

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 613

BY SENATORS SMITH, PHILLIPS, AND STOLLINGS

[Originating in the Committee on Energy, Industry,
and Mining; reported on February 15, 2022]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of ~~ten~~ 10 percent of oil and gas severance tax for benefit of counties and municipalities and 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; 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.

1 (a) Effective ~~the first day of July, one thousand nine hundred ninety-six,~~ July 1, 1996, five
2 percent of the tax attributable to the severance of oil and gas imposed by ~~section three-a of this~~
3 ~~article~~ §11-13A-3a of this code is hereby dedicated for the use and benefit of counties and
4 municipalities within this state and shall be distributed to the counties and municipalities as
5 provided in this section. Effective ~~the first day of July, one thousand nine hundred ninety-seven,~~
6 July 1, 1997, and thereafter, ~~ten~~ 10 percent of the tax attributable to the severance of oil and gas
7 imposed by ~~section three-a of this article~~ §11-13A-3a of this code is hereby dedicated for the use
8 and benefit of counties and municipalities within this state and shall be distributed to the counties
9 and municipalities as provided in this section. Effective July 1, 2022, and thereafter, one and one
10 half percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this
11 code is hereby dedicated for the use and benefit of regulating the oil and gas industry by the West

12 Virginia Department of Environmental Protection Office of Oil and Gas and shall be deposited in
13 the Oil and Gas Operating Permit and Processing Fund to ensure that the Office of Oil and Gas
14 has sufficient funding to support its regulatory mission of ensuring the safety of the natural
15 environment of the State of West Virginia.

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

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

29 (d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax
30 for counties and municipalities on oil and gas to the oil and gas producing counties, the special
31 fund known as the oil and gas county revenue fund established in the ~~state treasurer's~~ State
32 Treasurer's office by ~~chapter two hundred forty two, acts~~ Chapter 242, Acts of the Legislature,
33 regular session, ~~one thousand nine hundred ninety five~~ 1995, as amended and reenacted in the
34 subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the
35 distribution of the remaining 25 percent of the dedicated tax for counties and municipalities on oil
36 and gas to all counties and municipalities of the state, without regard to oil and gas having been
37 produced in those counties or municipalities, the special fund known as the ~~all counties and~~

38 ~~municipalities revenue fund~~ All Counties and Municipalities Revenue Fund established in ~~state~~
39 ~~treasurer's~~ State Treasurer's office by ~~chapter two hundred forty-two, acts~~ Chapter 242, Acts of
40 the Legislature, regular session, ~~one thousand nine hundred ninety-five~~ 1995, as amended and
41 reenacted in the subsequent act of the Legislature, is hereby redesignated as the "~~all counties~~
42 ~~and municipalities oil and gas revenue fund~~" All Counties and Municipalities Revenue Fund and
43 is hereby continued.

44 Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas
45 shall be deposited in the "~~oil and gas county revenue fund~~" Oil and Gas County Revenue Fund
46 and 25 percent of the dedicated tax on oil and gas shall be deposited in the "~~all counties and~~
47 ~~municipalities oil and gas revenue fund~~" All Counties and Municipalities Oil and Gas Revenue
48 Fund, from time to time, as the proceeds are received by the ~~tax commissioner~~ Tax
49 Commissioner. The moneys in the funds shall be distributed to the respective counties and
50 municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

51 (e) The moneys in the "oil and gas county revenue fund" and the moneys in the "~~all~~
52 ~~counties and municipalities oil and gas revenue fund~~" All Counties and Municipalities Oil and Gas
53 Revenue Fund shall be allocated among and distributed annually to the counties and
54 municipalities entitled to the moneys by the ~~state treasurer~~ State Treasurer in the manner
55 specified in this section. On or before each distribution date, the ~~state treasurer~~ State Treasurer
56 shall determine the total amount of moneys in each fund which will be available for distribution to
57 the respective counties and municipalities entitled to the moneys on that distribution date. The
58 amount to ~~which~~ an oil and gas producing county is entitled from the "~~oil and gas county revenue~~
59 ~~fund~~" Oil and Gas County Revenue Fund shall be determined in accordance with subsection (f)
60 of this section, and the amount to which every county and municipality shall be entitled from the
61 "all counties and municipalities oil and gas revenue fund" shall be determined in accordance with
62 subsection (g) of this section. After determining, as set forth in subsections (f) and (g) of this
63 section, the amount each county and municipality is entitled to receive from the respective fund

64 or funds, a warrant of the ~~state auditor~~ State Auditor for the sum due to the county or municipality
65 shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed
66 to the county or municipality.

67 (f) The amount an oil and gas producing county is entitled from the ~~“oil and gas county~~
68 ~~revenue fund”~~ Oil and Gas County Revenue Fund shall be determined by:

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

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

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

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

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

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

81 (g) The amount to which each county and municipality is entitled from the ~~“all counties and~~
82 ~~municipalities oil and gas revenue fund”~~ All Counties and Municipalities Oil and Gas Revenue
83 Fund shall be determined in accordance with the provisions of this subsection. For purposes of
84 this subsection, “population” means the population as determined by the most recent decennial
85 census taken under the authority of the United States:

86 (1) The ~~treasurer~~ State Treasurer shall first apportion the total amount of moneys available
87 in the ~~“all counties and municipalities oil and gas revenue fund”~~ All Counties and Municipalities
88 Oil and Gas Revenue Fund by multiplying the total amount in the fund by the percentage which
89 the population of each county bears to the total population of the state. The amount thus

90 apportioned for each county is the county's base share.

91 (2) Each county's base share shall then be subdivided into two portions. One portion is
92 shall be determined by multiplying the base share by that percentage which the total population
93 of all unincorporated areas within the county bears to the total population of the county, and the
94 other portion is shall be determined by multiplying the base share by that percentage which the
95 total population of all municipalities within the county bears to the total population of the county.
96 The former portion shall be paid to the county and the latter portion shall be the municipalities'
97 portion of the county's base share. The percentage of the latter portion ~~to which~~ each municipality
98 in the county is entitled shall be determined by multiplying the total of the latter portion by the
99 percentage which the population of each municipality within the county bears to the total
100 population of all municipalities within the county.

101 (h) Moneys distributed to any county or municipality under the provisions of this section,
102 from either or both special funds, shall be deposited in the county or municipal general fund and
103 may be expended by the county commission or governing body of the municipality for such
104 purposes as the county commission or governing body shall determine to be in the best interest
105 of its respective county or municipality: *Provided*, That in counties with population in excess of
106 ~~two hundred thousand~~ 200,000, at least 75 percent of the funds received from the oil and gas
107 county revenue fund shall be apportioned to and expended within the oil and gas producing area
108 or areas of the county, the oil and gas producing areas of each county to be determined generally
109 by the ~~state tax commissioner~~ Tax Commissioner: *Provided, however*, That the moneys
110 distributed to any county or municipality under the provisions of this section shall not be budgeted
111 for personal services in an amount to exceed one fourth of the total amount of the moneys.

112 (i) On or before the ~~twenty-eighth day of March, one thousand nine hundred ninety-seven~~
113 March 28, 1997, and each ~~twenty-eighth~~ 28th day of March thereafter, each county commission
114 or governing body of a municipality receiving any such moneys shall submit to the ~~tax~~
115 ~~commissioner~~ Tax Commissioner on forms provided by the ~~tax commissioner~~ Tax Commissioner

116 a special budget, detailing how the moneys are to be spent during the subsequent fiscal year.
117 The budget shall be followed in expending the moneys unless a subsequent budget is approved
118 by the ~~state tax commissioner~~ Tax Commissioner. All unexpended balances remaining in the
119 county or municipality general fund at the close of a fiscal year shall remain in the general fund
120 and may be expended by the county or municipality without restriction.

121 (j) On or before ~~the fifteenth day of December, one thousand nine hundred ninety-six~~
122 December 15, 1996, and each ~~fifteenth~~ 15th day of December thereafter, the ~~tax commissioner~~
123 Tax Commissioner shall deliver to the ~~clerk~~ Clerk of the Senate and the ~~clerk~~ Clerk of the House
124 of Delegates a consolidated report of the budgets, created by subsection (i) of this section, for all
125 county commissions and municipalities as of the ~~fifteenth~~ 15th day of July of the current year.

126 (k) The ~~state tax commissioner~~ Tax Commissioner shall retain for the benefit of the state
127 from the dedicated tax attributable to the severance of oil and gas the amount of ~~thirty-five~~
128 ~~thousand dollars~~ \$35,000 annually as a fee for the administration of the additional tax by the ~~tax~~
129 ~~commissioner~~ Tax Commissioner.