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## HOUSE BILL NO. 1233

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance  
on February 6, 2012)

(Patron Prior to Substitute—Delegate Kilgore)

A *BILL to amend and reenact § 58.1-3713.3 of the Code of Virginia, relating to local ordinances levying taxes on the severing of oil, coal, or gas from the earth and appeals of the same.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-3713.3 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3713.3. Validation of local coal and gas severance tax ordinances and local coal and gas road improvement tax ordinances.

A. All ordinances adopted pursuant to §§ 58.1-3712 and 58.1-3713 prior to October 1, 1989, shall be valid as if they had been enacted as of January 1, 1985, as long as similar ordinances had been validly enacted under the predecessor provisions to §§ 58.1-3712 and 58.1-3713 and in substantial compliance therewith. Any such local tax ordinances are declared to be validly adopted and enacted as of January 1, 1985, notwithstanding the failure of the locality to change the reference in the local tax ordinance after the enactment of this title, effective January 1, 1985.

B. All ordinances adopted pursuant to §§ 58.1-3712, 58.1-3713 and 58.1-3713.4 prior to January 1, 2001, shall be valid and presumed to include all the provisions of §§ 58.1-3712, 58.1-3713 and 58.1-3713.4 as long as such ordinances were in substantial compliance therewith at the time of their adoption.

C. 1. Any locality that imposed the tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for the 2008, 2009, 2010, or 2011 license year shall (if it has not already done so by the effective date of this subsection) amend its local ordinance with regard to such taxes to adopt or include the uniform ordinance provisions of § 58.1-3703.1, with the exception of subdivisions A 1 and A 3 of such section, in the local ordinance with an effective date retroactive to the 2008 license year. As of the effective date of this subsection, each such locality shall allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1, provided that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes. Such rights and remedies shall include, but shall not be limited to, the appeal procedures set forth under subdivisions A 5, A 6, and A 7 of § 58.1-3703.1. In addition, each such locality, upon the provisions of this subsection becoming effective, shall within 60 days thereof provide written notice to all persons upon whom the locality imposed one or more of the taxes under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, or 2011 informing the person that the locality has adopted the uniform ordinance provisions of § 58.1-3703.1 with regard to such taxes, excluding subdivisions A 1 and A 3 of such section, retroactive to the 2008 license year and for each license year thereafter.

2. Any locality described in subdivision 1 that amends its local ordinance with regard to such taxes, or has amended the same prior to the effective date of this subsection, to expressly include, incorporate by reference, or adopt by incorporation the uniform ordinance provisions of § 58.1-3703.1 shall have met the requirement under subdivision 1 to amend its local ordinance with regard to such taxes, provided that the locality on or after the effective date of this subsection further amends its local ordinance to make such inclusion, incorporation by reference, or adoption by incorporation retroactive to the 2008 license year. Nothing in this subdivision shall relieve the locality from (i) the notice requirements under subdivision 1 or (ii) the requirement under subdivision 1 to allow all persons assessed with such taxes for the 2008 license year or any license year thereafter to exercise all rights and remedies under § 58.1-3703.1 except that subdivisions A 1 and A 3 of such section shall be inapplicable for purposes of the imposition, collection, or appeal of such taxes.

3. Each local ordinance amended as provided under this subsection shall be deemed valid and properly enacted for purposes of any tax imposed pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, or 2011, provided that the locality has met all other requirements of this subsection. Further, each such ordinance shall be deemed to have met the requirement of subsection A of § 58.1-3703.1 to include in the local ordinance provisions substantially similar to those set forth under such subsection.

4. a. Notwithstanding any other provision of law, any person assessed with a license tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, or 2012 shall be allowed to file an administrative appeal of the same under § 58.1-3703.1 to the commissioner of the revenue or other local assessing official only during the period beginning July 1, 2013, and ending July 1, 2014. Such person shall be allowed to file the administrative appeal regardless of

60 whether an appealable event, as defined in § 58.1-3703.1, occurs on or after the effective date of this  
61 subsection. Such appeal to the commissioner of the revenue or other local assessing official may be  
62 further appealed to the Tax Commissioner pursuant to subdivision A 6 of § 58.1-3703.1 and to the  
63 appropriate circuit court pursuant to subdivision A 7 of § 58.1-3703.1, in accordance with the  
64 procedures and time frames for the appeal as provided under the respective subdivision.

65 b. Notwithstanding any other provision of law, any person assessed with a license tax under  
66 § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license year 2008, 2009, 2010, 2011, or 2012  
67 who elects not to file an appeal of the same pursuant to § 58.1-3703.1 may apply for relief of the same  
68 pursuant to § 58.1-3984 only during the period beginning July 1, 2013, and ending July 1, 2014. If such  
69 person elects not to file an appeal of such license tax pursuant to § 58.1-3703.1 but applies for relief of  
70 the same pursuant to § 58.1-3984, then the period for collecting any such license tax shall expire as  
71 provided in § 58.1-3940 or two years after the final decision in a court application pursuant to  
72 § 58.1-3984, whichever is later.

73 c. Notwithstanding the provisions of § 58.1-3940, the period for collecting any license tax imposed  
74 under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 for license years 2008 and 2009 shall expire  
75 on January 1, 2016, unless a longer period is provided under law.

76 d. Notwithstanding any other provision of law, collection activity shall be suspended on the  
77 assessment of additional license tax for license year 2008, 2009, 2010, or 2011 for taxes on severing  
78 coal, gases, or oil from the earth pursuant to § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4. In  
79 addition, collection activity shall be suspended on the assessment of additional license tax for license  
80 year 2012 for such taxes on severing coal, gases, or oil from the earth, provided that, in applying for a  
81 license to sever coal, gases, or oil from the earth in the locality in license year 2012, the person making  
82 application makes a good faith payment or report of the tax due. The good faith payment or report of  
83 tax due shall be in accordance with the methodology used by that person as of January 1, 2010, to  
84 report the person's gross receipts to the locality for purposes of such taxes unless such person and the  
85 locality have entered into a contract or agreement on an alternate methodology to report the person's  
86 gross receipts. As used in this subsection, "additional license tax" means all amounts of license tax,  
87 penalty, and interest that are in addition to the amount of license tax paid by a person or reported by a  
88 person as due in applying for a license to sever coal, gases, or oil from the earth in the locality.  
89 Collection activity shall not be required to be suspended if collection of any tax, interest, or penalty is  
90 jeopardized by delay as defined in § 58.1-3703.1. However, nothing herein shall be construed or  
91 interpreted as to require the suspension of collection activity for any amount of unpaid license tax  
92 reported by a person as due in applying for a license, and any interest and penalty related thereto.

93 Collection activity on additional license tax for license year 2008, 2009, 2010, 2011, or 2012 may  
94 commence on July 1, 2013, unless other law requires the suspension of collection activity.

95 5. Except as otherwise provided in subdivision 4, nothing in this subsection shall be construed or  
96 interpreted as extending any limitations period for appealing any of the taxes imposed under  
97 § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4 or extending any period for the collection of such  
98 taxes.

99 2. That the Tax Commissioner shall convene a working group consisting of representatives of  
100 those localities that levy a severance tax under § 58.1-3712, 58.1-3712.1, 58.1-3713, or 58.1-3713.4  
101 and representatives of those coal, oil, and gas companies that are subject to the tax. The working  
102 group may add other individuals to its membership as it deems necessary.

103 The working group shall review the methodology for determining gross receipts subject to such  
104 tax and such other issues related to the imposition of any tax under § 58.1-3712, 58.1-3712.1,  
105 58.1-3713, or 58.1-3713.4. Upon completion of the review of the methodology, the Tax  
106 Commissioner shall have the discretion to review with the working group such other tax issues as  
107 may be in dispute between such localities and such representatives. The working group is  
108 requested to begin its work as soon as possible after the conclusion of the 2012 Regular Session of  
109 the General Assembly, and to identify any changes to current law, regulation, or policy that it  
110 considers desirable when addressing the above issues. The working group is requested to provide a  
111 report and recommendations to the Chairmen of the House Committee on Finance and the Senate  
112 Committee on Finance by December 1, 2012.

113 3. That an emergency exists and this act is in force from its passage.