

No. 2172

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2172

(By ~~Mr.~~ Del. Fantasia)

— ● —

Passed April 8, 1989

In Effect Ninety Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2172
(By DELEGATE FANTASIA)

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-a, all relating to severance taxes; specifically requiring revenue sharing to take place within ninety days of the end of each quarter; requiring the tax commissioner to promulgate rules; requiring coal companies to submit monthly schedules to the tax department; setting priorities for expenditures from the "coal severance tax revenue fund"; requiring a certain percentage of the funds be expended within coal producing areas of the county or municipalities wholly with the coal producing area of the county; creating special funds from oil and gas severance taxes; dedication of special funds for benefit of counties and municipalities; distribution of major portion of such special funds to oil and gas producing counties; setting priorities for expenditure of the funds; distribution of remaining portion of such special funds to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formula for distribution of such special funds; expenditure of funds by counties and

municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section six-a, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) *Additional coal severance tax.*—Upon every person
2 exercising the privilege of engaging or continuing
3 within this state in the business of severing coal, or
4 preparing coal (or both severing and preparing coal), for
5 sale, profit or commercial use, there is hereby imposed
6 an additional severance tax, the amount of which shall
7 be equal to the value of the coal severed or prepared (or
8 both severed and prepared), against which the tax
9 imposed by section three of the article is measured as
10 shown by the gross proceeds derived from the sale
11 thereof by the producer, multiplied by thirty-five one
12 hundredths of one percent. The tax imposed by this

13 subsection (a) shall be in addition to the tax imposed by
14 section three of this article, and this additional tax is
15 hereinafter in this section referred to as the "additional
16 tax on coal."

17 (b) This additional tax on coal is imposed pursuant to
18 the provisions of section six-a, article ten of the West
19 Virginia constitution. Seventy-five percent of the net
20 proceeds of this additional tax on coal shall, after
21 appropriation thereof by the Legislature, be distributed
22 by the state treasurer in the manner hereinafter
23 specified, to the various counties of this state in which
24 the coal upon which this additional tax is imposed was
25 located at the time it was severed from the ground.
26 Those counties are hereinafter in this section referred
27 to as the "coal-producing counties." The remaining
28 twenty-five percent of the net proceeds of this additional
29 tax on coal shall be distributed, after appropriation,
30 among all the counties and municipalities of this state
31 in the manner hereinafter specified.

32 (c) Such additional tax on coal shall be due and
33 payable, reported and remitted as elsewhere provided in
34 this article for the tax imposed by said section three of
35 this article, and all of the enforcement and other
36 provisions of this article shall apply to such additional
37 tax. In addition to the reports and other information
38 required under the provisions of this article and the
39 tonnage reports required to be filed under the provisions
40 of section seventy-two, article two, chapter twenty-two
41 of this code, the tax commissioner is hereby granted
42 plenary power and authority to promulgate reasonable
43 rules and regulations requiring the furnishing by
44 producers of such additional information as may be
45 necessary to compute the allocation required under the
46 provisions of subsection (f) of this section. The tax
47 commissioner is also hereby granted plenary power and
48 authority to promulgate such other reasonable rules and
49 regulations as may be necessary to implement the
50 provisions of this section.

51 (d) In order to provide a procedure for the distribu-
52 tion of seventy-five percent of the net proceeds of such
53 additional tax on coal to such coal-producing counties,

54 there is hereby created in the state treasurer's office a
55 special fund to be known as the "county coal revenue
56 fund"; and in order to provide a procedure for the
57 distribution of the remaining twenty-five percent of the
58 net proceeds of such additional tax on coal to all counties
59 and municipalities of the state, without regard to coal
60 having been produced therein, there is also hereby
61 created in the state treasurer's office a special fund to
62 be known as the "all counties and municipalities revenue
63 fund."

64 Seventy-five percent of the net proceeds of such
65 additional tax on coal shall be deposited in the "county
66 coal revenue fund" and twenty-five percent of such net
67 proceeds shall be deposited in the "all counties and
68 municipalities revenue fund," from time to time, as such
69 proceeds are received by the tax commissioner. The
70 moneys in such funds shall, after appropriation thereof
71 by the Legislature, be distributed to the respective
72 counties and municipalities entitled thereto, in the
73 manner set forth in subsection (e) of this section.

74 (e) The moneys in the "county coal revenue fund" and
75 the moneys in the "all counties and municipalities
76 revenue fund" shall be allocated among and distributed
77 within ninety days after the end of each quarter to the
78 counties and municipalities entitled thereto by the state
79 treasurer in the manner hereinafter specified. On or
80 before each distribution date, the state treasurer shall
81 determine the total amount of moneys in each fund
82 which will be available for distribution to the respective
83 counties and municipalities entitled thereto on that
84 distribution date. The amount to which a coal-producing
85 county is entitled from the "county coal revenue fund"
86 shall be determined in accordance with subsection (f) of
87 this section, and the amount to which every county and
88 municipality shall be entitled from the "all counties and
89 municipalities revenue fund" shall be determined in
90 accordance with subsection (g) of this section. After
91 determining as set forth in subsection (f) and subsection
92 (g) of this section the amount each county and munic-
93 ipality is entitled to receive from the respective fund or
94 funds, a warrant of the state auditor for the sum due

95 to such county or municipality shall issue and a check
96 drawn thereon making payment of such sum shall
97 thereafter be distributed to such county or municipality.

98 (f) The amount to which a coal-producing county is
99 entitled from the "county coal revenue fund" shall be
100 determined by (1) dividing the total amount of moneys
101 in such fund then available for distribution by the total
102 number of tons of coal mined in this state during the
103 preceding quarter, and (2) multiplying the quotient thus
104 obtained by the number of tons of coal removed from
105 the ground in such county during the preceding quarter.
106 The commissioner shall promulgate legislative rules in
107 accordance with chapter twenty-nine-a of this code as to
108 how moneys in the "county coal revenue fund" are to be
109 allocated, apportioned and distributed among the
110 counties: *Provided*, That after the thirtieth day of June,
111 one thousand nine hundred eighty-nine these rules shall
112 include as one of the criteria for allocation, apportion-
113 ment and distribution of moneys from such fund the
114 following factor: The county or counties where the coal
115 has actually been parted from the earth where it has
116 been imbedded. These rules shall require persons
117 mining coal subject to this article, to submit monthly
118 schedules to the state tax department, on such form as
119 prescribed by the commissioner, showing the amount
120 and location by county where any coal has been parted
121 from the earth where it had been imbedded.

122 (g) The amount to which each county and municipal-
123 ity shall be entitled from the "all counties and munic-
124 ipalities revenue fund" shall be determined in accor-
125 dance with the provisions of this subsection. For
126 purposes of this subsection "population" shall mean the
127 population as determined by the most recent decennial
128 census taken under the authority of the United States:

129 (1) The treasurer shall first apportion the total
130 amount of moneys available in the "all counties and
131 municipalities revenue fund" by multiplying the total
132 amount in such fund by the percentage which the
133 population of each county bears to the total population
134 of the state. The amount thus apportioned for each
135 county shall be the county's "base share."

136 (2) Each county's "base share" shall then be subdivi-
137 vided into two portions. One portion shall be determined
138 by multiplying the "base share" by that percentage
139 which the total population of all unincorporated areas
140 within the county bears to the total population of the
141 county, and the other portion shall be determined by
142 multiplying the "base share" by that percentage which
143 the total population of all municipalities within the
144 county bears to the total population of the county. The
145 former portion shall be paid to the county and the latter
146 portion shall be the "municipalities' portion" of the
147 county's "base share." The percentage of such latter
148 portion to which each municipality in the county is
149 entitled shall be determined by multiplying the total of
150 such latter portion by the percentage which the
151 population of each municipality within the county bears
152 to the total population of all municipalities within the
153 county.

154 (h) All counties and municipalities shall create a "coal
155 severance tax revenue fund" which shall be the depos-
156 itory for moneys distributed to any county or municipal-
157 ity under the provisions of this section, from either or
158 both special funds. Moneys in such "coal severance tax
159 revenue funds," in compliance with subsection (i), may
160 be expended by the county commission or governing
161 body of the municipality for such public purposes as the
162 county commission or governing body shall determine to
163 be in the best interest of the people of its respective
164 county or municipality: *Provided*, That the first priority
165 for any expenditure be for the purposes of acquiring,
166 constructing, repairing or improving health, recrea-
167 tional, sanitary, water supply and treatment, sewage
168 treatment and transportation facilities or for the
169 operation of relief and supply programs in the coal
170 producing areas of the county: *Provided, however*, That
171 in counties with population in excess of two hundred
172 thousand at least seventy-five percent of such funds
173 received from the county coal revenue fund shall be
174 apportioned to, and expended within the coal producing
175 area or areas of the county and at least seventy-five
176 percent of such funds received from the "all county and
177 municipal revenue fund" shall be apportioned to

178 municipalities wholly within the coal producing area or
179 areas of the county and said coal producing areas of each
180 county are to be determined generally by the state tax
181 commissioner: *Provided further*, That a line item
182 budgeted amount from the current levy estimated for a
183 county shall be funded at one hundred percent of the
184 preceding year's expenditure from the county general
185 fund prior to the use of coal severance tax revenue fund
186 moneys for the same general purpose: *And Provided*
187 *further*, That said coal severance tax revenue fund
188 moneys shall not be budgeted for personal services in
189 an amount to exceed one fourth of the total funds
190 available in such fund.

191 (i) On or before March twenty-eighth, one thousand
192 nine hundred eighty-six and each March twenty-eighth
193 thereafter, each county commission or governing body
194 of a municipality receiving such revenue shall submit
195 to the tax commissioner on forms provided by the tax
196 commissioner a special budget, detailing how such
197 revenue is to be spent during the subsequent fiscal year.
198 Such budget shall be followed in expending such
199 revenue unless a subsequent budget is approved by the
200 state tax commissioner. All unexpended balances
201 remaining in said special fund at the close of a fiscal
202 year shall be reappropriated to the budget for the
203 subsequent fiscal year. Such reappropriation shall be
204 entered as an amendment to the new budget and
205 submitted to the tax commissioner on or before July
206 fifteenth of the current budget year.

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

215 (k) The state tax commissioner shall retain for the
216 benefit of the state from the additional taxes on coal
217 collected the amount of thirty-five thousand dollars
218 annually as a fee for the administration of such

219 additional tax by the tax commissioner.

§11-13A-6a. Use of taxes on the severance, extraction and production of oil and gas; dedication of special funds for benefit of counties and municipalities; distribution of major portion of such special funds to oil and gas producing counties; distribution of minor portion of such special funds to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such special funds; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) From the proceeds of severance taxes collected on
2 oil and natural gas pursuant to the provisions of this
3 article, the tax commissioner shall deduct a sum equal
4 in value to thirty-five one hundredths of one percent of
5 the total gross proceeds which are subject to the
6 payment of such severance taxes on oil and natural gas.
7 These special funds so deducted shall be deposited in the
8 state treasury and distributed in accordance with the
9 provisions of this section: *Provided*, That ten percent of
10 the thirty-five one hundredths of one percent of the total
11 gross share be deposited in the special fund on and after
12 the first day of July one thousand nine hundred ninety
13 and until such time and thereafter the balance of the
14 special fund shall be transferred to the general revenue
15 fund.

16 (b) Seventy-five percent of this special fund shall,
17 after appropriation thereof by the Legislature, be
18 distributed by the state treasurer in the manner
19 hereinafter specified, to the various counties of this state
20 in which the oil and gas upon which such severance
21 taxes are imposed was located at the time it was
22 extracted from the ground. Those counties are hereinaf-
23 ter in this section referred to as the "oil and gas

24 producing counties." The remaining twenty-five percent
25 of this special fund shall be distributed, after appropri-
26 ation, among all the counties and municipalities of this
27 state in the manner hereinafter specified.

28 (c) The tax commissioner is hereby granted plenary
29 power and authority to promulgate such other reasona-
30 ble rules and regulations as may be necessary to
31 implement the provisions of this section.

32 (d) In order to provide a procedure for the distribu-
33 tion of seventy-five percent of the net proceeds of such
34 special fund to such oil and gas producing counties,
35 there is hereby created in the state treasurer's office a
36 special fund to be known as the "oil and gas revenue
37 fund"; and in order to provide a procedure for the
38 distribution of the remaining twenty-five percent of the
39 net proceeds of such special fund to all counties and
40 municipalities of the state, without regard to oil and gas
41 having been produced therein, there is also hereby
42 created in the state treasurer's office a special fund to
43 be known as the "all counties and municipalities revenue
44 fund."

45 Seventy-five percent of the net proceeds of such
46 special fund shall be deposited in the "county oil and gas
47 revenue fund" and twenty-five percent of the net
48 proceeds of such special fund shall be deposited in the
49 "all counties and municipalities revenue fund," from
50 time to time, as such proceeds are received by the tax
51 commissioner. The moneys in such funds shall, after
52 appropriation thereof by the Legislature, be distributed
53 to the respective counties and municipalities entitled
54 thereto in the manner set forth in subsection (e) of this
55 section.

56 (e) The moneys in the "county oil and gas revenue
57 fund" and the moneys in the "all counties and munic-
58 ipalities revenue fund" shall be allocated among and
59 distributed quarterly to the counties and municipalities
60 entitled thereto by the state treasurer in the manner
61 hereinafter specified. On or before each distribution
62 date, the state treasurer shall determine the total
63 amount of moneys in each fund which will be available

64 for distribution to the respective counties and munic-
65 palities entitled thereto on that distribution date. The
66 amount to which an oil and gas county is entitled from
67 the "county oil and gas revenue fund" shall be deter-
68 mined in accordance with subsection (f) of this section,
69 and the amount to which every county and municipality
70 shall be entitled from the "all counties and municipal-
71 ities revenue fund" shall be determined in accordance
72 with subsection (g) of this section. After determining as
73 set forth in subsection (f) and subsection (g) of this
74 section the amount each county and municipality is
75 entitled to receive from the respective fund or funds, a
76 warrant of the state auditor for the sum due to such
77 county or municipality shall issue and a check drawn
78 thereon making payment of such sum shall thereafter
79 be distributed to such county or municipality.

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

83 (1) Dividing the total amount of moneys in such fund
84 then available for distribution by the total volume of
85 cubic feet of gas, or barrels of oil extracted in this state
86 during the preceding quarter; and

87 (2) Multiplying the quotient thus obtained by the
88 number of cubic feet of gas and barrels of oil taken from
89 the ground in such county during the preceding quarter.

90 (g) The amount to which each county and municipal-
91 ity shall be entitled from the "all counties and munic-
92 ipalities revenue fund" shall be determined in accor-
93 dance with the provisions of this subsection. For
94 purposes of this subsection "population" shall mean the
95 population as determined by the most recent decennial
96 census taken under the authority of the United States:

97 (1) The treasurer shall first apportion the total
98 amount of moneys available in the "all counties and
99 municipalities revenue fund" by multiplying the total
100 amount in such fund by the percentage which the
101 population of each county bears to the total population
102 of the state. The amount thus apportioned for each
103 county shall be the county's "base share."

104 (2) Each county's "base share" shall then be subdivi-
105 vided into two portions. One portion shall be determined
106 by multiplying the "base share" by that percentage
107 which the total population of all unincorporated areas
108 within the county bears to the total population of the
109 county, and the other portion shall be determined by
110 multiplying the "base share" by that percentage which
111 the total population of all municipalities within the
112 county bears to the total population of the county. The
113 former portion shall be paid to the county and the latter
114 portion shall be the "municipalities' portion" of the
115 county's "base share." The percentage of such latter
116 portion to which each municipality in the county is
117 entitled shall be determined by multiplying the total of
118 such latter portion by the percentage which the
119 population of each municipality within the county bears
120 the total population of all municipalities within the
121 county.

122 (h) All counties and municipalities shall create an "oil
123 and gas severance tax revenue fund" which shall be the
124 depository for moneys distributed to any county or
125 municipality under the provisions of this section, from
126 either or both special funds. Moneys in such "oil and gas
127 severance tax revenue funds," in compliance with
128 subsection (i), may be expended by the county commis-
129 sion or governing body of the municipality for such
130 public purposes as the county commission or governing
131 body shall determine to be in the best interest of the
132 people of its respective county or municipality: *Provided*,
133 That the first priority for any expenditure be for the
134 purposes of acquiring, constructing, repairing or
135 improving health, recreational, sanitary, water supply
136 and treatment, sewage treatment and transportation
137 facilities or for the operation of relief and supply
138 programs in the county: *Provided, however*, That in
139 counties with population in excess of two hundred
140 thousand at least fifty percent of such funds received
141 from the county oil and gas revenue fund shall be
142 apportioned to, and expended within, the oil and gas
143 producing area or areas of the county, said oil and gas
144 areas of each county to be determined generally by the
145 state tax commissioner: *Provided, further*, That a line

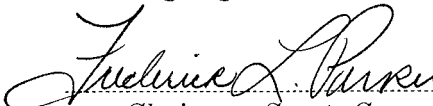
146 item budgeted amount from the current levy estimated
147 for a county shall be funded at one hundred percent of
148 the preceding year's expenditure from the county
149 general fund prior to the use of oil and gas severance
150 tax revenue fund moneys for the same general purpose:
151 *And provided further*, That said oil and gas severance
152 tax revenue fund moneys shall not be budgeted for
153 personal services in an amount to exceed one fourth of
154 the total funds available in such fund.

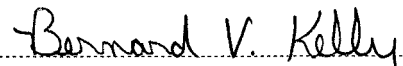
155 (i) On or before March twenty-eighth, one thousand
156 nine hundred ninety and each twenty-eighth day of
157 March thereafter, each county commission or governing
158 body of a municipality receiving such revenue shall
159 submit to the tax commissioner on forms provided by
160 the tax commissioner, a special budget, detailing how
161 such revenue is to be spent during the subsequent fiscal
162 year. Such budget shall be followed in expending such
163 revenue unless a subsequent budget is approved by the
164 state tax commissioner. All unexpended balances
165 remaining in said special fund at the close of a fiscal
166 year shall be reappropriated to the budget for the
167 subsequent fiscal year. Such reappropriation shall be
168 entered as an amendment to the new budget and
169 submitted to the tax commissioner on or before the
170 fifteenth day of July, of the current budget year.

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

13 [Enr. Com. Sub. for H. B. 2172


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

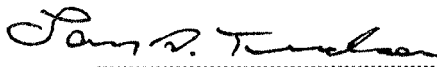

Chairman House Committee

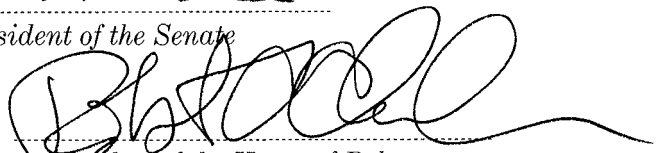
Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate

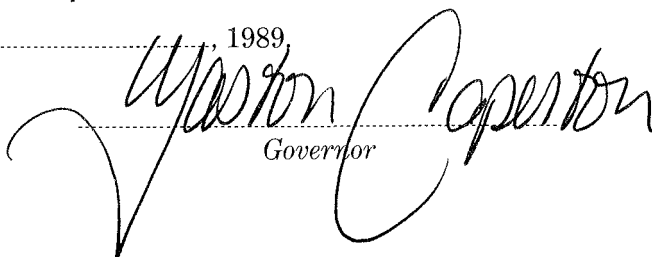

Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within *is disapproved* this the *27th*
day of *April*, 1989

 C-641


Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/89

Time 2:33 *JL*