

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2282

**FISCAL
NOTE**

BY DELEGATE BATES

[Introduced February 10, 2021; Referred
to the Committee on Banking and Insurance then
Energy and Manufacturing]

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 §11-13KK-1, §11-13KK-2
 4 and §11-13KK-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.

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 levied and shall
 3 be collected from every person exercising the privilege an annual privilege tax at the rate and
 4 measure provided in subsection (b) of this section: *Provided*, That effective for all taxable periods
 5 beginning on or after January 1, 2000, there is an exemption from the imposition of the tax
 6 provided in this article on the following: (1) Free natural gas provided to any surface owner; (2)
 7 natural gas produced from any well which produced an average of less than 5,000 cubic feet of
 8 natural gas per day during the calendar year immediately preceding a given taxable period; (3)
 9 oil produced from any oil well which produced an average of less than one-half barrel of oil per
 10 day during the calendar year immediately preceding a given taxable period; and (4) for a
 11 maximum period of 10 years, all natural gas or oil produced from any well which has not produced
 12 marketable quantities of natural gas or oil for five consecutive years immediately preceding the
 13 year in which a well is placed back into production and thereafter produces marketable quantities

14 of natural gas or oil.

15 (b) *Rate and measure of tax.*— The tax imposed in subsection (a) of this section is five
16 percent of the gross value of the natural gas or oil produced by the producer as shown by the
17 gross proceeds derived from the sale thereof by the producer, except as otherwise provided in
18 this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

19 (1) For all natural gas produced from any well which produced an average in excess of
20 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given
21 taxable year, and for oil produced from any well which produced an average in excess of 10
22 barrels of oil per day, during the calendar year immediately preceding the beginning date of a
23 given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil
24 produced as shown by the gross proceeds derived from the sale thereof by the producer;

25 (2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling
26 techniques targeting shale formations, which produced an average between 5,000 cubic feet of
27 natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year
28 immediately preceding the beginning date of a given taxable year, and for oil produced from any
29 well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which
30 produced an average between one-half barrel per day and 10 barrels per day, during the calendar
31 year immediately preceding the beginning date of a given taxable year, the rate of tax is two and
32 five tenths percent of the gross value of the natural gas or oil produced as shown by the gross
33 proceeds derived from the sale thereof by the producer; and

34 (3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting
35 shale formations, which produced an average between 5,000 cubic feet of natural gas per day
36 and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the
37 beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling
38 techniques targeting shale formations, which produced an average between one-half barrel per

39 day and 10 barrels per day, during the calendar year immediately preceding the beginning date
40 of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil
41 produced as shown by the gross proceeds derived from the sale thereof by the producer.

42 (c) *Tax in addition to other taxes.*— The tax and fee imposed by this section applies to all
43 persons severing gas or oil in this state and is in addition to all other taxes or fees imposed by
44 law.

45 (d) For purposes of this section, in determining the average amount of production of gas
46 and oil in any given calendar year, a taxpayer must calculate the actual production of such well
47 in the calendar year and divide the same by the number of days the well was in operation and
48 producing gas or oil in such calendar year.

49 (e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the
50 tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are
51 dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this
52 code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the
53 Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6
54 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is
55 reduced to zero for the taxable year beginning on and after the next succeeding January 1. The
56 Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the
57 balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant
58 to this subsection.

59 (f) *Imposition of additional production fee for severing natural gas.* — For the privilege of
60 engaging or continuing within this state in the business of severing natural gas for sale, profit, or
61 commercial use, there is hereby levied and shall be collected from every person exercising this
62 privilege an additional annual production fee. The rate of this fee shall be 47 cents per mcf of
63 natural gas and the measure of the tax is natural gas produced after July 1, 2021, determined at

64 the point where the production privilege ends for purposes of the fee imposed. The additional fee
65 imposed by this subsection shall be collected with respect to natural gas produced after July 1,
66 2021.

**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, 2021, 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 13KK. TAX CREDIT FOR VALUE ADDED PRODUCTS FOR NATURAL GAS
INDUSTRY CREDIT AGAINST ONE CENT VOLUME TAX.**

§11-13KK-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 value-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) of this code will facilitate
11 economic growth in this state.

**§11-13KK-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 §11-13A-3a of this code, 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 are undertaken for a purpose of manufacturing and not solely
8 for transport of the gas and its byproducts.

9 (b) Effective for taxable years beginning July 1, 2021, 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, 2021.

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. If the person is
18 employed for less than one year the credit herein shall be recaptured at the rate of 20 percent of
19 the dollar value of the credit for each month under 12 months the person works.

§11-13KK-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 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 §11-13KK-2 of
9 this code.

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.