

**H. B. 2953**

(By Mr. Speaker, Mr. Thompson)

[By Request of the Executive]

[Introduced February 1, 2011; referred to the

Committee on Energy, Industry and Labor, Economic

Development and Small Business then Finance.]

**FISCAL  
NOTE**

10 A BILL to amend and reenact §11-13A-20a of the Code of West  
11 Virginia, 1931, as amended; and to amend and reenact  
12 §31-15A-16 of said code, all relating to dedication of coalbed  
13 methane severance tax proceeds; redirecting coalbed methane  
14 severance tax revenues from the Infrastructure Fund to county  
15 economic development authorities; requiring moneys deposited  
16 in the Infrastructure Fund prior to July 1, 2011, be  
17 distributed to county economic development authorities;  
18 removing requirement that the Tax Commissioner provide  
19 Infrastructure and Jobs Development Council a breakdown of  
20 coalbed methane severance taxes paid and amount of coalbed  
21 methane produced by each county; providing calculation methods  
22 and specifying a minimum share of coalbed methane severance  
23 tax revenue be distributed to producing counties in an amount  
24 at least equal to the share received by nonproducing counties;

1 providing for portional adjustments and redesignation for  
 2 counties deemed nonproducing; providing that no distribution  
 3 of moneys to exceed total amount of coalbed methane severance  
 4 tax received in any fiscal year; setting forth the purposes  
 5 for receiving and conditions of expending such funds by county  
 6 economic development authorities; requiring approval of  
 7 respective county commissions and the Development Office prior  
 8 to expending any funds; prohibiting certain expenditures by  
 9 counties or county economic development authorities; and  
 10 authorizing and requiring the Development Office to promulgate  
 11 legislative rules regarding use of funds, including emergency  
 12 rules.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §11-13A-20a of the Code of West Virginia, 1931, as  
 15 amended, be amended and reenacted; and that §31-15A-16 of said code  
 16 be amended and reenacted, all to read as follows:

17 **CHAPTER 11. TAXATION.**

18 **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

19 **11-13A-20a. Dedication of tax; authorization of the development**  
 20 **office to promulgate rules.**

21 (a) The amount of taxes collected under this article from  
 22 providers of health care items or services, including any interest,  
 23 additions to tax and penalties collected under article ten of this  
 24 chapter, less the amount of allowable refunds and any interest

1 payable with respect to such refunds, shall be deposited into the  
2 special revenue fund created in the State Treasurer's Office and  
3 known as the Medicaid State Share Fund. Said fund shall have  
4 separate accounting for those health care providers as set forth in  
5 articles four-b and four-c, chapter nine of this code.

6 (b) Notwithstanding the provisions of subsection (a) of this  
7 section, for the remainder of fiscal year 1993 and for each  
8 succeeding fiscal year, no expenditures from taxes collected from  
9 providers of health care items or services are authorized except in  
10 accordance with appropriations by the Legislature.

11 (c) The amount of taxes on the privilege of severing timber  
12 collected under section three-b of this article, including any  
13 interest, additions to tax and penalties collected under article  
14 ten of this chapter, less the amount of allowable refunds and any  
15 interest payable with respect to such refunds, shall be paid into  
16 a special revenue account in the State Treasury to be appropriated  
17 by the Legislature for purposes of the Division of Forestry.

18 (d) Notwithstanding any other provision of this code to the  
19 contrary, beginning January 1, 2009, there is hereby dedicated an  
20 annual amount not to exceed \$4 million from annual collections of  
21 the tax imposed by section three-d of this article to be deposited  
22 into the West Virginia Infrastructure Fund, created in section  
23 nine, article fifteen-a, chapter thirty-one of this code.

24 (e) Beginning with the fiscal year ending June 30, 2009, and

1 each fiscal year thereafter, the Tax Commissioner shall pay from  
2 the taxes imposed in section three-d of this article, on October 1,  
3 of each year, ~~into the West Virginia Infrastructure Fund~~ to the  
4 respective county economic development authorities as provided in  
5 subsections (f) through (h) of this section, an amount in the  
6 aggregate not to exceed \$4 million per fiscal year. Prior to  
7 making any such payment the commissioner shall deduct the amount of  
8 refunds lawfully paid and administrative costs authorized by this  
9 code. All moneys distributed to the West Virginia Infrastructure  
10 Fund pursuant to this section prior to July 1, 2011, shall be  
11 returned to the Tax Commissioner and distributed to the respective  
12 county economic development authorities as provided in this  
13 section.

14 (f) ~~The Tax Commissioner shall provide to the West Virginia~~  
15 ~~Infrastructure and Jobs Development Council a breakdown of coalbed~~  
16 ~~methane taxes paid and amount of coalbed methane produced by~~  
17 ~~county. The commissioner may obtain any production or other~~  
18 ~~necessary information not currently reported to the commissioner~~  
19 ~~from the owners or operators of coalbed methane wells or from the~~  
20 ~~Department of Environmental Protection or both.~~ Notwithstanding any  
21 provision of this article to the contrary, prior to the deposit of  
22 the proceeds of the tax on coalbed methane with each county  
23 economic development authority pursuant to subsection (e) of this  
24 section, the Tax Commissioner shall undertake the following

1 calculations:

2 (1) Seventy-five percent of the moneys to be deposited shall  
3 be provisionally allocated for the various counties of this state  
4 in which the coalbed methane was produced; and

5 (2) The remaining twenty-five percent of the moneys to be  
6 deposited shall be provisionally allocated to the various counties  
7 of this state in which no coalbed methane was produced for projects  
8 in accordance with subsection (h) of this section.

9 (3) Moneys shall be provisionally allocated to each coalbed  
10 methane producing county in direct proportion to the amount of tax  
11 revenues derived from coalbed methane production in the county.

12 (4) Portional adjustments.

13 (A) If, for any year, a coalbed methane producing county's  
14 share of money provisionally allocated to that county is computed  
15 to be an amount that is less than the amount provisionally  
16 allocated to each of the coalbed methane nonproducing counties,  
17 then for purposes of the computations set forth in this subsection,  
18 that coalbed methane producing county shall be redesignated a  
19 coalbed methane nonproducing county. The money that has been  
20 provisionally allocated to that coalbed methane producing county  
21 out of the seventy-five percent portion specified in subdivision  
22 (1) of this subsection shall be subtracted out of the seventy-five  
23 percent portion specified in that subdivision and added to the  
24 twenty-five percent portion specified in subdivision (2) of this

1 subsection.

2 (B) When the adjustment specified in paragraph (A),  
3 subdivision (4) of this subsection has been made for each coalbed  
4 methane producing county that has been redesignated as a coalbed  
5 methane nonproducing county, then the Tax Department shall finalize  
6 the calculations of the amounts to be made available for  
7 distribution to the respective county development authority of the  
8 coalbed methane producing counties that have not been redesignated  
9 as coalbed methane nonproducing counties under subdivision (4) of  
10 this subsection as follows: The amount remaining in the provisional  
11 seventy-five percent portion specified in subdivision (1) of this  
12 subsection, as adjusted in accordance with paragraph (A),  
13 subdivision (4) of this subsection, shall be allocated, in direct  
14 proportion to the amount that tax revenues derived from coalbed  
15 methane production in each such county not redesignated as a  
16 coalbed methane nonproducing county bears to the total amount of  
17 tax revenues derived from coalbed methane production in all coalbed  
18 methane producing counties that have not been redesignated as a  
19 coalbed methane nonproducing county.

20 (C) The Tax Commissioner shall then finalize the calculation  
21 of the total amount in the twenty-five percent portion specified in  
22 subdivision (2) of this subsection, as adjusted in accordance with  
23 paragraph (A), subdivision (4) of this subsection.

24 (g) In no case may the total amount distributed in any fiscal

1 year to the aggregate of all coalbed methane producing counties and  
2 all coalbed methane nonproducing counties calculated by the Tax  
3 Commissioner exceed the total amount of tax on coalbed methane  
4 authorized to be remitted to the county economic development  
5 authority pursuant to subsection (e) of this section.

6 (h) Distribution of coalbed methane severance tax to county  
7 economic development authorities is subject to the following:

8 (1) The Tax Commissioner shall distribute the provisional  
9 amount for each county to the economic development authority of  
10 such county created pursuant to article twelve, chapter seven of  
11 this code for the purposes of encouraging economic development in  
12 such county.

13 (2) Each county economic development authority shall use such  
14 funds for the following upon a finding by the county economic  
15 development authority that the cost of such projects are reasonably  
16 anticipated to lead to further economic development of the county:

17 (i) The cost of preparation of land sites for any public or  
18 private facility; or

19 (ii) The cost of design or construction of water, sewer and  
20 stormwater infrastructure.

21 (3) Prior to expending any coalbed methane severance tax  
22 moneys, each county economic development authority must obtain the  
23 approval of its respective county commission in writing for the  
24 purpose of such expenditure.

1       (4) Prior to expending any coalbed methane severance tax  
2 moneys, each county economic development authority must obtain the  
3 approval of the development office in writing for the purpose of  
4 such expenditure. The Development Office shall approve all plans  
5 for use of the moneys if such plans are within the required uses  
6 provided in subdivision (2) of this subsection. The Director of  
7 the State Development Office shall promulgate legislative rules in  
8 accordance with article three, chapter twenty-nine-a of this code  
9 in order to set forth the required documentation to be submitted to  
10 the Development Office from the county economic development  
11 authorities to ensure that such funds are utilized as intended by  
12 the Legislature. The Director of the Development Office is  
13 authorized to promulgate emergency rules to implement the  
14 provisions of this section.

15       (5) A county or county economic development authority may not  
16 use such funds for the purposes of paying wages to any employee of  
17 the county or any employee of a county economic development  
18 authority.

19                                   **CHAPTER 31. CORPORATIONS.**

20 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**

21                                   **ACT.**

22 **§31-15A-16. Dedication of severance tax proceeds.**

23       (a) There shall be dedicated an annual amount from the  
24 collections of the tax collected pursuant to article thirteen-a,

1 chapter eleven of this code for the construction, extension,  
2 expansion, rehabilitation, repair and improvement of water supply  
3 and sewage treatment systems and for the acquisition, preparation,  
4 construction and improvement of sites for economic development in  
5 this state as provided in this article.

6 (b) Notwithstanding any other provision of this code to the  
7 contrary, beginning on July 1, 1995, the first \$16 million of the  
8 tax collected pursuant to article thirteen-a, chapter eleven of  
9 this code shall be deposited to the credit of the West Virginia  
10 Infrastructure General Obligation Debt Service Fund created  
11 pursuant to section three, article fifteen-b of this chapter:  
12 *Provided*, That beginning on July 1, 1998, the first \$24 million of  
13 the tax annually collected pursuant to article thirteen-a of this  
14 code shall be deposited to the credit of the West Virginia  
15 Infrastructure General Obligation Debt Service Fund created  
16 pursuant to section three, article fifteen-b of this chapter.

17 (c) Notwithstanding any provision of subsection (b) of this  
18 section to the contrary: (1) None of the collections from the tax  
19 imposed pursuant to section six, article thirteen-a, chapter eleven  
20 of this code shall be so dedicated or deposited; and (2) the  
21 portion of the tax imposed by article thirteen-a, chapter eleven  
22 and dedicated for purposes of Medicaid and the Division of Forestry  
23 pursuant to section twenty-a of said article thirteen-a shall

1 remain dedicated for the purposes set forth in ~~said~~ that section  
2 twenty-a.

3 (d) On or before May 1 of each year, commencing May 1, 1995,  
4 the council, by resolution, shall certify to the Treasurer and the  
5 Water Development Authority the principal and interest coverage  
6 ratio and amount for the following fiscal year on any  
7 infrastructure general obligation bonds issued pursuant to the  
8 provisions of article fifteen-b of this chapter.

9 ~~(e) Notwithstanding any provision of this article to the~~  
10 ~~contrary, the tax on coalbed methane remitted by the Tax~~  
11 ~~Commissioner for deposit in the West Virginia Infrastructure Fund~~  
12 ~~pursuant to section twenty-a, article thirteen-a, chapter eleven of~~  
13 ~~this code, shall be distributed as follows:~~

14 ~~(1) Seventy five percent of the moneys so deposited shall be~~  
15 ~~distributed for infrastructure projects in the various counties of~~  
16 ~~this state in which the coalbed methane was produced; and-~~

17 ~~(2) The remaining twenty-five percent of the moneys so~~  
18 ~~deposited shall be distributed equally to the various counties of~~  
19 ~~this state in which no coalbed methane was produced for~~  
20 ~~infrastructure projects. Moneys shall be distributed to each~~  
21 ~~coalbed methane producing county in direct proportion to the amount~~  
22 ~~of tax paid by the county using information provided by the Tax~~  
23 ~~Commissioner as required in section twenty-a, article thirteen-a,~~  
24 ~~chapter eleven of this code.~~

NOTE: The purpose of this bill is to specify that a minimum share of coalbed methane severance tax revenue be distributed to producing counties in an amount at least equal to the share received by nonproducing counties. The bill also amends the code to direct the severance tax revenues for coalbed methane producing and nonproducing counties be distributed to the county economic development authorities in lieu of the infrastructure fund.

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