

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 522

FISCAL
NOTE

BY SENATORS SMITH, MAYNARD, SYPOLT, TARR,

PLYMALE, CLINE, RUCKER, AND MARONEY

[Introduced February 5, 2019; Referred
to the Committee on Transportation and Infrastructure; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as
 2 amended; to amend said code by adding thereto a new section, designated §17-3-11; and
 3 to amend said code by adding thereto a new article, designated §17-30-1, §17-30-2, §17-
 4 30-3, §17-30-4, and §17-30-5, all relating to creating the Special Road Repair Fund for
 5 the maintenance and repair of the state's roads and highways; providing for two percent
 6 on the severance of natural gas and oil, and coal and other mining activities be transferred
 7 to the Special Road Repair Fund; requiring a one-time transfer of \$200 million from the
 8 Rainy Day Fund; requiring a think tank be formed; requiring rulemaking; and creating a
 9 procedure for contracting road maintenance projects.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

**§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or
 furnishing certain health care services, effective dates therefor; reduction of
 severance rate for coal mined by underground methods based on seam thickness.**

1 (a) *Imposition of tax.* — Upon every person exercising the privilege of engaging or
 2 continuing within this state in the business of severing, extracting, reducing to possession and
 3 producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of
 4 furnishing certain health care services, there is hereby levied and shall be collected from every
 5 person exercising such privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* — Subject to the provisions of subsection (g) of this section,
 7 the tax imposed in subsection (a) of this section shall be five percent of the gross value of the
 8 natural resource produced or the health care service provided, as shown by the gross income
 9 derived from the sale or furnishing thereof by the producer or the provider of the health care
 10 service, except as otherwise provided in this article. In the case of coal, this five percent rate of

11 tax includes the thirty-five one hundredths of one percent additional severance tax on coal
12 imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of
13 this code: Provided, That effective July 1, 2019, two percent of the severance taxes collected from
14 coal production in this state shall be deposited in the Special Road Repair Fund created by §17-
15 3-11 of this code.

16 (c) *“Certain health care services” defined.* — For purposes of this section, the term “certain
17 health care services” means, and is limited to, behavioral health services.

18 (d) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all
19 persons severing or processing, or both severing and processing, in this state natural resources
20 enumerated in subsection (a) of this section and to all persons providing certain health care
21 services in this state as enumerated in subsection (c) of this section and shall be in addition to all
22 other taxes imposed by law.

23 (e) *Effective date.* — This section, as amended in 1993, shall apply to gross proceeds
24 derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall
25 apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds,
26 shall be fully and completely preserved.

27 (f) *Reduction of severance tax rate.* — For tax years beginning after the effective date of
28 this subsection, any person exercising the privilege of engaging within this state in the business
29 of severing coal for the purposes provided in subsection (a) of this section shall be allowed a
30 reduced rate of tax on coal mined by underground methods in accordance with the following:

31 (1) For coal mined by underground methods from seams with an average thickness of 37
32 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the
33 gross value of the coal produced. For coal mined by underground methods from seams with an
34 average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall
35 be one percent of the gross value of the coal produced. Gross value is determined from the sale
36 of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one

37 percent additional severance tax imposed by the state for the benefit of counties and
38 municipalities as provided in §11-13A-6 of this code.

39 (2) This reduced rate of tax applies to any new underground mine producing coal after the
40 effective date of this subsection, from seams of less than 45 inches in average thickness or any
41 existing mine that has not produced coal from seams 45 inches or less in thickness in the one
42 hundred eighty days immediately preceding the effective date of this subsection.

43 (3) The seam thickness shall be based on the weighted average isopach mapping of
44 actual coal thickness by mine as certified by a professional engineer.

45 (g)(1) *Termination and expiration of the behavioral health severance and business*
46 *privilege tax.* — The tax imposed upon providers of health care services under the provisions of
47 this article shall expire, terminate and cease to be imposed with respect to privileges exercised
48 on or after July 1, 2016. Expiration of the tax as provided in this subsection shall not relieve any
49 person from payment of any tax imposed with respect to privileges exercised before the expiration
50 date.

51 (2) *Refunds made.* — The Tax Commissioner will issue a requisition on the treasury for
52 any amount finally, administratively or judicially determined to be an overpayment of the tax
53 terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
54 refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the
55 Treasurer shall pay the warrant out of the fund into which the amount refunded was originally
56 paid.

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

57 (a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the
58 business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied
59 and shall be collected from every person exercising such privilege an annual privilege tax:
60 *Provided, That effective for all taxable periods beginning on or after January 1, 2000, there is an*

61 exemption from the imposition of the tax provided in this article on the following: (1) Free natural
62 gas provided to any surface owner; (2) natural gas produced from any well which produced an
63 average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately
64 preceding a given taxable period; (3) oil produced from any oil well which produced an average
65 of less than one-half barrel of oil per day during the calendar year immediately preceding a given
66 taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any
67 well which has not produced marketable quantities of natural gas or oil for five consecutive years
68 immediately preceding the year in which a well is placed back into production and thereafter
69 produces marketable quantities of natural gas or oil.

70 (b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be
71 five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds
72 derived from the sale thereof by the producer, except as otherwise provided in this article:
73 Provided, That effective July 1, 2019, two percent of the severance taxes collected from oil and
74 gas production in this state shall be deposited in the Special Road Repair Fund created by §17-
75 3-11 of this code.

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

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

86 (2) On or before July 1, 2003, the Tax Commissioner shall design a common form that

87 may be used for each of the reports regarding production that are required to be filed by oil and
88 gas producers, which form shall readily permit a filing without financial information when such
89 information is unnecessary. The commissioner shall also design such forms so as to permit filings
90 in different formats, including, but not limited to, electronic formats.

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

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3. STATE ROAD FUND.

§17-3-11. Special Road Repair Fund.

1 (a) There is hereby created the Special Road Repair Fund for the maintenance and repair
2 of the state's roads and highways.

3 (b) The fund shall be comprised of the following:

4 (1) A one-time transfer of \$200 million from the state's Rainy Day Fund;

5 (2) Two percent of the tax collected pursuant to §11-13A-3 of this code relating to the tax
6 on the privilege and severing of coal, limestone, or sandstone; and

7 (3) Two percent of the tax collected pursuant to §11-13A-3a of this code relating to the tax
8 on the privilege and severing natural gas or oil.

9 (c) In order to better maintain and repair the state's roads and highways, the
10 Commissioner of the Division of Highways shall form a think tank comprised of Division of
11 Highways employees to develop strategies to that end. The think tank shall develop criteria, which
12 may be used in conjunction with current funding formulas, that will aid the commissioner in
13 identifying which counties require the most critical need so that proceeds from the Special Road
14 Repair Fund may be used in those counties first.

15 (d) The commissioner shall propose rules for legislative approval in accordance with §29A-
16 3-1 et seq. of this code to implement this section.

ARTICLE 30. ROAD MAINTENANCE PROGRAM.

§17-30-1. Legislative intent; purpose.

1 Whereas, the Legislature finds that the Division of Highways, through no fault of its own,
2 struggles to maintain roadways to the expectation of the citizens of this state. The purpose of the
3 Road Maintenance Program is to allow private companies to provide maintenance services for
4 the Division of Highways in each state district so that this state's roads will be properly maintained
5 and usable by the citizens of this state.

§17-30-2. Creation of the program; minimum amount of work; funds.

1 (a) The Division of Highways shall permit each district to contract with a private contractor
2 or private contractors to perform certain maintenance activities, including, but not limited to,
3 ditching, snow removal, and mowing along each district's roadways.

4 (b) Each district shall contract with a private contractor or private contractors to complete
5 a portion of maintenance activities for the district.

6 (c) Each district must use funds appropriated by the Division of Highways or additional
7 funds provided by the Division of Highways for the purpose of contracting with a private contractor
8 or private contractors to perform certain maintenance activities for the district.

§17-30-3. Purchasing requirements.

1 (a) Whenever a district reasonably anticipates a contract for services under §17-30-2 of
2 this code, the purchase or contract shall be based on competitive bids based on mileage or feet,
3 whichever is feasible for the contract to be performed. The district may solicit bids or price quotes
4 in any manner that the Division of Highways deems appropriate and the district shall obtain its
5 commodities or services by the lowest responsible bidder.

6 (b) The district may solicit sealed bids for such commodities or services: *Provided, That*
7 the district may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids
8 shall be solicited by public notice. The notice shall be published as a Class II legal advertisement
9 in all participating counties in compliance with the provisions of §59-3-1 *et seq.* of this code and
10 by such other means as the Division of Highways deems appropriate. The notice shall state the

11 general character of the work and general character of the materials to be furnished, the place
 12 where plans and specifications therefor may be examined, and the time and place of receiving
 13 bids. After all bids are received, the district shall enter into a written contract with the lowest
 14 responsible bidder; however, the district may reject any or all bids that fail to meet the
 15 specifications required by the district or that exceed the district's budget estimation for those
 16 commodities or services. If the district determines in writing that there is only one responsive and
 17 responsible bidder and that there has been sufficient public notice to attract competitive bids, the
 18 Division of Highways may negotiate the price for a noncompetitive award or the specifications for
 19 a noncompetitive award based solely on the original purpose of the solicitation.

20 (c) The district may require the vendors to post a bond, with form and surety to be
 21 approved by the Division of Highways, in an amount equal to at least 50 percent of the contract
 22 price conditioned upon faithful performance and completion of the contract.

§17-30-4. Reporting requirements; Legislative Auditor review; program automatically continued.

1 (a) At the end of the first three fiscal years following the effective date of this article, the
 2 Division of Highways shall present a report to the Interim Committee on Government Operations
 3 no later than November of the following fiscal year. After November 2022, such reports will no
 4 longer be required.

5 (b) The Legislative Auditor will review the program to determine efficacy, economic
 6 responsibility, and other such factors relating to the program three years after the effective date.
 7 After the initial review, the Legislative Auditor shall have the power to review the program to
 8 ensure efficient operations, economic responsibility, and any other factors for the continued
 9 success of the program.

10 (c) The Road Maintenance Program will continue indefinitely until an act of the Legislature
 11 terminates the program.

§17-30-5. Effective Date.

1 This article will take effect on July 1, 2019.

NOTE: The purpose of this bill is to create the Special Road Repair Fund for the maintenance and repair of the state's roads and highways. The bill provides for two percent of the severance of natural gas and oil and coal and other mining to be transferred to the new fund. The bill also requires a one-time transfer of \$200 million from the Rainy Day Fund. The bill requires a think tank be formed and to develop new rules and criteria for identifying counties with the most critical need. The bill requires rule-making. The bill also creates a new article that establishes a procedure for contracting road maintenance work.

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