WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 613

FISCAL NOTE

BY SENATORS SMITH, PHILLIPS, STOLLINGS, AND LINDSAY

[Introduced February 10, 2022; referred

to the Committee on Energy, Industry, and Mining;

and then to the Committee on Finance]

A BILL to amend and reenact §11-13A-5a of the Code of West Virginia, 1931, as amended, relating to the apportionment of oil and gas severance taxes; and relating to adequately and meaningfully fund the West Virginia Department of Environmental Protection's Office of Oil and Gas.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities <u>and the dedication of one and one half percent of oil and gas severance tax for the benefit of the West Virginia Department of Environmental Protection Office of Oil and Gas;</u> distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective the first day of July, one thousand nine hundred ninety-six, five percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective the first day of July, one thousand nine hundred ninety-seven, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. <u>Effective July 1, 2022, and thereafter, one and one half percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of regulating the oil and gas industry by the West Virginia Department of Environmental Protection Office of Oil and Gas and</u>

shall be deposited in the Oil and Gas Operating Permit and Processing Fund (3323) to ensure that the Office of Oil and Gas has sufficient funding to support its regulatory mission of ensuring the safety of the natural environment of the State of West Virginia.

(b) Seventy-five percent of ~~this~~ the dedicated tax for counties and municipalities shall be distributed by the state treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the “oil and gas producing counties”. The remaining 25 percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax for counties and municipalities on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in the state treasurer’s office by chapter two hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred ninety-five, as amended and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining 25 percent of the dedicated tax for counties and municipalities on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the all counties and municipalities revenue fund established in state treasurer’s office by chapter two hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred ninety-five, as amended and reenacted in the subsequent act of the Legislature, is hereby redesignated as the "all counties and municipalities oil and gas revenue fund" and is hereby continued.

Seventy-five percent of the dedicated tax <u>for counties and municipalities</u> on oil and gas shall be deposited in the "oil and gas county revenue fund" and 25 percent of the dedicated tax on oil and gas shall be deposited in the "all counties and municipalities oil and gas revenue fund", from time to time, as the proceeds are received by the tax commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the "oil and gas county revenue fund" and the moneys in the "all counties and municipalities oil and gas revenue fund" shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the state treasurer in the manner specified in this section. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the "oil and gas county revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the "all counties and municipalities oil and gas revenue fund" shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (g) of this section, the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the "oil and gas county revenue fund" shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

(g) The amount to which each county and municipality is entitled from the “all counties and municipalities oil and gas revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the “all counties and municipalities oil and gas revenue fund” by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's “base share”.

(2) Each county’s “base share” shall then be subdivided into two portions. One portion is determined by multiplying the “base share” by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the “base share” by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the “municipalities' portion” of the county’s “base share”. The percentage of the latter portion to which each municipality in the county is

entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: *Provided*, That in counties with population in excess of two hundred thousand, at least 75 percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the state tax commissioner: *Provided*, *however*, That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before the twenty-eighth day of March, one thousand nine hundred ninety-seven, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the general fund and may be expended by the county or municipality without restriction.

(j) On or before the fifteenth day of December, one thousand nine hundred ninety-six, and each fifteenth day of December thereafter, the tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of the budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of thirty-five thousand dollars annually as a fee for the administration of the additional tax by the tax commissioner.

NOTE: The purpose of this bill is to establish a reliable annual source of funding for the DEP's Office of Oil and Gas. Nearly all of the agency's other divisions are funded largely through grants from the United States government, but oil and gas has no federal regulatory counterpart and is, instead, entirely reliant on the State of West Virginia for continued funding to ensure the safety of oil and gas wells in the State.

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