

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 522

BY SENATORS SMITH, MAYNARD, SYPOLT, TARR,

PLYMALE, CLINE, RUCKER, AND MARONEY

[Originating in the Committee on Transportation and

Infrastructure; Reported on February 18, 2019]

1 A BILL to amend and reenact §11-13A-3, §11-13A-3a, and §11-13A-3c of the Code of West
2 Virginia, 1931, as amended; to amend said code by adding thereto a new section,
3 designated §17-3-11; and to amend said code by adding thereto a new article, designated
4 §17-30-1, §17-30-2, §17-30-3, and §17-30-4, all relating to enhancing maintenance and
5 repair of the state's roads and highways; creating the Special Road Repair Fund as a sub-
6 account of the State Road Fund; providing two percent of severance taxes on coal,
7 limestone, or sandstone production, natural gas or oil production, and any other natural
8 resource product be transferred to the Special Road Repair Fund; directing Secretary of
9 Revenue to make a one-time transfer of \$200 million from the Revenue Shortfall Reserve
10 Fund into the Special Road Repair Fund; striking obsolete language; creating the
11 Enhanced Road Maintenance Program; stating legislative finding and purpose of program;
12 setting forth requirements concerning bidding, vendors, and contracts with vendors;
13 specifying uses of Special Road Repair Fund; requiring districts develop maintenance
14 plans; defining term; providing requirements for Commissioner of Highways and districts;
15 and requiring reporting by Division of Highways and Legislative Auditor.

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~~ The tax imposed in subsection (a) of this section shall be five percent of the gross value of
8 the 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 on
14 or after that date from the privilege of producing coal, limestone, or sandstone in this state shall
15 be deposited in the Special Road Repair Fund created by §17-3-11 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) (d) ~~Reduction of severance tax rate.~~ — For tax years beginning after the effective date
28 of 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 180
42 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 on or after*
74 *that date from the privilege of producing natural gas or oil in this state shall be deposited in the*
75 *Special Road Repair Fund created by §17-3-11 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.~~

§11-13A-3c. Imposition of tax on privilege of severing other natural resources.

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the
2 business of severing, extracting, reducing to possession, and producing for sale, profit, or
3 commercial use any other natural resource product or product not taxed under §11-13A-3, §11-
4 13A-3a, §11-13A-3b, or §11-13A-4 of this code, there is hereby levied and shall be collected from
5 every person exercising this privilege an annual privilege tax.

6 (b) *Rate and measure of tax.* — The tax imposed in §11-13A-3c(a) of this code shall be
7 four percent of the gross value of the natural resource produced, as shown by the gross proceeds
8 derived from the sale thereof by producer, except as otherwise provided in this article: *Provided,*
9 That beginning July 1, 1993, the tax imposed by this section shall be levied and collected at the
10 rate of four and one-half percent, and beginning July 1, 1994, the tax imposed by this section
11 shall be levied and collected at the rate of five percent: *Provided, however, That effective July 1,*
12 *2019, two percent of the severance taxes collected on or after that date from the privilege of*
13 *producing any other natural resource product in this state shall be deposited in the Special Road*
14 *Repair Fund created by §17-3-11 of this code.*

15 (c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all
16 persons severing other natural resources in this state and shall be in addition to all other taxes
17 imposed by law.

18 (d) *Effective date.* — This section, as amended in the year 1993, shall apply to gross
19 proceeds derived after May 31 of such year. The language of section three of this article, as in
20 effect on January 1, of such year, shall apply to gross proceeds derived prior to June 1 of such
21 year and, with respect to such gross proceeds, shall be fully and completely preserved.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3. STATE ROAD FUND.

§17-3-11. Special Road Repair Fund.

1 (a) There is hereby created a special sub-account in the State Road Fund, designated the
2 Special Road Repair Fund, to be expended solely for the purposes specified in §17-30-1 et seq.
3 of this code for the maintenance and repair of the state's roads and highways. The Special Road
4 Repair Fund shall be comprised of the following:

5 (1) The two percent tax collected pursuant to §11-13A-3 of this code relating to the
6 severance tax on coal, limestone, or sandstone;

7 (2) Two percent of the tax collected pursuant to §11-13A-3a of this code relating to the
8 severance tax on natural gas or oil;

9 (3) Two percent of the tax collected pursuant to §11-13A-3c of this code relating to the
10 severance tax on any other natural resource product; and

11 (4) A one-time transfer of \$200 million from the state's Revenue Shortfall Reserve Fund
12 created in §11B-2-20 of this code that the Secretary of Revenue shall make on July 1, 2019.

ARTICLE 30. ENHANCED ROAD MAINTENANCE PROGRAM.

§17-30-1. Legislative finding; 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 Enhanced Road Maintenance Program established in this article is to increase the utilization of
4 private vendor contractors to provide maintenance services for the Division of Highways in
5 districts where there is an established need so that this state's roads will be properly maintained
6 and usable by the citizens of this state.

§17-30-2. Establishment of the Enhanced Road Maintenance Program.

1 (a) The Enhanced Road Maintenance Program is hereby created within the Division of
2 Highways, to be administered by the division in accordance with the provisions of this article.

3 (b) The Division of Highways is authorized, in certain circumstances as determined in this
4 article, to direct each district to contract with vendor contractors to perform certain road
5 maintenance activities, including, but not limited to, pot hole repair, paving, ditching, snow
6 removal, and mowing, on and along each district's roadways. For purposes of this article, "district"
7 means one of the management areas of the state, which include one or more counties,
8 established by the Division of Highways, with each district headed by a separate district engineer
9 or manager.

10 (c) Each district, as authorized by the division, shall contract with vendor contractors to
11 complete a portion of maintenance activities for the district, subject, however, to the availability of
12 funds and the availability of acceptable bids from contract vendors.

13 (d) The Division of Highways and applicable district shall ensure that, alongside roads
14 being paved, all drainage work, including any necessary ditching and installation of culverts, if
15 necessary, has been performed in the state's rights-of-way prior to such paving work.

§17-30-3. District maintenance plans; funding from Special Road Repair Fund; bidding,
contracting, and vendor requirements.

1 (a) Each district is required to develop a maintenance plan for the district. By December
2 1, 2019, and by December 1 of each year thereafter, each district shall complete a review of the
3 proposed maintenance projects and work to determine what work and projects were not

4 completed during the previous year.

5 (b) If the district has not completed at least 90 percent of the maintenance that was
6 proposed for completion in the previous year, the district shall solicit bids and, to the extent funds
7 are available and acceptable bids are submitted, contract with vendors by February of the
8 following year to complete work and projects that were proposed for the previous year that have
9 not been performed or completed.

10 (c) Funds in the Special Road Repair Fund created by §17-3-11 of this code shall be
11 allocated by the West Virginia Commissioner of Highways for the payment of vendor contracts
12 among the districts that have not completed at least 90 percent of the maintenance that was
13 proposed for completion in the previous year, with consideration being given to maintenance in
14 such districts with the most critical need as determined by the commissioner.

15 (d) Each district must use their allocated funds for the purpose of contracting with a vendor
16 to perform certain maintenance activities for the district. In the event the district has fully utilized
17 their annual allocation of funds, the Division of Highways may provide supplemental funds to a
18 district in need if additional funds are available in the Special Road Repair Fund.

19 (e) By December 1, 2019, each district shall have in place a mechanism to solicit bids
20 from vendor contractors.

21 (f) Notwithstanding any other provision of this code to the contrary, the bidding and vendor
22 contracting process provided for in this article shall be conducted in accordance with the most
23 efficient procedures available to the Division of Highways. A district may only require that the
24 vendor provide the minimum amount of insurance coverage and bond and surety coverage that
25 is required by law.

26 (g) Vendor contractors performing work pursuant to a contract pursuant to this article shall
27 follow all work, operating, and safety procedures and requirements prescribed by the Division of
28 Highways.

29 (h) Potential vendors desiring eligibility to contract to perform and provide snow removal

30 on public roads with a truck equipped with a snow plow shall provide the district with evidence of
31 the appropriate driver's license and endorsements for each operator. Each operator that has not
32 provided evidence of appropriate experience to the district shall satisfactorily complete a road
33 test, to be determined by district personnel, to demonstrate competency in the skills necessary to
34 perform the work in a safe and workmanlike manner.

§17-30-4. Reporting requirements by Division of Highways and Legislative Auditor.

1 (a) By November 1, 2019, and on November 1 of each year thereafter, the Division of
2 Highways shall present a report to the Legislative Oversight Commission on Department of
3 Transportation Accountability as to the status and progress of the program together with any
4 suggested legislation to address any issues related thereto no later than November of the
5 following fiscal year. After November 2022, such reports will no longer be required.

6 (b) By December 1, 2019, and by December biennially thereafter, the Legislative Auditor,
7 in a separate audit report, shall review the program to determine efficacy, economic responsibility,
8 and other such factors relating to the program and submit a report of his or her findings, together
9 with any suggested legislation to improve the efficiency and to more economically carry out the
10 purposes of this article.

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 certain severance taxes to be transferred to the new fund. The bill requires a one-time transfer of \$200 million from the Rainy-Day Fund into the new fund. The bill creates a new article that establishes a procedure for contracting road maintenance work to be paid out of the new 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.