WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2172

(By Sen. Fantasia)

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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 addi­
tional tax for benefit of counties and
municipalities; distribution of major por­
tion of such additional tax to coal-produc­
ing 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 for­
mulas for distribution of such additional
tax; expenditure of funds by counties and
municipalities for public purposes; creat­
ing special funds in counties and
municipalities; and requiring special
county and municipal budgets and reports
thereon.

(a) Additional coal severance tax.—Upon every person
exercising the privilege of engaging or continuing
within this state in the business of severing coal, or
preparing coal (or both severing and preparing coal), for
sale, profit or commercial use, there is hereby imposed
an additional severance tax, the amount of which shall
be equal to the value of the coal severed or prepared (or
both severed and prepared), against which the tax
imposed by section three of the article is measured as
shown by the gross proceeds derived from the sale
thereof by the producer, multiplied by thirty-five one
hundredths of one percent. The tax imposed by this
subsection (a) shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the "additional tax on coal."

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

(c) Such additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section three of this article, and all of the enforcement and other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-two, article two, chapter twenty-two of this code, the tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules and regulations requiring the furnishing by 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 and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax on coal to such coal-producing counties,
there is hereby created in the state treasurer's office a special fund to be known as the "county coal revenue fund"; and in order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such additional tax on coal to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the "all counties and municipalities revenue fund."

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

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed within ninety days after the end of each quarter to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. 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 thereto on that distribution date. The amount to which a coal-producing county is entitled from the "county coal 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 revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (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 such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is entitled from the “county coal revenue fund” shall be determined by (1) dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter, and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter. The commissioner shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code as to how moneys in the “county coal revenue fund” are to be allocated, apportioned and distributed among the counties: Provided, That after the thirtieth day of June, one thousand nine hundred eighty-nine these rules shall include as one of the criteria for allocation, apportionment and distribution of moneys from such fund the following factor: The county or counties where the coal has actually been parted from the earth where it has been imbedded. These rules shall require persons mining coal subject to this article, to submit monthly schedules to the state tax department, on such form as prescribed by the commissioner, showing the amount and location by county where any coal has been parted from the earth where it had been imbedded.

(g) The amount to which each county and municipality shall be entitled from the “all counties and municipalities revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” shall mean 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 revenue fund” by multiplying the total amount in such 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 shall be the county’s “base share.”
(2) Each county’s “base share” shall then be subdivided into two portions. One portion shall be 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 shall be 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 such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such 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) All counties and municipalities shall create a “coal severance tax revenue fund” which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such “coal severance tax revenue funds,” in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That the first priority for any expenditure be for the purposes of acquiring, constructing, repairing or improving health, recreational, sanitary, water supply and treatment, sewage treatment and transportation facilities or for the operation of relief and supply programs in the coal producing areas of the county: Provided, however, That in counties with population in excess of two hundred thousand at least seventy-five percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal producing area or areas of the county and at least seventy-five percent of such funds received from the “all county and municipal revenue fund” shall be apportioned to
municipalities wholly within the coal producing area or areas of the county and said coal producing areas of each county are to be determined generally by the state tax commissioner: Provided further, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year’s expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: And Provided further, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

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

(j) On or before December fifteenth, one thousand nine hundred eighty-six, and each December fifteenth 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 special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July fifteenth of the current year.

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

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

(b) Seventy-five percent of this special fund shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the oil and gas upon which such severance taxes are imposed was located at the time it was extracted from the ground. Those counties are hereinafter in this section referred to as the “oil and gas
producing counties.” The remaining twenty-five percent of this special fund shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) The tax commissioner is hereby granted plenary power and authority to promulgate such other reasonable rules and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such special fund to such oil and gas producing counties, there is hereby created in the state treasurer's office a special fund to be known as the “oil and gas revenue fund”; and in order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such special fund to all counties and municipalities of the state, without regard to oil and gas having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the “all counties and municipalities revenue fund.”

Seventy-five percent of the net proceeds of such special fund shall be deposited in the “county oil and gas revenue fund” and twenty-five percent of the net proceeds of such special fund shall be deposited in the “all counties and municipalities revenue fund,” from time to time, as such proceeds are received by the tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section.

(e) The moneys in the “county oil and gas revenue fund” and the moneys in the “all counties and municipalities revenue fund” shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. 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 thereto on that distribution date. The amount to which an oil and gas county is entitled from the "county oil and gas 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 revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (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 such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

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

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

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

(g) The amount to which each county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" shall mean 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 revenue fund" by multiplying the total amount in such 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 shall be the county's "base share."
(2) Each county's "base share" shall then be subdivided into two portions. One portion shall be 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 shall be 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 such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears the total population of all municipalities within the county.

(h) All counties and municipalities shall create an "oil and gas severance tax revenue fund" which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such "oil and gas severance tax revenue funds," in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That the first priority for any expenditure be for the purposes of acquiring, constructing, repairing or improving health, recreational, sanitary, water supply and treatment, sewage treatment and transportation facilities or for the operation of relief and supply programs in the county: Provided, however, That in counties with population in excess of two hundred thousand at least fifty percent of such funds received from the county oil and gas revenue fund shall be apportioned to, and expended within, the oil and gas producing area or areas of the county, said oil and gas areas of each county to be determined generally by the state tax commissioner: Provided, further, That a line
item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year’s expenditure from the county general fund prior to the use of oil and gas severance tax revenue fund moneys for the same general purpose: And provided further, That said oil and gas severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

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

(j) On or before the fifteenth day of December, one thousand nine hundred ninety and each fifteenth day of December, thereafter, the tax commissioner shall deliver to the clerk of the Senate and clerk of the House of Delegates a consolidated report of the special 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

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

[Signature]
Governor