

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 731

FISCAL
NOTE

BY SENATORS SMITH AND CLINE

[Introduced February 7, 2020; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend and reenact §11-13A-3 of the Code of West Virginia, 1931, as amended, relating
 2 to limiting the two percent severance tax break on steam coal to the first six million tons
 3 of production per operator per year.

Be it enacted by the Legislature of West Virginia:

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 (h) of this section,
 7 the tax imposed in subsection (a) of this section is five percent of the gross value of the natural
 8 resource produced or the health care service provided, as shown by the gross income derived
 9 from the sale or furnishing thereof by the producer or the provider of the health care service,
 10 except as otherwise provided in this article: *Provided*, That effective July 1, 2019, the tax rate
 11 imposed by this subsection on the gross value of the first six million tons of thermal or steam coal
 12 per operator per year produced shall be reduced incrementally over the next three tax years for
 13 a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at
 14 the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at
 15 the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent
 16 of the two percent reduction. In the case of coal, the rate of tax includes the thirty-five one
 17 hundredths of one percent additional severance tax on coal imposed by the state for the benefit
 18 of counties and municipalities as provided in §11-13A-6 of this code and the additional severance

19 tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-
20 13A-6a of this code.

21 (c) *“Thermal or steam coal” defined.* - For purposes of this section the term “thermal or
22 steam coal” means coal sold for the purpose of generating electricity.

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

25 (e) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons
26 severing or processing, or both severing and processing, in this state natural resources
27 enumerated in subsection (a) of this section and to all persons providing certain health care
28 services in this state as enumerated in subsection (d) of this section and shall be in addition to all
29 other taxes imposed by law.

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

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

38 (1) For coal mined by underground methods from seams with an average thickness of 37
39 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the
40 gross value of the coal produced. For coal mined by underground methods from seams with an
41 average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall
42 be one percent of the gross value of the coal produced. Gross value is determined from the sale
43 of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one
44 percent additional severance tax imposed by the state for the benefit of counties and

45 municipalities as provided in §11-13A-6 of this code.

46 (2) This reduced rate of tax applies to any new underground mine producing coal after the
47 effective date of this subsection, from seams of less than 45 inches in average thickness or any
48 existing mine that has not produced coal from seams 45 inches or less in thickness in the 180
49 days immediately preceding the effective date of this subsection.

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

52 (h)(1) *Termination and expiration of the behavioral health severance and business*
53 *privilege tax.* — The tax imposed upon providers of health care services under the provisions of
54 this article shall expire, terminate and cease to be imposed with respect to privileges exercised
55 on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any
56 person from payment of any tax imposed with respect to privileges exercised before the expiration
57 date.

58 (2) *Refunds made.* — The Tax Commissioner shall issue a requisition on the Treasury for
59 any amount finally, administratively or judicially determined to be an overpayment of the tax
60 terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
61 refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the
62 Treasurer shall pay the warrant out of the fund into which the amount refunded was originally
63 paid.

64 (i) *Termination and expiration of the privilege tax on limestone or sandstone.* — The taxes
65 imposed under this section for persons exercising the privilege of engaging or continuing within
66 this state in the business of severing, extracting, reducing to possession and producing for sale,
67 profit or commercial use limestone or sandstone shall cease, terminate and be of no further force
68 or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not
69 relieve any person of any liability or duty to pay tax imposed under this article with respect to
70 privileges exercised before the effective date of the termination.

NOTE: The purpose of this bill is to limit the two percent severance tax break on steam coal to the first six million tons of production per operator per year.

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