

SENATE BILL 768

Q7, M1, M3

2lr2079
CF 2lr3136

By: **Senator Edwards**

Introduced and read first time: February 3, 2012

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Gas Severance Tax and Impact Fund**

3 FOR the purpose of imposing a tax on the removal of natural gas from certain wells in
4 the State; providing for the calculation of the tax; setting the rate of the tax;
5 providing for the administration of the tax by the Comptroller; authorizing the
6 Comptroller to require certain security for the tax; imposing certain penalties
7 for certain violations; requiring persons subject to the tax to file returns and
8 keep and make available certain records and information; providing for the
9 distribution of revenue from the tax; establishing the Natural Gas Impact Fund
10 as a special, nonlapsing fund; specifying the purpose of the Fund; requiring the
11 Department of the Environment, in consultation with the Department of
12 Natural Resources, to administer the Fund; requiring the State Treasurer to
13 hold the Fund and the Comptroller to account for the Fund; specifying the
14 contents of the Fund; specifying the purposes for which the Fund may be used;
15 providing for the investment of money in and expenditures from the Fund;
16 requiring the departments to report to the Governor and the General Assembly
17 on or before a certain date; stating the intent of the General Assembly; defining
18 certain terms; and generally relating to a tax on removing natural gas from
19 certain wells in the State.

20 BY adding to

21 Article – Tax – General

22 Section 1–101(o–1); 2–104(c)(3); 2–11A–01 and 2–11A–02 to be under the new
23 subtitle “Subtitle 11A. Natural Gas Severance Tax Revenue
24 Distribution”; 10.5–101 through 10.5–301 to be under the new title “Title
25 10.5. Natural Gas Severance Tax”; and 13–825(f–1), 13–1001(d–1),
26 13–1003(b–1), 13–1008(b–1), and 13–1104(f–1)

27 Annotated Code of Maryland

28 (2010 Replacement Volume and 2011 Supplement)

29 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Tax – General
2 Section 2–102, 13–201(3), 13–508(a) and (c), 13–509(a), and 13–1102
3 Annotated Code of Maryland
4 (2010 Replacement Volume and 2011 Supplement)

5 BY adding to
6 Article – Environment
7 Section 14–122.1
8 Annotated Code of Maryland
9 (2007 Replacement Volume and 2011 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article – Tax – General**

13 1–101.

14 **(O–1) “NATURAL GAS SEVERANCE TAX” MEANS THE TAX IMPOSED**
15 **UNDER TITLE 10.5 OF THIS ARTICLE.**

16 2–102.

17 In addition to the duties set forth elsewhere in this article and in other articles
18 of the Code, the Comptroller shall administer the laws that relate to:

- 19 (1) the admissions and amusement tax;
- 20 (2) the alcoholic beverage tax;
- 21 (3) the boxing and wrestling tax;
- 22 (4) the income tax;
- 23 (5) the Maryland estate tax;
- 24 (6) the Maryland generation–skipping transfer tax;
- 25 (7) the motor carrier tax;
- 26 (8) the motor fuel tax;
- 27 (9) **THE NATURAL GAS SEVERANCE TAX;**
- 28 **(10) the sales and use tax;**

1 ~~[(10)]~~ **(11)** the savings and loan association franchise tax; and

2 ~~[(11)]~~ **(12)** the tobacco tax.

3 2-104.

4 **(c) (3) THE COMPTROLLER SHALL KEEP A NATURAL GAS SEVERANCE**
5 **TAX RETURN FOR 4 YEARS FROM THE DATE THE RETURN IS FILED, AFTER**
6 **WHICH THE COMPTROLLER MAY DESTROY THE RETURN.**

7 **SUBTITLE 11A. NATURAL GAS SEVERANCE TAX REVENUE DISTRIBUTION.**

8 **2-11A-01.**

9 **FROM THE NATURAL GAS SEVERANCE TAX REVENUE, THE COMPTROLLER**
10 **SHALL DISTRIBUTE EACH QUARTER THE AMOUNT NECESSARY TO ADMINISTER**
11 **THE NATURAL GAS SEVERANCE TAX LAWS IN THE PREVIOUS QUARTER TO AN**
12 **ADMINISTRATIVE COST ACCOUNT.**

13 **2-11A-02.**

14 **AFTER MAKING THE DISTRIBUTION REQUIRED UNDER § 2-11A-01 OF**
15 **THIS SUBTITLE, THE COMPTROLLER SHALL DISTRIBUTE THE REMAINING**
16 **NATURAL GAS SEVERANCE TAX REVENUE TO THE NATURAL GAS IMPACT FUND**
17 **ESTABLISHED UNDER § 14-122.1 OF THE ENVIRONMENT ARTICLE.**

18 **TITLE 10.5. NATURAL GAS SEVERANCE TAX.**

19 **SUBTITLE 1. GENERAL PROVISIONS.**

20 **10.5-101.**

21 **(A) A TAX IS IMPOSED ON THE WHOLESALE MARKET VALUE OF**
22 **NATURAL GAS TAKEN FROM A NATURAL GAS WELL.**

23 **(B) THE NATURAL GAS SEVERANCE TAX RATE IS 2.5% OF THE**
24 **WHOLESALE MARKET VALUE ON THE DATE THE GAS IS PRODUCED AT THE**
25 **WELLHEAD.**

26 **SUBTITLE 2. RETURNS AND RECORDS.**

27 **10.5-201.**

1 **A PERSON SHALL COMPLETE UNDER OATH AND FILE WITH THE**
2 **COMPTROLLER THE NATURAL GAS SEVERANCE TAX RETURN:**

3 **(1) ON OR BEFORE THE 10TH DAY OF THE MONTH THAT FOLLOWS**
4 **THE MONTH IN WHICH THE DATE OF FIRST PRODUCTION OCCURS; AND**

5 **(2) FOR OTHER PERIODS AND OTHER DATES THAT THE**
6 **COMPTROLLER SPECIFIES BY REGULATION.**

7 **10.5–202.**

8 **(A) EACH PERSON WHO HAS A WELL SUBJECT TO THE NATURAL GAS**
9 **SEVERANCE TAX SHALL KEEP COMPLETE AND ACCURATE RECORDS IN THE**
10 **FORM AND WITH THE INFORMATION THAT THE COMPTROLLER REQUIRES BY**
11 **REGULATION.**

12 **(B) THE PERSON WHO IS REQUIRED UNDER SUBSECTION (A) OF THIS**
13 **SECTION TO KEEP RECORDS SHALL MAKE THE RECORDS AVAILABLE FOR**
14 **INSPECTION AND EXAMINATION BY THE COMPTROLLER AT ANY TIME DURING**
15 **BUSINESS HOURS.**

16 **(C) THE PERSON SHALL KEEP THE RECORDS REQUIRED UNDER**
17 **SUBSECTION (A) OF THIS SECTION FOR 4 YEARS UNLESS THE COMPTROLLER**
18 **CONSENTS IN WRITING TO AN EARLIER DESTRUCTION OF THE RECORDS OR**
19 **REQUIRES IN WRITING THAT THE RECORDS BE KEPT LONGER THAN 4 YEARS.**

20 **SUBTITLE 3. TAX PAYMENT.**

21 **10.5–301.**

22 **A PERSON WHO HAS A WELL SUBJECT TO THE NATURAL GAS SEVERANCE**
23 **TAX SHALL PAY THE TAX WITH THE RETURN REQUIRED UNDER SUBTITLE 2 OF**
24 **THIS TITLE.**

25 **13–201.**

26 In this subtitle, “tax information” means:

27 **(3) any information contained in:**

28 **(i) an admissions and amusement tax return; [or]**

29 **(ii) A NATURAL GAS SEVERANCE TAX RETURN; OR**

1 (III) a sales and use tax return.

2 13-508.

3 (a) Within 30 days after the date on which a notice of assessment of the
4 admissions and amusement tax, alcoholic beverage tax, boxing and wrestling tax,
5 income tax, motor carrier tax, motor fuel tax, **NATURAL GAS SEVERANCE TAX**, public
6 service company franchise tax, financial institution franchise tax, sales and use tax, or
7 tobacco tax is mailed, a person or governmental unit against which the assessment is
8 made may submit to the tax collector:

9 (1) an application for revision of the assessment; or

10 (2) except for the public service company franchise tax, if the
11 assessment is paid, a claim for refund.

12 (c) The Comptroller or an employee of the Comptroller's office expressly
13 designated by the Comptroller promptly:

14 (1) (i) shall hold an informal hearing on a person's or
15 governmental unit's admissions and amusement tax, alcoholic beverage tax, boxing
16 and wrestling tax, income tax, motor carrier tax, motor fuel tax, **NATURAL GAS**
17 **SEVERANCE TAX**, sales and use tax, or tobacco tax application for revision or claim for
18 refund under subsection (a) of this section; and

19 (ii) after the hearing:

20 1. shall act on the application for revision; and

21 2. may assess any additional tax, penalty, and interest
22 due; and

23 (2) shall mail to the person or governmental unit a notice of final
24 determination.

25 13-509.

26 (a) Notwithstanding a person's failure to file a timely application for revision
27 or claim for refund of an assessment of the admissions and amusement tax, alcoholic
28 beverage tax, boxing and wrestling tax, income tax, motor carrier tax, motor fuel tax,
29 **NATURAL GAS SEVERANCE TAX**, sales and use tax, or tobacco tax under § 13-508(a)
30 of this subtitle, the Comptroller or the Comptroller's designee may issue an order
31 decreasing or abating an assessment to correct an erroneous assessment.

32 13-825.

1 **(F-1) THE COMPTROLLER MAY REQUIRE A PERSON SUBJECT TO THE**
2 **NATURAL GAS SEVERANCE TAX TO POST SECURITY FOR THE NATURAL GAS**
3 **SEVERANCE TAX IN THE AMOUNT THAT THE COMPTROLLER DETERMINES.**

4 13-1001.

5 **(D-1) A PERSON WHO IS REQUIRED TO FILE A NATURAL GAS SEVERANCE**
6 **TAX RETURN AND WHO WILLFULLY FAILS TO FILE THE RETURN AS REQUIRED**
7 **UNDER TITLE 10.5 OF THIS ARTICLE IS GUILTY OF A MISDEMEANOR AND ON**
8 **CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT**
9 **NOT EXCEEDING 5 YEARS OR BOTH.**

10 13-1003.

11 **(B-1) A PERSON WHO IS REQUIRED TO FILE A NATURAL GAS SEVERANCE**
12 **TAX RETURN AND WHO WILLFULLY MAKES A FALSE STATEMENT OR MISLEADING**
13 **OMISSION ON THE RETURN REQUIRED UNDER TITLE 10.5 OF THIS ARTICLE IS**
14 **GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT**
15 **EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.**

16 13-1008.

17 **(B-1) A PERSON WHO IS REQUIRED TO PAY THE NATURAL GAS**
18 **SEVERANCE TAX AND WHO WILLFULLY FAILS TO KEEP RECORDS AS REQUIRED**
19 **UNDER § 10.5-202 OF THIS ARTICLE OR UNDER NATURAL GAS SEVERANCE TAX**
20 **REGULATIONS IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT**
21 **TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS**
22 **OR BOTH.**

23 13-1102.

24 (a) Except as provided in subsection (b) of this section, an action to recover
25 admissions and amusement tax, boxing and wrestling tax, motor fuel tax, **NATURAL**
26 **GAS SEVERANCE TAX**, or sales and use tax may not be brought after 4 years from the
27 date on which the tax is due.

28 (b) (1) (i) An action to recover admissions and amusement tax, boxing
29 and wrestling tax, **NATURAL GAS SEVERANCE TAX**, or sales and use tax may be
30 brought at any time if there is proof that the tax is not paid due to fraud or gross
31 negligence.

32 (ii) An underpayment of 25% or more of the sales and use tax
33 due is prima facie evidence of gross negligence.

1 **(3) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED**
2 **FOR THE BENEFIT OF THE FUND.**

3 **(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
4 **SUBSECTION, THE FUND SHALL BE USED BY THE DEPARTMENT TO ADDRESS**
5 **THE IMPACT OF GAS EXPLORATION AND PRODUCTION THAT CANNOT BE**
6 **ATTRIBUTED TO A SPECIFIED OPERATOR AND FOR WHICH THERE IS NO**
7 **SOLVENT RESPONSIBLE ENTITY.**

8 **(2) (I) IF DURING A FISCAL YEAR THE BALANCE OF THE FUND**
9 **IS AT LEAST \$25,000,000, ANY EXCESS AMOUNT DISTRIBUTED TO THE FUND**
10 **MAY BE USED TO ADDRESS THE IMPACTS OF GAS EXPLORATION AND**
11 **PRODUCTION:**

12 **1. THAT ARE REGIONAL AND NOT ATTRIBUTABLE TO**
13 **A SPECIFIC COMPANY AT A SPECIFIC SITE; AND**

14 **2. THAT ARE LOCATED IN AREAS OF THE STATE**
15 **WHERE NATURAL GAS IS PRODUCED.**

16 **(II) OF THE EXCESS AMOUNT UNDER SUBPARAGRAPH (I) OF**
17 **THIS PARAGRAPH:**

18 **1. HALF OF THE AMOUNT SHALL BE USED TO FUND**
19 **IMPACTS IDENTIFIED BY THE DEPARTMENT; AND**

20 **2. HALF OF THE AMOUNT SHALL BE USED TO FUND**
21 **IMPACTS IDENTIFIED BY THE DEPARTMENT OF NATURAL RESOURCES.**

22 **(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**
23 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

24 **(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE PAID**
25 **INTO THE GENERAL FUND.**

26 **(I) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT AND**
27 **THE DEPARTMENT OF NATURAL RESOURCES SHALL REPORT TO THE**
28 **GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE,**
29 **THE GENERAL ASSEMBLY ON THE NATURAL GAS REMEDIATION PROJECTS THAT**
30 **RECEIVE FUNDING UNDER THIS SECTION.**

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 2012.