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HOUSE BILL NO. 1771

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 15.2-6009, 15.2-6010, 45.1-361.5, 46.2-1143, 58.1-3343, 58.1-3712, 58.1-3713, 58.1-3713.01, 58.1-3713.4, and 58.1-3959 of the Code of Virginia; and to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3740 and 58.1-3741, relating to local gas severance taxes.*

Patron—Kilgore

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-6009, 15.2-6010, 45.1-361.5, 46.2-1143, 58.1-3343, 58.1-3712, 58.1-3713, 58.1-3713.01, 58.1-3713.4, and 58.1-3959 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 37.1, consisting of sections numbered 58.1-3740 and 58.1-3741, as follows:

§ 15.2-6009. Capitalization of Authority.

On September 1, 1988, and on the first day of each month thereafter, each county and city shall remit to the Virginia Coalfield Economic Development Fund twenty-five percent of the revenues collected during the next to last calendar month from the (i) coal and gas road improvement tax pursuant to § 58.1-3713 and (ii) local gas road improvement severance tax pursuant to subsection F of § 58.1-3740.

§ 15.2-6010. Proceeds held.

The treasurer may invest and reinvest funds of the Authority pending their need. All moneys received by the Authority pursuant to § 15.2-6009, together with any matching funds received from state or federal sources, shall be applied and used only in the county or city from which the funds were received, unless the governing body of the county or city consents to their use in another county or city.

Moneys received pursuant to ~~§ 58.1-3713.4~~ subsection G of § 58.1-3740 may be used at the discretion of the Authority for purposes and projects as determined by the Authority.

§ 45.1-361.5. Exclusivity of regulation and enforcement.

No county, city, town or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee or bond to perform any gas, oil, or geophysical operations which varies from or is in addition to the requirements of this chapter. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of other state agencies, local land-use ordinances, regulations of general purpose, or §§ 58.1-3712, 58.1-3712.1, 58.1-3713, 58.1-3713.1, 58.1-3713.2 and 58.1-3713.3, and 58.1-3740.

§ 46.2-1143. Overweight permits for coal haulers; trucks hauling gravel, sand, crushed stone, or liquids produced from gas or oil wells in certain counties; penalties.

A. The Commissioner upon written application by the owner or operator of vehicles used exclusively for hauling coal or coal byproducts from a mine or other place of production to a preparation plant, electricity-generation facility, loading dock, or railroad shall issue, without a fee, a permit authorizing those vehicles to operate with gross weights in excess of those established in § 46.2-1126 on the conditions set forth in this section.

B. Vehicles with three axles may have a maximum gross weight, when loaded, of no more than 60,000 pounds, a single axle weight of not more than 24,000 pounds and a tandem axle weight of no more than 45,000 pounds. Vehicles with four axles may have a maximum gross weight, when loaded, of no more than 70,000 pounds, a single axle weight of no more than 24,000 pounds, and a tri-axle weight of no more than 50,000 pounds. Vehicles with five axles having no less than 35 feet of axle space between extreme axles may have a maximum gross weight, when loaded, of no more than 90,000 pounds, a single axle weight of no more than 20,000 pounds, and a tandem axle weight of no more than 40,000 pounds. Vehicles with six axles may have a maximum gross weight, when loaded, of no more than 110,000 pounds, a single axle weight of no more than 24,000 pounds, a tandem axle weight of no more than 44,000 pounds, and a tri-axle weight of no more than 54,500 pounds.

C. No load of any vehicle operating under a permit issued according to this section shall rise above the top of the bed of such vehicle, not including extensions of the bed. Three-axle vehicles shall not carry loads in excess of the maximum bed size in cubic feet for such vehicle which shall be computed by a formula of 60,000 pounds minus the weight of the empty truck divided by the average weight of coal. For the purposes of this section, the average weight of coal shall be 52 pounds per cubic foot.

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59 Four-axle vehicles shall not carry loads in excess of the maximum bed size for such vehicle which shall
60 be computed by a formula of 70,000 pounds minus the weight of the truck empty divided by the
61 average weight of coal. Five-axle vehicles shall not carry loads in excess of the maximum bed size for
62 such vehicle, which shall be computed by a formula of 90,000 pounds minus the weight of the truck
63 empty divided by the average weight of coal. Six-axle vehicles shall not carry loads in excess of the
64 maximum bed size for such vehicle, which shall be computed by a formula of 110,000 pounds minus
65 the weight of the truck empty divided by the average weight of coal.

66 D. For the purposes of this section, "bed" means that part of the vehicle used to haul coal. Bed size
67 shall be based on its interior dimensions, which may be determined by measuring the exterior of the
68 bed, with volume expressed in cubic feet. In order to ensure compliance with this section by visual
69 inspection, if the actual bed size of the vehicle exceeds the maximum as provided above, the owner or
70 operator shall be required to paint a horizontal line two inches wide on the sides of the outside of the
71 bed of the vehicle, clearly visible to indicate the uppermost limit of the maximum bed size applicable to
72 the vehicle as provided in this section. In addition, one hole two inches high and six inches long on
73 each side of the bed shall be cut in the center of the bed and at the top of the painted line. Any vehicle
74 in violation of this section shall subject the vehicle's owner or operator or both to a penalty of \$250 for
75 a first offense, \$500 for a second offense within a 12-month period, and \$1,000 and revocation of the
76 permit for a third offense within a 12-month period from the first offense.

77 E. If the bed of any vehicle is enlarged beyond the maximum bed size for which its permit was
78 granted, or if the line or holes required are altered so that the vehicle exceeds the bed size for which its
79 permit was granted, the owner, operator, or both shall be subject to a penalty of \$1,000 for each offense
80 and revocation of the permit. Upon revocation, a permit shall not be reissued for six months. The
81 penalties provided in this section shall be in lieu of those imposed under § 46.2-1135.

82 F. For any vehicle with a valid permit issued pursuant to the conditions required by this section,
83 when carrying loads which do not rise above the top of the bed or the line indicating the bed's
84 maximum size, if applicable, it shall be, in the absence of proof to the contrary, prima facie evidence
85 that the load is within the applicable weight limits. If any vehicle is stopped by enforcement officials for
86 carrying a load rising above the top of the bed or the line indicating the bed's maximum size, the
87 operator of the vehicle shall be permitted to shift his load within the bed to determine whether the load
88 can be contained in the bed without rising above its top or above the line.

89 G. No such permit shall be valid for the operation of any such vehicle for a distance of more than
90 85 miles within the Commonwealth of Virginia from the preparation plant, loading dock, or railroad.

91 H. In counties that impose a severance tax on coal ~~and gases~~ as authorized by § 58.1-3712 *or a*
92 *severance tax on gases as authorized by § 58.1-3740*, the Commissioner, upon written application by
93 the owner or operator of vehicles used exclusively for hauling gravel, sand, or crushed stone no more
94 than 50 miles from origin to destination, shall issue a permit authorizing those vehicles to operate with
95 the weight limits prescribed in subsection B. Nothing contained in this subsection shall authorize any
96 extension of weight limits provided in § 46.2-1127 for operation on interstate highways. Any weight
97 violation hauling sand, gravel, or crushed stone under this subsection shall be subject to the penalties
98 authorized by § 46.2-1135.

99 The fee for a permit issued under this subsection shall be \$70, to be allocated as follows: (i) \$65 to
100 the Highway Maintenance and Operating Fund, with a portion equal to the percentage of the
101 Commonwealth's total lane miles represented by the lane miles eligible for maintenance payments
102 pursuant to §§ 33.1-23.5:1 and 33.1-41.1 being redistributed on the basis of lane miles to the applicable
103 localities pursuant to §§ 33.1-23.5:1 and 33.1-41.1, to be used to assist in funding needed highway
104 pavement and bridge maintenance and rehabilitation and (ii) a \$5 administrative fee to the Department.

105 I. In counties that impose a severance tax on coal ~~and gases~~ as authorized by § 58.1-3712 *or a*
106 *severance tax on gases as authorized by § 58.1-3740*, the weight limits prescribed in subsection B shall
107 also apply to motor vehicles hauling liquids produced from a gas or oil well and water used for drilling
108 and completion of a gas or oil well no more than 50 miles from origin to destination. Nothing contained
109 in this subsection shall authorize any extension of weight limits provided in § 46.2-1127 for operation
110 on interstate highways. Any weight violation involving hauling liquids produced from a gas or oil well
111 and water used for drilling and completion of a gas or oil well under this subsection shall be subject to
112 the penalties authorized by § 46.2-1135.

113 **§ 58.1-3343. Effect of lien on certain real estate jointly owned.**

114 The lien on real estate owned by more than one person as tenants in common, joint tenants or
115 otherwise for the payment of all prior, present and subsequent taxes and levies or assessments thereof,
116 including any tax, levy, or assessment authorized under §§ 58.1-3712, 58.1-3713, or ~~§ 58.1-3713.4~~
117 ~~58.1-3740~~, shall not be impaired if such real estate was or is assessed in the name of one of such
118 owners with the notation, "and another," or "and others," or "and wife," or "and husband," or the
119 appropriate abbreviations of such words, or their legal equivalents, so as to indicate that the real estate
120 was or is owned by more than one person.

§ 58.1-3712. Counties and cities authorized to levy severance tax on coal.

A. The governing body of any county or city may levy a license tax on every person engaging in the business of severing coal ~~or gases~~ from the earth. Such tax shall be at a rate not to exceed one percent of the gross receipts from the sale of coal ~~or gases~~ severed within such county. Such gross receipts shall be the fair market value measured at the time such coal ~~or gases~~ *are is* utilized or sold for utilization in such county or city or at the time ~~they are~~ *it is* placed in transit for shipment therefrom, provided that if the tax provided herein is levied, such county or city cannot enact the provisions of § 58.1-3286 relating to a tax on gross receipts. ~~In calculating the fair market value, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.~~

B. Notwithstanding any other provision of this section or law, for purposes of calculating the fair market value of gases severed in Buchanan County, except as otherwise provided in a settlement agreement regarding the calculation of fair market value, including deductions for transportation and compression costs, between the County and the taxpayer, no person engaging in the production and operation of severing gases from the earth in connection with coal mining shall be allowed to take deductions, including but not limited to, depreciation, compression, marketing fees, overhead, maintenance, transportation fees, and personal property taxes.

C. Any county or city enacting a license tax under this section may require producers of coal ~~or gas~~ and common carriers to maintain records and file reports showing the quantities of and receipts from coal ~~or gases~~ which they have produced or transported.

§ 58.1-3713. (Expires December 31, 2014) Local coal road improvement and Virginia Coalfield Economic Development Authority tax.

A. In addition to the taxes authorized under § 58.1-3712, any county or city may adopt a license tax on every person engaging in the business of severing coal ~~or gases~~ from the earth. The rate of such tax shall not exceed one percent. The provisions of § 58.1-3712 as they relate to measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this section.

The moneys collected for each county or city from the ~~tax~~ *taxes* imposed under authority of this section *and subsection F of § 58.1-3740* shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund of such county or city, and shall be spent for such improvements to public roads as the coal and gas road improvement advisory committee and the governing body of such county or city may determine as provided in subsection B of this section. The county may also, in its discretion, elect to improve city or town roads with its funds if consent of the city or town council is obtained. Such funds shall be in addition to those allocated to such counties from state highway funds which allocations shall not be reduced as a result of any revenues received from the tax imposed hereunder. In those localities which comprise the Virginia Coalfield Economic Development Authority, the tax imposed under this section *or subsection F of § 58.1-3740* shall be paid as follows: (i) three-fourths of the revenue shall be paid to the Coal and Gas Road Improvement Fund and used for the purposes set forth herein; however, one-fourth of such revenue may be used to fund the construction of new water and/or sewer systems and lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity, and (ii) one-fourth of the revenue shall be paid to the Virginia Coalfield Economic Development Fund. Furthermore, with regard to the portion paid to the Coal and Gas Road Improvement Fund, a county or city may provide for an additional one-fourth allocation for the construction of new water or sewer systems or lines or the repair or enhancement of existing water or sewer systems or lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity; however, if this option is initiated by a county or city, it must satisfy the requirements set forth in § 58.1-3713.01. Notwithstanding the foregoing limitations regarding revenues used for water systems and/or sewer systems, such revenues designated for water and water systems and/or sewer systems shall be distributed directly to the local public service authority for such purposes instead of the local governing body.

B. Any county or city imposing the tax authorized in this section *or in subsection F of § 58.1-3740* shall establish a Coal and Gas Road Improvement Advisory Committee, to be composed of four members: (i) a member of the governing body of such county or city, appointed by the governing body, (ii) a representative of the Department of Transportation, and (iii) two citizens of such county or city connected with the coal and gas industry, appointed for a term of four years, initially commencing July 1, 1989, by the chief judge of the circuit court.

Such committee shall develop on or before July 1 of each year a plan for improvement of roads during the following fiscal year. Such plan shall have the approval of three members of the committee and shall be submitted to the governing body of the county or city for approval. The governing body may approve or disapprove such plan, but may make no changes without the approval of three members of the committee.

C. The provisions of this section shall expire on December 31, 2014.

§ 58.1-3713.01. Distribution of local coal and gas road improvement taxes for water and sewer projects applicable to the additional one-fourth allocation.

The governing body of any county or city imposing a local coal and gas road improvement tax which is authorized by under subsection A of § 58.1-3713 to use or a local gas road improvement severance tax under subsection F of § 58.1-3740 that is using an additional one-fourth of the revenue from such tax to fund the construction of new water or sewer systems or lines or the repair or enhancement of existing water systems or lines shall develop and adopt by resolution an annual plan for such water and/or sewer projects and an annual plan for the funding of such water and/or sewer projects in areas in its county or city where natural water supplies are insufficient from the standpoint of quality or quantity. Plans shall establish a priority for funding water and/or sewer projects in such city or county. Consideration for funding shall be given to (i) replacing water supplies lost due to mining activities and providing emergency water services to areas that have lost water due to mining activities; (ii) preserving water supplies that are jeopardized due to permitted mining which is occurring or is near commencement; (iii) facilitating development of water and/or sewer projects which will promote diversified industrial development; and (iv) increasing the capacity of publicly owned water and/or sewer treatment or supply facilities.

Plans shall encourage the development of regional water and/or sewer projects. "Regional water and/or sewer project" means a project involving two or more public water and/or sewer service providers located in the same or neighboring political subdivisions. In order to promote cost savings and economic development, funding may be provided for regional water and/or sewer projects as provided in this section. If a regional water and/or sewer project encompasses an area for which plans are developed by two or more local governing bodies, the project shall not be funded unless it is agreed to by all of the affected local governing bodies.

A county or city shall not expend local coal and gas road improvement tax revenue for water and/or sewer projects in a manner that is inconsistent with the priority for funding set forth in an approved plan.

§ 58.1-3713.4. Additional one percent tax on gas.

A. Notwithstanding the rate limitations established in §§ 58.1-3712 and 58.1-3713, a county or city may levy an additional license tax on every person engaging in the business of severing gases from the earth. The license tax shall be at a rate not to exceed one percent of the gross receipts from the sale of gases severed within the county or city. The provisions of § 58.1-3712 as they relate to measurement of gross receipts shall be applicable to this section. The revenue received from such additional tax shall be paid into the general fund of the county or city from where the gases are severed. However, in the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise and the City of Norton one-half of the revenues derived from such tax shall be paid to the Virginia Coalfield Economic Development Fund.

B. No county or city shall be authorized to assess or collect the tax set forth in this section on or after July 1, 2013.

CHAPTER 37.1.

LOCAL GAS SEVERANCE TAXES.

§ 58.1-3740. Counties and cities authorized to levy severance tax on natural gas.

A. The governing body of any county or city may levy a severance tax on every person severing natural gas (including coalbed methane) from the earth within the county or city (the "severance taxpayer"). Such tax shall be at a rate not to exceed one percent of the fair market value of such gas at the time it is produced at the wellhead within the county or city. If the tax authorized hereby is levied, such county or city cannot enact the tax on gross receipts authorized by § 58.1-3286.

Fair market value shall be the gross receipts from the first sale by the severance taxpayer or any of its related parties to a nonrelated party, less all reasonable, actual costs of moving and processing the gas from the wellhead to the point of such sale, including, but not limited to, depreciation, compression, marketing, overhead, maintenance, processing, transportation (whether for transportation before or after the nonrelated party sale point), property taxes, and return on investment.

For purposes of this section, "related parties" means two or more persons or entities owned or controlled with 50 percent or greater ownership, directly or indirectly, by the same interests.

B. Gas produced but lost or consumed before sale to a nonrelated party shall not be included in the calculation of fair market value.

C. Notwithstanding any other provision of this section or law, the commissioner of the revenue or local assessing official of the locality and severance taxpayers may enter into written agreements adopting a method of calculating fair market value different from that set out in this section, provided that such method is uniformly applied and reasonably calculated to reflect fair market value. All such agreements heretofore or hereafter entered into are valid and enforceable.

D. Any county or city enacting a severance tax under this section may require severance taxpayers

to (i) file reports with their severance tax payments certifying, in writing, that their returns reflect the calculation of their severance taxes based upon regularly kept records of the severance taxpayer in accordance with this section or with any written agreement then in effect and (ii) maintain records (or electronic data) for a minimum of four years showing the basis of their calculations of fair market value and make such records available to the commissioner of the revenue upon request, subject to the confidentiality provisions of § 58.1-3.

E. Uniform reporting forms shall be developed by the Tax Commissioner after consultation with counties, cities, and severance taxpayers.

F. In addition to the tax imposed under subsection A, any county or city may levy a local gas road improvement severance tax on every severance taxpayer severing natural gas from the earth within the county or city. The tax shall be at a rate not to exceed one percent of the fair market value of the natural gas (including coalbed methane) at the time it is produced at the wellhead within the county or city. The revenues from such tax shall be utilized as provided for under §§ 58.1-3713 and 58.1-3713.01. The provisions of this subsection shall expire on December 31, 2014.

G. In addition to the taxes imposed under subsections A and F, a county or city may levy an additional severance tax on every severance taxpayer severing natural gas, including coalbed methane, from the earth within the county or city. The tax shall be at a rate not to exceed one percent of the fair market value of the natural gas (including coalbed methane) at the time it is produced at the wellhead within the county or city. The revenue generated from such additional tax shall be paid into the general fund of the county or city from which the gases are severed. However, in the Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise and the City of Norton one-half of the revenues generated from such tax shall be paid to the Virginia Coalfield Economic Development Fund.

H. The provisions of subsections A, B, C, D, and E as they relate to the measurement of gross receipts, the filing of reports, calculation agreements, and record keeping shall also be applicable to any taxes imposed pursuant to subsections F or G.

§ 58.1-3741. Uniform ordinance provisions.

The provisions of § 58.1-3703.1 with the exception of subdivisions A 1 and A 3 of such section shall apply to the taxes authorized by this chapter, *mutatis mutandis*.

§ 58.1-3959. Petition to ascertain delinquent taxes; exoneration from lien.

Any person interested in real estate may file a petition in the circuit court of the county or city wherein the assessment of taxes was made, for the purpose of having ascertained any and all delinquent taxes due upon such real estate or any delinquent taxes imposed under the authority of §§ 58.1-3712, 58.1-3713, or ~~§ 58.1-3713.4~~ 58.1-3740. A copy of the petition shall be served upon the county or city attorney, or if there is none, on the attorney for the Commonwealth at least ten days before the date upon which the petition specifies the court shall be asked to hear the petition. The court may refer the question to a commissioner in chancery for report thereon. The court shall enter final judgment determining what, if any, taxes are due upon the real estate, including any taxes covered by the lien described in § 58.1-3713.5, mentioned in the petition. Upon the payment of any amount so ascertained by the court, and the costs of the proceeding, the land shall be held free and clear of any such tax lien. No writ tax shall be charged. The clerk shall be entitled to a fee of one dollar which, together with other costs, including such fee as the court may deem proper to allow the commissioner in chancery, shall be paid by the petitioner.

2. That any locality imposing a gas severance tax as of January 1, 2013, shall amend its local ordinance to be consistent with the provisions of this act with regard to such tax effective July 1, 2013. The provisions of any gas severance tax local ordinance not consistent with the provisions of this act shall become null and void effective July 1, 2013.

3. That the provisions of § 58.1-3740 are declaratory of existing law.