insurance Agency;</u> reports; rules; special funds in the office of State Treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 1997, and thereafter, 10 percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 2018, 33 percent of the 7.5 per cent of the severed tax on natural gas imposed by §11-13A-3a of this code shall be dedicated for the use and benefit of funding the Public Employees Insurance Agency. Thirty-three per cent of the 7.5 per cent of the severed tax on natural gas imposed shall be placed in the newly created PEIA Fund in the West Virginia Treasurer's office for the benefit of funding the Public Employees Insurance Agency.

(b) Seventy-five percent of this dedicated tax shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining 25 percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The Tax Commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The Tax Commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax on oil and gas to the oil and gas producing counties, the special fund known as the Oil and Gas

Revenue Fund established in State Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining 25 percent of the dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the All Counties and Municipalities Revenue Fund established in State Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is hereby re-designated as the "All Counties and Municipalities Oil and Gas Revenue Fund" and is hereby continued.

Seventy-five percent of the dedicated tax on oil and gas shall be deposited in the Oil and Gas Revenue Fund and 25 percent of the dedicated tax on oil and gas shall be deposited in the All Counties and Municipalities Oil and Gas Revenue Fund, from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the Oil and Gas Revenue Fund and the moneys in the All Counties and Municipalities Oil and Gas Revenue Fund shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the Oil and Gas Revenue Fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the All Counties and Municipalities Oil and Gas Revenue Fund shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (g) of this section, the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the Oil and Gas Revenue Fund shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

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

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

(2) Each county's base share shall then be subdivided into two portions. One portion is

determined by multiplying the base share by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the base share by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's base share. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: *Provided,* That in counties with population in excess of 200,000, at least 75 percent of the funds received from the Oil and Gas Revenue Fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the State Tax Commissioner: *Provided, however,* That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before March 28, 1997, and each March 28, each county commission or governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the State Tax Commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the General Fund and may be expended by the county or municipality without restriction.

(j) On or before December 15, 1996, and each December 15 thereafter, the Tax Commissioner shall deliver to the clerk of the Senate and the Clerk of the House of Delegates a consolidated report of the budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July 15, of the current year.

(k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of $35,000 annually as a fee for the administration of the additional tax by the Tax Commissioner.

NOTE: The purpose of this bill is to stabilize the public employees insurance agency benefits. The bill dedicates a portion of the severance tax on natural gas to the benefit of public employee and retiree health care. The bill creates a special fund account entitled the PEIA Fund. The bill requires that portion of the severance tax on natural gas to be deposited into the PEIA Fund.

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