

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2659

FISCAL  
NOTE

BY DELEGATE BATES AND PYLES

[Introduced January 24, 2019; Referred  
to the Committee on Banking and Insurance then  
Energy.]

1 A BILL to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; and  
 2 to amend said code by adding thereto a new section, designated §11-13A-5c; and to  
 3 amend said code by adding thereto a new article, designated §11-13DD-1, §11-13DD-2  
 4 and §11-13D-3, all relating to establishing a tax on the production of natural gas to fund  
 5 the public employees insurance program; establishing a special revenue account;  
 6 providing that proceeds retained in account be used for the benefit of supplementing state  
 7 and employee contributions thereto; and providing that upon certification by PEIA Finance  
 8 Board that fund is sufficient to maintain benefits for five-year period remaining funds  
 9 subject to legislative appropriation.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

**§11-13A-3a. Imposition of tax and fee 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 10 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 tax imposed in subsection (a) of this section shall be  
15 five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds  
16 derived from the sale thereof by the producer, except as otherwise provided in this article.

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

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

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

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

34           (d) Imposition of additional production fee for severing natural gas. — For the privilege of  
35 engaging or continuing within this state in the business of severing natural gas for sale, profit or  
36 commercial use, there is hereby levied and shall be collected from every person exercising this  
37 privilege an additional annual production fee. The rate of this fee shall be 47 cents per mcf of  
38 natural gas and the measure of the tax is natural gas produced after July 1, 2019, determined at  
39 the point where the production privilege ends for purposes of the fee imposed. The additional fee

40 imposed by this subsection shall be collected with respect to natural gas produced after July 1,  
41 2019.

**11-13A-5c. Creation of West Virginia PEIA Reserve Fund; legislative intent; calculation of  
deposits from excess of needed moneys; definitions.**

1 (a) There is hereby created in the State Treasury a special revenue account, designated  
2 the West Virginia PEIA Reserve Fund, which is an interest-bearing account and may be invested  
3 by the West Virginia Investment Management Board in the manner permitted by the provisions of  
4 §12-6-1 et seq. of this code, with the investment income to be credited to the fund and deposited  
5 in the special revenue account.

6 (b) The Legislature declares its intention to use the fund as a means of conserving a  
7 portion of the state's revenue derived from the increased revenue proceeds received by the state  
8 as a result of natural gas production to supplement funding for the state Public Employees  
9 Insurance Agency. The balance of the fund shall remain inviolate and no portion may be  
10 appropriated, expended or encumbered by the Legislature or any official of the state, except as  
11 provided by this section.

12 (c) Notwithstanding any provision of this code to the contrary, for the fiscal year beginning  
13 July 1, 2019, and each year thereafter, the secretary of revenue shall cause to be deposited in  
14 this fund the proceeds of the fee collected pursuant to §11-13A-3a(d) of this code,

15 (d) In order to maximize effective management of the Public Employees Insurance Agency  
16 Reserve Fund, no money from the fund may be expended or appropriated for any purpose other  
17 than funding to maintain the Public Employee Insurance Agency at its existing benefit and  
18 copayment level existing at the time of enactment, until the Public Employee Finance Board,  
19 established pursuant to §5-16-4 of this code certifies that the fund is actuarially projected to have  
20 sufficient funds to meet these funding requirements for the next five fiscal years. Upon that  
21 certification, the excessive proceeds contained in the fund are available for legislative  
22 appropriation.

**ARTICLE 13DD. TAX CREDIT FOR VALUE ADDED PRODUCTS FOR NATURAL GAS  
INDUSTRY CREDIT AGAINST ONE CENT VOLUME TAX.**

**§11-13DD-1. Legislative purpose.**

1        The Legislature finds and declares that creation of jobs for state workers in the natural gas  
2 system can be incentivized by creating a tax credit for value added activities outside of production  
3 of natural gas will facilitate job creation in this state and provide an effective incentive for the  
4 reduction of fees established in §11-13A-3a (d) of this code created to maintain the state's existing  
5 Public Insurance Employee Agency funding, copays and benefits levels. The Legislature finds  
6 that establishing a credit against this continued fee assessment to reward industries that add jobs  
7 in West Virginia by converting raw natural gas into materials to valued added products will  
8 incentivize extractive industries to develop businesses in this state rather than exporting this  
9 valuable natural resource and will also fulfill a critical need by creating new jobs in West Virginia.  
10 Therefore, a credit against the fee collected pursuant to §11-13A-3a (d) will facilitate economic  
11 growth in this state.

**§11-13DD-2. Credit allowed; amount and duration of credit; recapture of credit and  
effective date.**

1        (a) There shall be allowed to eligible taxpayers a tax credit against the fee imposed  
2 pursuant to §11-13A-3a (d) of this code. For the purpose of this article, "eligible fee-payer" means  
3 a person, firm, partnership, corporation or other entity who is subject to the fee assessed provided  
4 in section §11-13A-3a, and that also invests capital into hiring employees to produce valued  
5 added products derived from natural gas in state for sale or export. For purposes of this section,  
6 "value-added product" means products derived from processing natural gas as a raw product for  
7 production of other products that is undertaken for a purpose of manufacturing and not solely for  
8 transport of the gas and its byproducts.

9        (b) Effective for taxable years beginning July 1, 2019, any entity subject to the fee and

10 engaged in the production of value-added products in West Virginia is allowed a credit against  
11 the fee, according to the schedule herein, for every one hour spent by a new permanent, full-time  
12 employee training to learn a skill specific thereto, or production of, value-added products up to  
13 the maximum fee paid pursuant by the fee-payer for that fiscal year.

14 (c) The credit set forth in this article shall apply to fees collected arising after December  
15 31, 2019.

16 (d) As a condition of receiving the credit established in this article, the eligible fee-payer  
17 shall employ the person or persons for a period of time at least equal to one year. In the event  
18 such person is employed for less than one year the credit herein shall be recaptured at the rate  
19 of 20 percent of the dollar value of the credit for each month under 12 months the person works.

**§11-13DD-3. Application of credit; limitation of credit; Tax Commissioner may promulgate  
legislative rule; notice of credit.**

1 (a) The credit allowed in this article shall be applied to a either the fee-payer's personal  
2 income tax liability or corporation net income tax liability, as the case may be.

3 (b) The credit allowed in this article may not exceed the maximum tax due and is not  
4 refundable, nor may it be carried forward nor backward to other tax years.

5 (c) The Tax Commissioner may propose rules for promulgation in accordance with the  
6 provisions of §29A-3-1 et seq. of this code as necessary to effectuate the purposes of this article,  
7 including adding to the list of activities deemed “valued added products” that are appropriate for  
8 treatment as value added products eligible for the tax credit created pursuant to section two of  
9 this article.

10 (d) The State Tax Commissioner shall develop a written notice setting forth the availability  
11 employee producing value added products.

NOTE: The purpose of this bill is to provide for a new fee on each MFC of natural gas produced to fully fund PEIA benefits at current levels; allow a tax credit for value added jobs in West Virginia for persons paying this fee; and creating a special reserve account to assume that sufficient moneys are collected to preserve the existing insurance program for a 5-year period, then allowing excess proceeds to be directed to general revenue.

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