

SENATE BILL 651

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9lr1819
CF HB 803

By: **Senator Edwards**

Introduced and read first time: February 6, 2009

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2009

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of repealing certain taxes on the purchase, distribution, and
4 collection of natural gas in Garrett County; repealing certain taxes on
5 purchasing natural gas in the county; repealing certain exclusions to the county
6 natural gas tax; altering the amount of a certain Garrett County tax; requiring
7 the tax to be distributed in certain amounts to the county and certain
8 municipalities; repealing certain provisions to provide that the market value of
9 natural gas in the county is the value at the mouth of the well; altering the day
10 that certain taxes shall be paid; altering the frequency with which certain
11 county taxes shall be paid; requiring a producer of natural gas in the county to
12 make a certain report; requiring the Director of Finance to perform certain
13 duties; repealing certain provisions relating to certain evidence in a judicial
14 proceeding relating to failure to pay certain county taxes; repealing certain
15 provisions creating a Garrett County Natural Gas Fund; repealing certain
16 penalties that are applicable to purchasers of certain natural gas; making
17 conforming changes; repealing certain definitions; altering certain definitions;
18 and generally relating to natural gas distribution and production in Garrett
19 County.

20 BY repealing and reenacting, with amendments,
21 The Public Local Laws of Garrett County
22 Section ~~51.02(A)~~ 51.01 through 51.07 and 51.99
23 Article 12 – Public Local Laws of Maryland
24 (2005 Edition and 2008 Supplement, as amended)

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.



1 BY repealing
2 The Public Local Laws of Garrett County
3 Section 51.08
4 Article 12 – Public Local Laws of Maryland
5 (2005 Edition and 2008 Supplement, as amended)

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

8 **Article 12 – Garrett County**

9 **51.01.**

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

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

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

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

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

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

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

33 [OPERATOR. The person having the active management and operation of the
34 well.]

1 PERSON. Includes any person, firm, concern, receiver, trustee, executor,
2 administrator, agent, institution, association, partnership, company, corporation, and
3 persons acting under declarations of trust, as well as the trustees acting under such
4 declarations of trust.

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

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

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

16 [ROYALTY OWNERS. Includes all persons owning any mineral rights under
17 any producing leasehold within Garrett County, other than the working interest,
18 which working interest is that of the person having the management and operation of
19 the well.

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

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

23 51.02.

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

27 (1) A tax shall be paid on the gas produced ~~and saved for commercial~~
28 ~~purposes~~ within Garrett County, accounting from January 1, 1951, equivalent to [7%]
29 **5.5%** of the wholesale market value ~~thereof as and when produced, provided that the~~
30 ~~amount of the tax shall never be less than 11/150 of 1% per 1,000 cubic feet~~ **AT THE**
31 **WELLHEAD;**

32 ~~(2) In calculating the tax herein levied, the following shall be~~
33 ~~excluded:~~

34 ~~(a) Gas injected into a natural oil or gas bearing reservoir in~~
35 ~~Garrett County, unless sold for such purpose;~~

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

3 ~~(c) Gas used for lifting oil, unless sold for such purpose.~~

4 ~~(3)~~ **(2) MONEY RECEIVED PURSUANT TO THE TAX SHALL BE**
5 **DISTRIBUTED AS FOLLOWS:**

6 **(A) TEN-ELEVENTHS TO THE COUNTY; AND**

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

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

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

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

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

28 [(D)] (C) The [first purchaser] PRODUCER of gas shall pay the total tax on
29 all gas [purchased] PRODUCED, making the payments of tax to the County
30 Commissioners of Garrett County by legal tender or cashier's check payable to the
31 County Commissioners. [The first purchaser shall be entitled to deduct the
32 proportionate amount of the tax chargeable to the producer and royalty owner from
33 the amount due the producer from whom such gas is purchased, and the producer
34 shall be entitled to deduct the proportionate amount of the tax chargeable to any other
35 producer owning an interest in such gas from the amount due such other producer and
36 shall be entitled to deduct the proportionate amount of the tax chargeable to any
37 royalty owner from the amount due such royalty owner, and such moneys so deducted
38 from payments due producers for the payment of this tax shall be held by the

1 purchaser in trust for the use and benefit of Garrett County and shall not be
2 commingled with any other funds held by the purchaser and shall be remitted to the
3 County Commissioners, together with the purchaser's proportion of the tax, in
4 accordance with the terms and provisions of this chapter.] It shall be the duty of each
5 such [purchaser] **PRODUCER** to keep accurate records of all such gas [purchased]
6 **PRODUCED.**

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

28 [(F)] **(E)** Unless the payment of tax on all gas produced [and collected]
29 during any [quarter] **MONTH** or fractional part thereof shall be made on or before the
30 date due as hereinabove specified, such payment shall become delinquent and a
31 penalty of 10% of the amount of the tax shall be added, and the tax and penalty shall
32 bear interest at the rate of 6% per annum from the date due until the date paid.

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

38 (H) The operator of each well from which gas is produced, saved and collected
39 in Garrett County shall also make and deliver to the County Commissioners of Garrett
40 County, on or before the due date of the payments provided above, a report of all gas
41 produced and sold from each well during the preceding quarter, together with details
42 as to amounts of gas, the name or location of the wells, the correct names and

1 addresses of the producer and purchaser of the gas and such other information as the
2 County Commissioners may require.

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

7 51.03.

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

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

22 51.04.

23 The County Commissioners may, through the County Auditors or other auditors
24 and/or other technical assistants employed for the purpose of verifying reports and
25 investigating the affairs of producers [and/or purchasers], determine whether the tax
26 is being properly reported and paid. They shall have the power to enter upon the
27 premises necessary in determining the correct tax liability and to examine or cause to
28 be examined any books or records of any person subject to a tax under this chapter
29 and to secure any other information directly or indirectly concerned in the
30 enforcement of this chapter and to promulgate and enforce, according to law, rules and
31 regulations pertinent to the enforcement of this chapter, which shall have full force
32 and effect of law.

33 51.05.

34 If the County Commissioners are satisfied that the values used in computing
35 the tax do not represent the **WHOLESALE** market value of the gas at the mouth of the
36 well, they shall forthwith so notify the taxpayers concerned, and it shall be the duty of
37 the County Commissioners to set a date for a hearing thereon, giving each taxpayer
38 concerned not less than 10 days written notice thereof, and to call before them by
39 proper process such persons as in their judgment may know the **WHOLESALE** market

1 value of the gas at the mouth of the well, who shall testify under oath as to the
2 WHOLESALE market value thereof. Each taxpayer shall have the right to be heard
3 and present evidence. The County Commissioners, after hearing the evidence, shall fix
4 the WHOLESALE market value of the gas at the mouth of the well by written findings
5 in accordance with the evidence so introduced, and their findings in such case or cases
6 shall be final, unless the taxpayer concerned shall pay the tax herein levied upon the
7 WHOLESALE market value so fixed by the County Commissioners under protest
8 within 60 days after the taxpayer has been notified in writing of the findings, or in the
9 event the taxpayer does not pay the tax based on the values so determined by the
10 County Commissioners within 60 days after having been notified of the findings. The
11 findings of the County Commissioners shall be final, unless the taxpayer shall, within
12 60 days, appeal to the Circuit Court of Garrett County. Upon the appeal, the trial shall
13 be de novo, but the findings of the County Commissioners shall be taken as prima
14 facie evidence of the WHOLESALE market value of the gas at the mouth of the well,
15 and the burden of proof shall rest upon the taxpayer to establish a lower WHOLESALE
16 market value.

17 51.06.

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

23 51.07.

24 [(A) (1) If any purchaser of natural and/or casinghead gas fails or refuses
25 to pay any tax, penalty or interest within the time and manner provided by this
26 chapter and it becomes necessary to bring suit or to intervene in any manner for the
27 establishment or collection of the claim in any judicial proceedings, any report filed in
28 the office of the County Commissioners by such purchaser or producer or
29 representative of the purchaser or producer or a copy thereof certified to by the County
30 Commissioners showing the amount of gas produced on which tax, penalties or
31 interest have not been paid or any audit made by the County Commissioners or their
32 representatives from the books of the purchaser when filed and sworn to by such
33 representative as being made from the records of the purchaser shall be admissible in
34 evidence in the proceedings and shall be prima facie evidence of the contents thereof;
35 provided, however, that the incorrectness of the report or audit may be shown, and
36 provided further that the report or audit may be admitted in evidence only against the
37 party by or from whom it was made.

38 (2) In the event the County Commissioners shall file suit or claim for
39 taxes provided for in the foregoing and attach or file as an exhibit any report or audit
40 of the purchaser or producer and an affidavit made by the County Commissioners or
41 their representative that the taxes shown to be due by the report or audit are past due
42 and unpaid and that all payments and credits have been allowed, then, unless the

1 party resisting the same shall file an answer in the same form and manner as required
2 by law, the audit or report shall be taken as prima facie evidence thereof.]

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

7 (2) Whenever any lease producing natural [and/or casinghead] gas
8 changes hands [or any purchaser of gas transfers his or her interest], it shall be the
9 duty of the [owner or operator of the lease and any such purchaser of gas] PRODUCER
10 to note on his or her last report that the lease or interest has been sold or transferred,
11 showing the effective date of the change and the name and address of the individual,
12 firm, association, joint-stock company, syndicate, copartnership, corporation, agency
13 or receiver who will operate the lease or who bought the interest and will be
14 responsible for the filing of reports provided for in this chapter. It further shall be the
15 duty of the new [owner or operator of the lease or interest] PRODUCER to note on his
16 or her first report that the lease or interest has been acquired, showing the effective
17 date of the change and the name and address of the individual, firm, association,
18 joint-stock company, syndicate, copartnership, corporation, agency or receiver
19 formerly owning and/or operating the lease or interest.

20 [51.08.

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

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

26 (1) Fifteen percent of the receipts from the tax received from gas
27 produced within the corporate limits of any incorporated town in Garrett County shall
28 be paid to corporate officials of the town;

29 (2) The first \$50,000 or as much thereof as shall be received each year
30 shall be used towards the liquidation of the present indebtedness of Garrett County for
31 public school building purposes;

32 (3) The next \$25,000 of receipts from the tax or so much thereof as
33 shall be received each year shall be used towards the payment of the expenses of
34 maintenance and operation of the Garrett County Memorial Hospital;

35 (4) The balance, if any, of the receipts each year shall be placed in a
36 New School Building Repair and/or Addition Fund, to be expended by the County
37 Commissioners and the Board of Education of Garrett County as they may deem

1 expedient and necessary, subject to the approval of the State Superintendent of
2 Schools.]

3 51.99.

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

24 (B) (1) Whoever shall, as a producer [or purchaser] or as agent or
25 representative of a producer [or purchaser], knowingly make any false entries or fail
26 to make any proper entries in the books required by this chapter with the intent to
27 defraud Garrett County, or whoever, as such, shall knowingly make a false or
28 incomplete report as required by the provisions of this chapter, or whoever, as such,
29 shall knowingly fail or refuse to make the report required to be made, or whoever, as
30 such, shall destroy, mutilate or secrete any of the records required to be kept by the
31 provisions of this chapter, or whoever, as such, shall hide or secrete with the intent to
32 defraud any of the property upon which a lien is created hereunder, shall be guilty of a
33 misdemeanor and, upon conviction thereof, shall be fined in a sum of not less than
34 \$100 nor more than \$1,000, or be confined in the county jail for not more than 12
35 months, or be punishable by both such fine and imprisonment.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.