

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4574

FISCAL
NOTE

BY DELEGATE MAYNARD

[Introduced February 13, 2018; Referred
to the Committee on Energy then Finance.]

1 A BILL to amend and reenact §11-13A-3a and §11-13A-5a of the Code of West Virginia, 1931,
2 as amended, to amend and reenact §37-7-2 of said code; and to amend said code by
3 adding thereto a new article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4,
4 §37-16-5, and §37-16-6, all relating to development of interests in natural gas and oil;
5 providing an additional measure of tax for the severance of natural gas and providing for
6 distribution of the revenues from the additional measure to be used to contribute to teacher
7 salaries in all counties; establishing a special fund for receipt of money from the additional
8 measure of severance tax; providing an exception to waste and trespass for certain oil or
9 natural gas developments; providing declarations of public policy and legislative findings;
10 defining terms; providing for development of oil and natural gas estates by persons owning
11 three fourths of the royalty interests; providing that nonconsenting cotenants may elect a
12 production royalty interest or a working interest share of production; providing that
13 interests owned by unknown or unlocatable owners be reserved, reported, and deposited
14 in a special fund; creating the Unknown and Unlocatable Interest Owners Fund, to be
15 administered by the State Treasurer in conjunction with the West Virginia Uniform
16 Unclaimed Property Act; empowering the Oil and Gas Conversation Commission to
17 enforce certain provisions hereof and to make determinations of reasonable terms and
18 conditions; granting rulemaking authority to the Oil and Gas Conversation Commission;
19 providing liability protection for damages resulting from the lawful use or development of
20 oil or natural gas mineral property; establishing basic provisions for determinations of
21 royalties and declaring that royalties shall not be reduced by production expenses incurred
22 by an operator; specifying damages for injury to surface property; and limiting liabilities for
23 nonconsenting cotenants.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

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.

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

14 (b) *Rate and measure of tax.* -- The base tax imposed in subsection (a) of this section
15 shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross
16 proceeds derived from the sale thereof by the producer, except as otherwise provided in this
17 article, and the tax imposed on the severance of natural gas produced after June 30, 2018, shall
18 also include an additional amount, to be known as the natural gas severance surtax, of 4.7 cents
19 per thousand cubic feet of natural gas produced.

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

22 (d)(1) The Legislature finds that in addition to the production reports and financial records
23 which must be filed by oil and gas producers with the State Tax Commissioner in order to comply
24 with this section, oil and gas producers are required to file other production reports with other

25 agencies, including, but not limited to, the office of oil and gas, the Public Service Commission
26 and county assessors. The reports required to be filed are largely duplicative, the compiling of the
27 information in different formats is unnecessarily time consuming and costly, and the filing of one
28 report or the sharing of information by agencies of government would reduce the cost of
29 compliance for oil and gas producers.

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

35 (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; 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.

1 (a) ~~Effective July 1, 1996, five percent of the tax attributable to the severance of oil and~~
2 ~~gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties~~
3 ~~and municipalities within this state and shall be distributed to the counties and municipalities as~~
4 ~~provided in this section~~ Effective July 1, 1997, and thereafter, 10 percent of the base tax
5 attributable to the severance of oil and gas imposed by §11-13A-3a of this code is hereby
6 dedicated for the use and benefit of counties and municipalities within this state and shall be
7 distributed to the counties and municipalities as provided in this section. Effective July 1, 2018,
8 the full amount of the natural gas severance surtax imposed by §11-13A-3a of this code shall be

9 deposited in a special fund hereby created in the State Treasury and hereby named as the
10 “Natural Gas Severance Teacher Pay Raise Fund.”

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

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

24 (d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax
25 on oil and gas to the oil and gas producing counties, the special fund known as the Oil and Gas
26 County Revenue Fund established in State Treasurer's office by chapter 242, Acts of the
27 Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the
28 Legislature, is hereby continued. In order to provide a procedure for the distribution of the
29 remaining 25 percent of the dedicated tax on oil and gas to all counties and municipalities of the
30 state, without regard to oil and gas having been produced in those counties or municipalities, the
31 special fund known as the all counties and municipalities revenue fund established in State
32 Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and
33 reenacted in the subsequent act of the Legislature, is hereby redesignated as the “All Counties
34 and Municipalities Oil and Gas Revenue Fund” and is hereby continued.

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

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

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

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

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

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

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

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

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

69 (g) The amount to which each county and municipality is entitled from the All Counties and
70 Municipalities Oil and Gas Revenue Fund shall be determined in accordance with the provisions
71 of this subsection. For purposes of this subsection "population" means the population as
72 determined by the most recent decennial census taken under the authority of the United States:

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

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

87 (h) Moneys distributed to any county or municipality under the provisions of this section,
88 from either or both special funds, shall be deposited in the county or municipal general fund and
89 may be expended by the county commission or governing body of the municipality for such
90 purposes as the county commission or governing body shall determine to be in the best interest
91 of its respective county or municipality: *Provided*, That in counties with population in excess of
92 200,000, at least 75 percent of the funds received from the oil and gas county revenue fund shall
93 be apportioned to and expended within the oil and gas producing area or areas of the county, the
94 oil and gas producing areas of each county to be determined generally by the State Tax
95 Commissioner: *Provided, however*, That the moneys distributed to any county or municipality
96 under the provisions of this section shall not be budgeted for personal services in an amount to
97 exceed one fourth of the total amount of the moneys.

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

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

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

113 (l) The Treasurer shall make regular distributions from the Natural Gas Severance
 114 Teacher Pay Raise Fund to every county in this state in proportion to the percentage which the
 115 population of each county bears to the total population of the state. Money distributed to a county
 116 according to this subsection shall be deposited in the county general fund, but shall be accounted
 117 separately from other revenue or distributions into the general fund. The money distributed from
 118 the Natural Gas Severance Teacher Pay Raise Fund shall be used solely for compensation of
 119 public education teachers.

CHAPTER 37. REAL PROPERTY.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

1 If a tenant in common, joint tenant, or parcener commit waste, he or she shall be liable to
 2 his or her cotenants, jointly or severally, for damages: Provided, That if the tenants in common,
 3 joint tenants, or parceners representing a majority of the ownership consent to lawful use of the
 4 property, such use shall be permissible, shall not constitute waste, and the cotenants, their
 5 agents, and assigns shall not be liable for damages if an accounting is provided and a pro rata
 6 share of the revenues and costs resulting from such use is distributed to or reserved for each
 7 tenant in common, joint tenant, or parcener who has not consented to the lawful use.

ARTICLE 16. MINERAL DEVELOPMENT BY COTENANTS.

§37-16-1. Declaration of public policy; legislative findings.

1 It is declared to be the public policy of this state and in the public interest to:

2 (1) Foster, encourage and promote exploration for and development, production, and
 3 conservation of oil, natural gas, and their constituents;

4 (2) Prohibit waste of oil, natural gas, and their constituents and unnecessary surface loss
 5 of oil, natural gas, and their constituents;

6 (3) Encourage the maximum recovery of oil, natural gas, and their constituents;

7 (4) Safeguard, protect, and enforce the correlative rights of operators and mineral owners
8 in that each such operator and mineral owner may obtain his or her just and equitable share of
9 production;

10 (5) Safeguard, protect, and enforce the integrity of the passive royalty owner's interest in
11 his or her minerals.

12 (6) Safeguard, protect, and enforce the rights of surface owners; and

13 (7) Protect and enforce the clear provisions of contracts lawfully made.

§37-16-2. Definitions.

1 As used in this article:

2 "Consenting Cotenant" means a tenant in common, joint tenant, or parcener having an
3 interest in the mineral property who consents in writing to a lawful use of the mineral property
4 through a bona fide lease made in an arms-length transaction;

5 "Nonconsenting Cotenant" means an owner who for any reason chooses not to consent
6 to a lawful use of the mineral property agreed to by persons owning, cumulatively, at least an
7 undivided three fourths interest in and to the mineral property;

8 "Operator" means any owner of at least an undivided three fourths interest of the right to
9 develop, operate and produce oil, natural gas, or their constituents, and to appropriate the oil,
10 natural gas, or their constituents produced therefrom;

11 "Post-production expense" means an expense or cost subsequent to production including,
12 but not limited to, an expense or cost related to severance taxes, pipelines, surface facilities,
13 telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing,
14 processing, treating or marketing of oil or natural gas and their constituents;

15 "Prorata share" means the allocation of revenues and costs attributable to the lawful use
16 of a mineral property that is calculated based on the proportion that the net acreage of such
17 ownership interest bears to the total net acreage in the mineral property, in a development or
18 production unit that includes, all or part of, that mineral property;

19 “Royalty owner” means any owner in place of oil or natural gas and their constituents,
20 owners of oil or natural gas leasing rights, and owners vested with any leasehold estate less than
21 25 percent of the total, to the extent that the owners are not an operator as defined in this section.
22 A royalty owner does not include a person whose interest is limited to: (A) A working interest in a
23 wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive
24 mineral interests; or (E) net profit interests; and

25 “Unknown or unlocatable interest owner” means a person vested with a present ownership
26 interest in the oil or natural gas and their constituents in place in a mineral property whose present
27 identity or location cannot be determined from:

28 (A) A reasonable review of the records of the clerk of the county commission, the sheriff,
29 the assessor, and the clerk of the circuit court in the county or counties in which the interest is
30 located, and includes unknown heirs, successors and assigns known to be alive;

31 (B) A reasonable inquiry in the vicinity of the owner’s last known place of residence;

32 (C) A diligent inquiry into known interest owners in the same tract; and

33 (D) A reasonable review of available Internet resources commonly utilized by the industry.

§37-16-3. Lawful use and development by cotenants; election of interests; reporting and
remitting of interests of unknown or unlocatable cotenants; establishment of terms
and provisions for development.

1 (a) If an operator or owner makes reasonable efforts to negotiate with all royalty owners
2 in an oil or natural gas mineral property and three fourths or more of the royalty owners, including
3 without limitation tenants in common, joint tenants or coparceners, consent to the lawful use or
4 development of the oil or natural gas mineral property, the operator’s or owner’s use or
5 development of the oil or natural gas mineral property is permissible, is not waste, and is not
6 trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors
7 or assigns are not liable for damages for waste or trespass due to the lawful use or development
8 if they pay nonconsenting royalty owners in accordance with subsections (b) and (c) of this

9 section, reserve the amounts specified in subsection (d) of this section for the benefit of unknown
10 or unlocatable interest owners, and report and remit the reserved interests as provided in
11 subsection (d) of this section.

12 (b) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

13 (1) A production royalty, paid on the gross proceeds received at the first point of sale to
14 an unaffiliated third-party purchaser and free of post-production expenses, equal to the highest
15 royalty percentage paid to his or her consenting cotenants in the same mineral property, and
16 lease bonus and delay rental payments equal to the average amount paid to such consenting
17 cotenants calculated on net mineral acre basis; or

18 (2) To participate in the development and receive his or her pro-rata share of the revenue
19 and cost equal to his or her share of production attributable to the tract or tracts being developed
20 according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding
21 royalty reserved in any lease, assignments thereof or agreements relating thereto, after the
22 market value of such nonconsenting cotenant's share of production, exclusive of such royalty and
23 overriding royalty, equals double the share of such costs payable or charged to the interest of
24 such nonconsenting cotenant.

25 (c) A nonconsenting cotenant shall have 45 days following the operator's written delivery
26 of its best and final lease offer in which to make his or her election for either a production royalty
27 or a revenue share as specified in subsection (b) of this section. If the nonconsenting cotenant
28 fails to deliver a written election to the operator prior to the expiration of such 45 day period, he
29 or she shall be deemed to have made the election set forth in subdivision (1), subsection (b), of
30 this section.

31 (d) Unknown or unlocatable interest owners are deemed to have made the election
32 provided by subdivision (1), subsection (b) of this section and are only entitled to receive the
33 amount provided by that subdivision. Within 120 days from the date upon which an amount is
34 reserved for an unknown or unlocatable interest owner pursuant to subsection (a) of this section,

35 the consenting cotenants and their lessees, operators, agents, contractors or assigns shall make
36 a report to the State Treasurer as the Unclaimed Property administrator and each calendar
37 quarter, thereafter, concerning each reserved interest for each unknown or unlocatable interest
38 owner and shall concurrently remit the amount reserved, in accordance with the provisions of
39 article two of this chapter, article eight of chapter thirty-six of this code and as determined by the
40 State Treasurer. The quarterly report and remittances shall be submitted by the first day of the
41 month following each calendar quarter.

42 (e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting
43 cotenant and any unknown or unlocatable interest owner who elects or is deemed to elect a
44 production royalty under subdivision (1), subsection (b), of this section is subject to and shall
45 benefit from the other terms and provisions defined by the leasehold executed by a consenting
46 cotenant which contains terms and provisions most favorable to the nonconsenting cotenant or
47 the unknown or unlocatable interest owner: *Provided*, That nonconsenting cotenants and
48 unknown or unlocatable interest owners shall not be subject to or liable under any warranty of
49 title.

50 (f) Unless otherwise agreed to in writing or defined by this section, a nonconsenting
51 cotenant who elects to participate under subdivision (2), subsection (b), of this section, shall be
52 subject to and shall benefit from other terms and provisions determined to be just and reasonable
53 by the Oil and Gas Conservation Commission in a manner similar to the provisions of §22C-9-1
54 *et seq.* of this code governing deep wells. The commission may propose rules for legislative
55 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and
56 make effective the provisions of this section and the powers and authority conferred and the duties
57 imposed upon the commission under the provisions of this section.

§37-16-4. Damages for injury to surface property.

1 Where an operator or operators have the right to develop multiple contiguous oil and gas
2 leases, the operator may develop these leases jointly by horizontal drilling unless the

3 development is expressly prohibited by the terms of a lease or agreement. In addition to the
4 surface damages payable pursuant to §22-6B-3 of this code and any surface damages owed
5 under common law, the operator shall pay the surface owner suffering damage to his or her
6 surface tract the greater of \$100,000 or the value of \$100,000 in July 2018 adjusted by the change
7 in the consumer price index as of the date of the damage for each well pad constructed by the
8 operator that results in damage to the surface owner's tract.

§37-16-5. Royalties for jointly-developed minerals.

1 (a) In determining the royalty where multiple contiguous leases are developed under §37-
2 16-3 of this code, in the absence of specific agreement language to the contrary, the production
3 shall be allocated to each lease in the proportion that the net acreage of each lease bears to the
4 total net acreage of the jointly developed tracts.

5 (b) In the absence of specific agreement language to the contrary, the royalty for all royalty
6 owners of the acreage jointly developed under §37-16-3 of this code shall not be reduced for post-
7 production expenses incurred by the operator. Nothing in this subsection is intended to impact
8 royalties due for wells drilled prior to the effective date of the original enactment of this chapter.

§37-16-6. Limitation of liability for nonconsenting cotenant.

1 A nonconsenting cotenant shall have no liability for bodily injury, property, damage, or
2 environmental claims arising out of site preparation, mineral extraction, maintenance,
3 reclamation, and other operations with respect to minerals produced from the cotenant's property.

NOTE: The purpose of this bill is to establish and define rights of mineral estate owners, surface owners, royalty owners, and operators for development of oil and gas interests through cotenancy in production, to authorize development of oil and gas through agreements for horizontal well drilling, and to levy an additional amount in tax for the severance of natural gas to be distributed to all counties and used to supplement teacher salaries.

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