

# HOUSE BILL 803

L2

(9lr1821)

## ***ENROLLED BILL***

—Ways and Means / Budget and Taxation—

Introduced by **Delegate Beitzel**

Read and Examined by Proofreaders:

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Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

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Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

## **Garrett County – Code of Ordinances – Natural Gas**

2 FOR the purpose of repealing certain taxes on the purchase, distribution, and  
3 collection of natural gas in Garrett County; repealing certain taxes on  
4 purchasing natural gas in the county; repealing certain exclusions to the county  
5 natural gas tax; altering the amount of a certain Garrett County tax; requiring  
6 the tax to be distributed in certain amounts to the county and certain  
7 municipalities; repealing certain provisions to provide that the market value of  
8 natural gas in the county is the value at the mouth of the well; altering the day  
9 that certain taxes shall be paid; altering the frequency with which certain  
10 county taxes shall be paid; repealing a requirement that the operator of a well  
11 make certain reports concerning gas production and sales; requiring a producer  
12 of natural gas in the county to make a certain report; requiring the Director of  
13 Finance to perform certain duties; repealing certain provisions relating to  
14 certain evidence in a judicial proceeding relating to failure to pay certain county  
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### **EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber / conference committee amendments.



taxes; repealing certain provisions creating a Garrett County Natural Gas Fund; repealing certain penalties that are applicable to purchasers of certain natural gas; making conforming changes; repealing certain definitions; altering certain definitions; and generally relating to natural gas distribution and production in Garrett County.

BY repealing and reenacting, with amendments,  
The Public Local Laws of Garrett County  
Section ~~51.02(A)~~ 51.01 through 51.07 and 51.99  
Article 12 – Public Local Laws of Maryland  
(2005 Edition and 2008 Supplement, as amended)

BY repealing  
The Public Local Laws of Garrett County  
Section 51.08  
Article 12 – Public Local Laws of Maryland  
(2005 Edition and 2008 Supplement, as amended)

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

## **Article 12 – Garrett County**

19 51.01.

20        For the purpose of this chapter, the following definitions shall apply unless the  
21        context clearly indicates or requires a different meaning.

22 BUSINESS OF [COLLECTING, DISTRIBUTING OF PRODUCING GAS] GAS  
23 PRODUCTION. Applies to any person in the business of [purchasing or producing gas  
24 for resale to domestic and industrial consumers and includes any person who has  
25 voluntarily submitted to the regulations of the Federal Power Commission or the  
26 Public Service Commission regulations of the state] **PRODUCING GAS FOR SALE.**

27       [CARRIER. The owner, operator or manager of any means of transporting gas  
28    or any instrumentality that may now be used or come into use for such purpose.]

29           CASINGHEAD GAS. Any gas and/or vapor indigenous to an oil stratum and  
30 produced from such stratum with oil.

CUBIC FOOT OF GAS. The volume of gas expressed in cubic feet and computed at a base pressure of 6.28 ounces per square inch above the average barometric pressure of 14.4 pounds per square inch and a standard base and flowing temperature of 60° F, corrections to be made for pressure according to Boyle's law and for specific gravity according to tests made by the balance method.

1       [FIRST PURCHASER. Any person purchasing gas from the producer and  
2 includes any producer which is a utility retailing gas in Garrett County and any  
3 producer who does not sell his or her gas in Garrett County but transports it outside of  
4 the county before sale.]

5       GAS. Natural and casinghead gas or other gas taken from the earth or  
6 waters[.], regardless of whether produced from a gas well or from a well also  
7 productive of oil, distillate and/or condensate or other product.

8       OPERATOR. The person having the active management and operation of the  
9 well.]

10       PERSON. Includes any person, firm, concern, receiver, trustee, executor,  
11 administrator, agent, institution, association, partnership, company, corporation, and  
12 persons acting under declarations of trust, as well as the trustees acting under such  
13 declarations of trust.

14       PRODUCER. Any person owning, controlling, managing or leasing any gas well  
15 and/or any person who produces in any manner any gas by taking it from the earth or  
16 waters in Garrett County[, and includes any person owning any royalty or other  
17 interest in any gas or its value, whether produced by him or her or by some other  
18 person on his or her behalf, either by lease, contract or otherwise].

19       PRODUCTION or TOTAL GAS PRODUCED. The total gross amount of gas  
20 produced[, including all royalty or other interest]. The amount for the purpose of the  
21 tax imposed by this chapter shall be measured or determined by meter readings  
22 showing 100% of the full volume expressed in cubic feet.

23       REPORT. Any report required to be furnished by this chapter or that may be  
24 required by the County Commissioners in the administration of this chapter.

25       ROYALTY OWNERS. Includes all persons owning any mineral rights under  
26 any producing leasehold within Garrett County, other than the working interest,  
27 which working interest is that of the person having the management and operation of  
28 the well.

29       SUBSEQUENT PURCHASER. Any person who purchases gas for any purpose  
30 whatsoever when the gas is purchased from any person other than the producer.]

31       TAXPAYER. Any person subject to the tax herein levied.

32       51.02.

33       (A) There is levied a ~~distribution and~~ production tax on the business or  
34 occupation of ~~collecting, distributing and~~ producing natural gas or other gases taken  
35 from the earth in Garrett County, computed as follows:

10 (b) ~~Gas produced from oil wells with oil and lawfully vented or~~  
11 flared;

12 (e) Gas used for lifting oil, unless sold for such purpose.

15 (A) TEN-ELEVENTHS TO THE COUNTY; AND

16 (B) ONE-ELEVENTH TO MUNICIPALITIES IN THE COUNTY  
17 DISTRIBUTED ON A PER CAPITA BASIS, BASED ON POPULATION RECORDS AS  
18 UPDATED BY THE STATE PLANNING COMMISSION.

19       (B) The market value of gas produced in Garrett County shall be the value  
20 thereof at the mouth of the well[; however, in case gas is sold for cash only, the tax  
21 shall be computed on the producer's gross cash receipts. In all cases where the whole  
22 or a part of the consideration for the sale of gas is a portion of the products extracted  
23 from the producer's gas or a portion of the residue gas, or both, the tax shall be  
24 computed on the gross value of all things of value received by the producer, including  
25 any bonus or premium, provided that, notwithstanding any other provision herein to  
26 the contrary, where gas is processed for the liquid hydrocarbon content and the  
27 residue gas is returned by cycling methods, as distinguished from repressuring or  
28 pressure maintenance methods, to some gas-producing formation, the taxable value of  
29 such gas shall be 3/5 of the gross value of all liquids extracted, separated and saved  
30 from the gas, such value to be determined upon separation and extraction and prior to  
31 absorption, refining or procession of such hydrocarbons, and the quantity of the  
32 products shall be measured by the total yield of the processing plant from the gas.

33           (C) The tax hereby levied shall be the liability of the producer and purchaser  
34 of gas in the following proportions:

35 (1) The producer shall be liable for 60% of the tax hereby levied;

(2) The purchaser shall be liable for 40% of the tax hereby levied].

2        **(D) (C)**    The [first purchaser] **PRODUCER** of gas shall pay the total tax on  
3    all gas [purchased] **PRODUCED**, making the payments of tax to the County  
4    Commissioners of Garrett County by legal tender or cashier's check payable to the  
5    County Commissioners. [The first purchaser shall be entitled to deduct the  
6    proportionate amount of the tax chargeable to the producer and royalty owner from  
7    the amount due the producer from whom such gas is purchased, and the producer  
8    shall be entitled to deduct the proportionate amount of the tax chargeable to any other  
9    producer owning an interest in such gas from the amount due such other producer and  
10   shall be entitled to deduct the proportionate amount of the tax chargeable to any  
11   royalty owner from the amount due such royalty owner, and such moneys so deducted  
12   from payments due producers for the payment of this tax shall be held by the  
13   purchaser in trust for the use and benefit of Garrett County and shall not be  
14   commingled with any other funds held by the purchaser and shall be remitted to the  
15   County Commissioners, together with the purchaser's proportion of the tax, in  
16   accordance with the terms and provisions of this chapter.] It shall be the duty of each  
17   such [purchaser] **PRODUCER** to keep accurate records of all such gas [purchased]  
18   **PRODUCED**.

19                   [(E)] (D)    The tax herein levied shall be due and payable at the office of the  
20 County Commissioners of Garrett County [on the last day of April, July, October and  
21 January] **BY THE 15TH DAY OF EACH MONTH** of each calendar year, based on the  
22 amount of gas produced[, saved and collected during the calendar quarter ending on  
23 the last day of March, June, September and December, respectively, and on] **IN THE**  
24 **PRECEDING MONTH.** **ON** or before such date each [purchaser] **PRODUCER** shall  
25 make and deliver to the County Commissioners a verified report, on forms prescribed  
26 by [them] **THE COUNTY**, showing the gross amount of gas produced [and collected,  
27 less the exclusions and at the pressure base set out herein], upon which the tax herein  
28 levied accrues, together with details as to the amount of gas, from what leases the gas  
29 was produced [and collected], the correct names and addresses of the producer [and  
30 purchaser] of the gas and such other information as the County Commissioners may  
31 require. In no event shall a producer [or purchaser] be relieved of responsibility for the  
32 tax until same shall have been paid[, and provided that in the event the amount of the  
33 tax herein levied as the producer's proportion thereof shall be withheld by a purchaser  
34 from payments due a producer and the purchaser fails to make payment of the tax to  
35 the County Commissioners as provided herein and the producer pays the tax himself  
36 or herself, the producer may bring legal action against such purchaser to recover the  
37 amount of tax so withheld, together with penalties and interest which may have  
38 accrued by failure to make such payment, and shall be entitled to reasonable  
39 attorney's fees and court costs incurred by legal action].

1 date due as hereinabove specified, such payment shall become delinquent and a  
2 penalty of 10% of the amount of the tax shall be added, and the tax and penalty shall  
3 bear interest at the rate of 6% per annum from the date due until the date paid.

4 [(G) The producer's proportion of the tax herein levied shall be borne ratably  
5 by all interested parties, including royalty interest, lessor's interest or any other  
6 interest, whether by lease, contract or otherwise, except the purchaser's interest, and  
7 the purchaser is authorized and required to withhold from any payment due any  
8 interested parties the proportionate tax due and remit the same as above provided.

9 (H) The operator of each well from which gas is produced, saved and collected  
10 in Garrett County shall also make and deliver to the County Commissioners of Garrett  
11 County, on or before the due date of the payments provided above, a report of all gas  
12 produced and sold from each well during the preceding quarter, together with details  
13 as to amounts of gas, the name or location of the wells, the correct names and  
14 addresses of the producer and purchaser of the gas and such other information as the  
15 County Commissioners may require.

16 (I) The tax imposed is in lieu of all other taxes upon the gas, the property  
17 rights attached thereto or inherent therein and the values created thereby, and upon  
18 all leases or rights to develop and operate any lands for gas, the values created  
19 thereby and the property right attached thereto or inherent therein.]

20 51.03.

21 [(A)] When it shall appear that a taxpayer to whom the provisions of this  
22 chapter shall apply has erroneously paid more taxes than were due during any  
23 taxpaying period on account of a mistake either of fact or of law, it shall be the duty of  
24 the [County Treasurer] DIRECTOR OF FINANCE, upon order of the County  
25 Commissioners, to credit the total amount of taxes due by the taxpayer for the current  
26 period with the total amount of taxes so erroneously paid or to make refund in a  
27 proper case.

28 [(B) The tax levied shall be paid by the first purchaser purchasing gas from  
29 the producer, who shall make deduction as aforesaid; provided, however, that the  
30 failure of the first purchaser to pay the tax shall not relieve any subsequent purchaser  
31 from the payment of same where the first purchaser does not account for and pay the  
32 tax, and it shall be the duty of every person purchasing gas produced in Garrett  
33 County to satisfy himself, herself or itself that the tax on the gas has been or will be  
34 paid by the persons primarily liable therefor.]

35 51.04.

36 The County Commissioners may, through the County Auditors or other auditors  
37 and/or other technical assistants employed for the purpose of verifying reports and  
38 investigating the affairs of producers [and/or purchasers], determine whether the tax

1 is being properly reported and paid. They shall have the power to enter upon the  
2 premises necessary in determining the correct tax liability and to examine or cause to  
3 be examined any books or records of any person subject to a tax under this chapter  
4 and to secure any other information directly or indirectly concerned in the  
5 enforcement of this chapter and to promulgate and enforce, according to law, rules and  
6 regulations pertinent to the enforcement of this chapter, which shall have full force  
7 and effect of law.

8 51.05.

9       If the County Commissioners are satisfied that the values used in computing  
10 the tax do not represent the **WHOLESALE** market value of the gas at the mouth of the  
11 well, they shall forthwith so notify the taxpayers concerned, and it shall be the duty of  
12 the County Commissioners to set a date for a hearing thereon, giving each taxpayer  
13 concerned not less than 10 days written notice thereof, and to call before them by  
14 proper process such persons as in their judgment may know the **WHOLESALE** market  
15 value of the gas at the mouth of the well, who shall testify under oath as to the  
16 **WHOLESALE** market value thereof. Each taxpayer shall have the right to be heard  
17 and present evidence. The County Commissioners, after hearing the evidence, shall fix  
18 the **WHOLESALE** market value of the gas at the mouth of the well by written findings  
19 in accordance with the evidence so introduced, and their findings in such case or cases  
20 shall be final, unless the taxpayer concerned shall pay the tax herein levied upon the  
21 **WHOLESALE** market value so fixed by the County Commissioners under protest  
22 within 60 days after the taxpayer has been notified in writing of the findings, or in the  
23 event the taxpayer does not pay the tax based on the values so determined by the  
24 County Commissioners within 60 days after having been notified of the findings. The  
25 findings of the County Commissioners shall be final, unless the taxpayer shall, within  
26 60 days, appeal to the Circuit Court of Garrett County. Upon the appeal, the trial shall  
27 be de novo, but the findings of the County Commissioners shall be taken as *prima  
facie* evidence of the **WHOLESALE** market value of the gas at the mouth of the well,  
28 and the burden of proof shall rest upon the taxpayer to establish a lower **WHOLESALE**  
29 market value.

31 51.06.

32       In the event of any person engaged in the business of producing [or purchasing]  
33 any gas in Garrett County shall become delinquent in the payment of the proper taxes  
34 herein imposed or fails to file required reports with the County Commissioners, the  
35 County Commissioners shall have the right to enjoin any such person who is at fault  
36 from producing gas until the delinquent tax is paid or the reports are filed.

37 51.07.

38       (A) (1) If any purchaser of natural and/or casinghead gas fails or refuses  
39 to pay any tax, penalty or interest within the time and manner provided by this  
40 chapter and it becomes necessary to bring suit or to intervene in any manner for the

1 establishment or collection of the claim in any judicial proceedings, any report filed in  
2 the office of the County Commissioners by such purchaser or producer or  
3 representative of the purchaser or producer or a copy thereof certified to by the County  
4 Commissioners showing the amount of gas produced on which tax, penalties or  
5 interest have not been paid or any audit made by the County Commissioners or their  
6 representatives from the books of the purchaser when filed and sworn to by such  
7 representative as being made from the records of the purchaser shall be admissible in  
8 evidence in the proceedings and shall be prima facie evidence of the contents thereof;  
9 provided, however, that the incorrectness of the report or audit may be shown, and  
10 provided further that the report or audit may be admitted in evidence only against the  
11 party by or from whom it was made.

12 (2) In the event the County Commissioners shall file suit or claim for  
13 taxes provided for in the foregoing and attach or file as an exhibit any report or audit  
14 of the purchaser or producer and an affidavit made by the County Commissioners or  
15 their representative that the taxes shown to be due by the report or audit are past due  
16 and unpaid and that all payments and credits have been allowed, then, unless the  
17 party resisting the same shall file an answer in the same form and manner as required  
18 by law, the audit or report shall be taken as prima facie evidence thereof.]

19 [(B)] (A) (1) On notice from the County Commissioners, it shall be  
20 unlawful for any person to produce or remove any natural [and/or casinghead] gas  
21 from any lease in Garrett County whenever the [owner or operator of the lease]  
22 **PRODUCER** has failed to file reports as required under the provisions of this chapter.

23 (2) (B) Whenever any lease producing natural [and/or casinghead]  
24 gas changes hands [or any purchaser of gas transfers his or her interest], it shall be  
25 the duty of the [owner or operator of the lease and any such purchaser of gas]  
26 **PRODUCER** to note on his or her last report that the lease or interest has been sold or  
27 transferred, showing the effective date of the change and the name and address of the  
28 individual, firm, association, joint-stock company, syndicate, copartnership,  
29 corporation, agency or receiver who will operate the lease or who bought the interest  
30 and will be responsible for the filing of reports provided for in this chapter. It further  
31 shall be the duty of the new [owner or operator of the lease or interest] **PRODUCER** to  
32 note on his or her first report that the lease or interest has been acquired, showing the  
33 effective date of the change and the name and address of the individual, firm,  
34 association, joint-stock company, syndicate, copartnership, corporation, agency or  
35 receiver formerly owning and/or operating the lease or interest.

36 [51.08.

37 (A) There is created the Natural Gas Fund, to which all receipts from the tax  
38 imposed by this chapter shall be credited on the books of the County Treasurer of  
39 Garrett County.

1                   (B) The Natural Gas Fund shall be allocated and paid out for the following  
2 purposes and in the order herein set out:

17 51.99.

18       (A) Any person, firm, association or corporation, whose failure, omission,  
19 default or violation it may be, shall be subject to a penalty of not less than \$100 nor  
20 more than \$1,000 for failure or omission to keep the records required herein or for the  
21 violation of any of the other provisions hereof, and each day's violation shall constitute  
22 a separate offense. Garrett County shall have a prior lien for all delinquent taxes,  
23 penalties and interests on all property and equipment used by the [purchaser]  
24 **PRODUCER** of gas in the business of [purchasing] **PRODUCING** gas, and if any  
25 [purchaser] **PRODUCER** of gas shall fail to remit the proper taxes, penalties and  
26 interest due, or any of them, the County Commissioners may employ auditors or other  
27 persons to ascertain the correct amount due, and the [purchaser] **PRODUCER** of gas  
28 shall be liable, as additional penalty, for the reasonable expenses of the reasonable  
29 value of such services of representatives of the County Commissioners incurred in  
30 such investigation and audit], provided that all funds collected for audits and  
31 examinations shall be placed in a Natural Gas Audit Fund of Garrett County and shall  
32 constitute a revolving fund which may be used from time to time by the County  
33 Commissioners in making such audits in addition to the general appropriation made  
34 for such purposes, and all of the funds to be placed in the Fund are appropriated for  
35 such purpose]. The County Commissioners of Garrett County are authorized to collect  
36 all delinquent taxes, penalties and other amounts due and to enforce all liens under  
37 this law by civil suit.

38           (B) (1) Whoever shall, as a producer [or purchaser] or as agent or  
39 representative of a producer [or purchaser], knowingly make any false entries or fail

1       to make any proper entries in the books required by this chapter with the intent to  
2       defraud Garrett County, or whoever, as such, shall knowingly make a false or  
3       incomplete report as required by the provisions of this chapter, or whoever, as such,  
4       shall knowingly fail or refuse to make the report required to be made, or whoever, as  
5       such, shall destroy, mutilate or secrete any of the records required to be kept by the  
6       provisions of this chapter, or whoever, as such, shall hide or secrete with the intent to  
7       defraud any of the property upon which a lien is created hereunder, shall be guilty of a  
8       misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than  
9       \$100 nor more than \$1,000, or be confined in the county jail for not more than 12  
10      months, or be punishable by both such fine and imprisonment.

11            (2) In addition thereto, the producer [or purchaser] or agent thereof  
12       shall forfeit to Garrett County, for any offense or the violation of any of the provisions  
13       hereof or any rule or regulation, a penalty of \$1,000 for each such offense, to be  
14       recovered by Garrett County in a civil suit. The penalties prescribed in this section,  
15       both criminal and civil, are in addition to any and all other penalties prescribed in this  
16       chapter.

17            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18       October 1, 2009.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.