

As Introduced

**130th General Assembly
Regular Session
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H. B. No. 212

Representative Hagan, R.

Cosponsors: Representatives Foley, Patterson, Boyd

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A B I L L

To amend sections 1509.02, 1509.071, 5749.01, and 1
5749.02 and to enact sections 190.01, 190.02, 2
190.03, 109.04, 190.05, 1509.074, and 5749.18 of 3
the Revised Code to levy a tax on the severance of 4
oil, gas, condensate, and natural gas liquids from 5
horizontal wells, to distribute revenue from the 6
tax to environmental and oil and gas regulatory 7
purposes, local governments impacted and not 8
impacted by horizontal well development, and a 9
permanent fund to promote economic development, 10
and to provide for the administration, investment, 11
and use of the permanent fund. 12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1509.02, 1509.071, 5749.01, and 13
5749.02 be amended and sections 190.01, 190.02, 190.03, 109.04, 14
190.05, 1509.074, and 5749.18 of the Revised Code be enacted to 15
read as follows: 16

Sec. 190.01. There is hereby created the severance tax trust 17
fund, which shall be in the custody of the treasurer of state but 18
shall not be part of the state treasury. Moneys received from the 19

tax levied in divisions (A)(10) and (11) of section 5749.02 of the 20
Revised Code shall be deposited in the fund in accordance with 21
division (B) of that section. Except as provided in section 190.04 22
of the Revised Code, money in the fund may not be appropriated by 23
the general assembly except upon approval of four-fifths of the 24
membership of the house of representatives and of the senate. 25
Money in the fund so appropriated may be used for any purpose. 26
Otherwise, money in the fund shall be used in accordance with 27
section 190.04 of the Revised Code. 28

Sec. 190.02. (A) The general administration, management, and 29
investment of the severance tax trust fund are hereby vested in a 30
board to be known as the "severance tax trust board," which shall 31
be composed of the following members: 32

(1) The treasurer of state; 33

(2) One member of the public who is a representative of the 34
oil and gas industry; 35

(3) One member of the public who is a representative of a 36
statewide environmental organization; 37

(4) Six members of the public, each of whom shall have direct 38
experience in the management, analysis, supervision, or investment 39
of financial assets. 40

(B) The members described in divisions (A)(2) to (4) of this 41
section shall be appointed by the governor with the advice and 42
consent of the senate and may be removed by the governor for good 43
cause. Such members may be reappointed, but may not serve more 44
than two consecutive terms on the board. 45

Each member described in divisions (A)(2) and (3) of this 46
section shall serve a four-year term. Of the members described in 47
division (A)(4) of this section, for the first term occurring 48
after the effective date of this section: 49

(1) Two members shall serve a three-year term; 50

(2) Two members shall serve a two-year term; and 51

(3) Two members shall serve a one-year term. 52

For every term thereafter, members described in division 53
(A)(4) of this section shall serve four-year terms. Any member 54
appointed to the board under this section shall hold office until 55
the later of the end of the term for which the member is appointed 56
or the date the member's successor takes office. A vacancy 57
occurring among the members shall be filled in the same manner as 58
the original appointment. 59

(C) At the first meeting, which shall occur not later than 60
one year after the effective date of this section, members of the 61
board shall elect a chair. The board shall meet annually or more 62
frequently at the call of the chair. A majority of the board 63
constitutes a quorum. The board is a public body for purposes of 64
section 121.22 of the Revised Code. Records of the board are 65
public records for purposes of section 149.43 of the Revised Code. 66

(D) The board may hire staff to assist the board in the 67
conduct of its duties under this chapter. The staff of the 68
severance tax trust board are in the unclassified service. The 69
director of administrative services shall fix the compensation of 70
the staff. 71

(E) Compensation of the members, except for the treasurer of 72
state, shall be in accordance with division (J) of section 124.15 73
of the Revised Code. In addition to such compensation, all members 74
shall be reimbursed for their necessary expenses incurred in the 75
performance of their work as members. 76

(F) The board shall prepare and submit an operating budget 77
for each fiscal year. Expenses incurred by the board in 78
administering this chapter shall be paid from the severance tax 79
trust administrative fund. 80

(G) There is hereby created the severance tax trust 81
administrative fund, which shall be in the custody of the 82
treasurer of state but shall not be part of the state treasury. 83
Money received from the tax levied in divisions (A)(10) and (11) 84
of section 5749.02 of the Revised Code shall be deposited in the 85
fund in accordance with division (B) of that section. Money in the 86
fund shall be used to pay the expenses of the severance tax trust 87
board in administering this chapter. Before the end of each fiscal 88
year, the severance tax trust board shall transfer any money in 89
the fund in excess of that included in the board's operating 90
budget for that fiscal year to the severance tax trust fund. The 91
board shall not appropriate or encumber money in the severance tax 92
trust fund. 93

Sec. 190.03. (A) The severance tax trust board and the 94
board's staff, in managing and investing the assets of the 95
severance tax trust fund, shall exercise the judgment and care 96
under the circumstances then prevailing that an institutional 97
investor of ordinary prudence, discretion, and intelligence 98
exercises in the designation and management of large investments 99
entrusted to it, not in regard to speculation, but in regard to 100
the permanent disposition of funds, considering preservation of 101
the purchasing power of the fund over time while maximizing the 102
expected total return from both income and the appreciation of 103
capital. 104

(B) Not later than one year after the effective date of this 105
section, the board shall do each of the following: 106

(1) Establish a statement of investment policies and 107
guidelines, including the board's overall investment philosophy 108
and other related policies as necessary for the effective 109
management and investment of the assets of the fund; 110

(2) Establish a framework or process for the management of 111

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| <u>the investment risk of the fund;</u> | 112 |
| <u>(3) Approve the long-term or strategic asset allocation of</u> | 113 |
| <u>the fund in terms of the proportion of total assets to be invested</u> | 114 |
| <u>on average over time in the various asset classes or risk</u> | 115 |
| <u>categories, as well as the minimum-maximum range within which the</u> | 116 |
| <u>assets can be allocated at any point in time;</u> | 117 |
| <u>(4) Establish an investment management structure for the fund</u> | 118 |
| <u>and proportion of assets in an asset class to be managed by</u> | 119 |
| <u>external investment managers versus the board's staff.</u> | 120 |
| <u>Sec. 190.04. Beginning in fiscal year 2020, the general</u> | 121 |
| <u>assembly may appropriate money from the severance tax trust fund</u> | 122 |
| <u>to provide funding for economic diversification projects,</u> | 123 |
| <u>education, workforce development, federal matching grants, and</u> | 124 |
| <u>higher education. The amount that the general assembly may</u> | 125 |
| <u>appropriate in each fiscal year from the fund shall not exceed</u> | 126 |
| <u>amounts equal to the following:</u> | 127 |
| <u>(A) For fiscal year 2020, one per cent of the investment</u> | 128 |
| <u>earnings of the fund in the preceding fiscal year;</u> | 129 |
| <u>(B) For fiscal year 2021, two per cent of the investment</u> | 130 |
| <u>earnings of the fund in the preceding two fiscal years, divided by</u> | 131 |
| <u>two;</u> | 132 |
| <u>(C) For fiscal year 2022, three per cent of the investment</u> | 133 |
| <u>earnings of the fund in the preceding three fiscal years, divided</u> | 134 |
| <u>by three;</u> | 135 |
| <u>(D) For fiscal year 2023, four per cent of the investment</u> | 136 |
| <u>earnings of the fund in the preceding four fiscal years, divided</u> | 137 |
| <u>by four;</u> | 138 |
| <u>(E) For fiscal year 2024 and every fiscal year thereafter,</u> | 139 |
| <u>five per cent of the investment earnings of the fund in the</u> | 140 |
| <u>preceding five fiscal years, divided by five.</u> | 141 |

Sec. 190.05. On or before the first day of December of each 142
year, the severance tax trust board shall submit to the governor, 143
the speaker and minority leader of the house of representatives, 144
and the president and minority leader of the senate 145
recommendations for legislation to improve the severance tax trust 146
fund. 147

Sec. 1509.02. There is hereby created in the department of 148
natural resources the division of oil and gas resources 149
management, which shall be administered by the chief of the 150
division of oil and gas resources management. The division has 151
sole and exclusive authority to regulate the permitting, location, 152
and spacing of oil and gas wells and production operations within 153
the state, excepting only those activities regulated under federal 154
laws for which oversight has been delegated to the environmental 155
protection agency and activities regulated under sections 6111.02 156
to 6111.029 of the Revised Code. The regulation of oil and gas 157
activities is a matter of general statewide interest that requires 158
uniform statewide regulation, and this chapter and rules adopted 159
under it constitute a comprehensive plan with respect to all 160
aspects of the locating, drilling, well stimulation, completing, 161
and operating of oil and gas wells within this state, including 162
site construction and restoration, permitting related to those 163
activities, and the disposal of wastes from those wells. In order 164
to assist the division in the furtherance of its sole and 165
exclusive authority as established in this section, the chief may 166
enter into cooperative agreements with other state agencies for 167
advice and consultation, including visitations at the surface 168
location of a well on behalf of the division. Such cooperative 169
agreements do not confer on other state agencies any authority to 170
administer or enforce this chapter and rules adopted under it. In 171
addition, such cooperative agreements shall not be construed to 172

dilute or diminish the division's sole and exclusive authority as 173
established in this section. Nothing in this section affects the 174
authority granted to the director of transportation and local 175
authorities in section 723.01 or 4513.34 of the Revised Code, 176
provided that the authority granted under those sections shall not 177
be exercised in a manner that discriminates against, unfairly 178
impedes, or obstructs oil and gas activities and operations 179
regulated under this chapter. 180

The chief shall not hold any other public office, nor shall 181
the chief be engaged in any occupation or business that might 182
interfere with or be inconsistent with the duties as chief. 183

All moneys collected by the chief pursuant to sections 184
1509.06, 1509.061, 1509.062, 1509.071, 1509.13, 1509.22, 1509.222, 185
1509.28, 1509.34, and 1509.50 of the Revised Code, ninety per cent 186
of moneys received by the treasurer of state from the tax levied 187
in divisions (A)(5) and (6) of section 5749.02 of the Revised 188
Code, four per cent of money received by the treasurer of state 189
from the tax levied in divisions (A)(10) and (11) of section 190
5749.02 of the Revised Code, all civil penalties paid under 191
section 1509.33 of the Revised Code, and, notwithstanding any 192
section of the Revised Code relating to the distribution or 193
crediting of fines for violations of the Revised Code, all fines 194
imposed under divisions (A) and (B) of section 1509.99 of the 195
Revised Code and fines imposed under divisions (C) and (D) of 196
section 1509.99 of the Revised Code for all violations prosecuted 197
by the attorney general and for violations prosecuted by 198
prosecuting attorneys that do not involve the transportation of 199
brine by vehicle shall be deposited into the state treasury to the 200
credit of the oil and gas well fund, which is hereby created. 201
Fines imposed under divisions (C) and (D) of section 1509.99 of 202
the Revised Code for violations prosecuted by prosecuting 203
attorneys that involve the transportation of brine by vehicle and 204

penalties associated with a compliance agreement entered into 205
pursuant to this chapter shall be paid to the county treasury of 206
the county where the violation occurred. 207

The fund shall be used solely and exclusively for the 208
purposes enumerated in division (B) of section 1509.071 of the 209
Revised Code, for the expenses of the division associated with the 210
administration of this chapter and Chapter 1571. of the Revised 211
Code and rules adopted under them, and for expenses that are 212
critical and necessary for the protection of human health and 213
safety and the environment related to oil and gas production in 214
this state. The expenses of the division in excess of the moneys 215
available in the fund shall be paid from general revenue fund 216
appropriations to the department. 217

Sec. 1509.071. (A) When the chief of the division of oil and 218
gas resources management finds that an owner has failed to comply 219
with a final nonappealable order issued or compliance agreement 220
entered into under section 1509.04, the restoration requirements 221
of section 1509.072, plugging requirements of section 1509.12, or 222
permit provisions of section 1509.13 of the Revised Code, or rules 223
and orders relating thereto, the chief shall make a finding of 224
that fact and declare any surety bond filed to ensure compliance 225
with those sections and rules forfeited in the amount set by rule 226
of the chief. The chief thereupon shall certify the total 227
forfeiture to the attorney general, who shall proceed to collect 228
the amount of the forfeiture. In addition, the chief may require 229
an owner, operator, producer, or other person who forfeited a 230
surety bond to post a new surety bond in the amount of fifteen 231
thousand dollars for a single well, thirty thousand dollars for 232
two wells, or fifty thousand dollars for three or more wells. 233

In lieu of total forfeiture, the surety or owner, at the 234
surety's or owner's option, may cause the well to be properly 235

plugged and abandoned and the area properly restored or pay to the treasurer of state the cost of plugging and abandonment.

(B) All moneys collected because of forfeitures of bonds as provided in this section shall be deposited in the state treasury to the credit of the oil and gas well fund created in section 1509.02 of the Revised Code.

The chief annually shall spend not less than fourteen per cent of the revenue credited to the fund from sources other than from the tax levied in divisions (A)(10) and (11) of section 5749.02 of the Revised Code during the previous fiscal year and all of the revenue credited to the fund from the tax levied in those divisions during the previous fiscal year for the following purposes:

(1) In accordance with division (D) of this section, to plug idle and orphaned wells or to restore the land surface properly as required in section 1509.072 of the Revised Code;

(2) In accordance with division (E) of this section, to correct conditions that the chief reasonably has determined are causing imminent health or safety risks at an idle and orphaned well or a well for which the owner cannot be contacted in order to initiate a corrective action within a reasonable period of time as determined by the chief.

Expenditures from the fund shall be made only for lawful purposes. In addition, expenditures from the fund shall not be made to purchase real property or to remove a dwelling in order to access a well.

(C)(1) Upon determining that the owner of a well has failed to properly plug and abandon it or to properly restore the land surface at the well site in compliance with the applicable requirements of this chapter and applicable rules adopted and orders issued under it or that a well is an abandoned well for

which no funds are available to plug the well in accordance with 267
this chapter, the chief shall do all of the following: 268

(a) Determine from the records in the office of the county 269
recorder of the county in which the well is located the identity 270
of the owner of the land on which the well is located, the 271
identity of the owner of the oil or gas lease under which the well 272
was drilled or the identity of each person owning an interest in 273
the lease, and the identities of the persons having legal title 274
to, or a lien upon, any of the equipment appurtenant to the well; 275

(b) Mail notice to the owner of the land on which the well is 276
located informing the landowner that the well is to be plugged. If 277
the owner of the oil or gas lease under which the well was drilled 278
is different from the owner of the well or if any persons other 279
than the owner of the well own interests in the lease, the chief 280
also shall mail notice that the well is to be plugged to the owner 281
of the lease or to each person owning an interest in the lease, as 282
appropriate. 283

(c) Mail notice to each person having legal title to, or a 284
lien upon, any equipment appurtenant to the well, informing the 285
person that the well is to be plugged and offering the person the 286
opportunity to plug the well and restore the land surface at the 287
well site at the person's own expense in order to avoid forfeiture 288
of the equipment to this state. 289

(2) If none of the persons described in division (C)(1)(c) of 290
this section plugs the well within sixty days after the mailing of 291
the notice required by that division, all equipment appurtenant to 292
the well is hereby declared to be forfeited to this state without 293
compensation and without the necessity for any action by the state 294
for use to defray the cost of plugging and abandoning the well and 295
restoring the land surface at the well site. 296

(D) Expenditures from the fund for the purpose of division 297

(B)(1) of this section shall be made in accordance with either of 298
the following: 299

(1) The expenditures may be made pursuant to contracts 300
entered into by the chief with persons who agree to furnish all of 301
the materials, equipment, work, and labor as specified and 302
provided in such a contract for activities associated with the 303
restoration or plugging of a well as determined by the chief. The 304
activities may include excavation to uncover a well, geophysical 305
methods to locate a buried well when clear evidence of leakage 306
from the well exists, cleanout of wellbores to remove material 307
from a failed plugging of a well, plugging operations, 308
installation of vault and vent systems, including associated 309
engineering certifications and permits, restoration of property, 310
and repair of damage to property that is caused by such 311
activities. Expenditures shall not be used for salaries, 312
maintenance, equipment, or other administrative purposes, except 313
for costs directly attributed to the plugging of an idle and 314
orphaned well. Agents or employees of persons contracting with the 315
chief for a restoration or plugging project may enter upon any 316
land, public or private, on which the well is located for the 317
purpose of performing the work. Prior to such entry, the chief 318
shall give to the following persons written notice of the 319
existence of a contract for a project to restore or plug a well, 320
the names of the persons with whom the contract is made, and the 321
date that the project will commence: the owner of the well, the 322
owner of the land upon which the well is located, the owner or 323
agents of adjoining land, and, if the well is located in the same 324
township as or in a township adjacent to the excavations and 325
workings of a mine and the owner or lessee of that mine has 326
provided written notice identifying those townships to the chief 327
at any time during the immediately preceding three years, the 328
owner or lessee of the mine. 329

(2)(a) The owner of the land on which a well is located who 330
has received notice under division (C)(1)(b) of this section may 331
plug the well and be reimbursed by the division of oil and gas 332
resources management for the reasonable cost of plugging the well. 333
In order to plug the well, the landowner shall submit an 334
application to the chief on a form prescribed by the chief and 335
approved by the technical advisory council on oil and gas created 336
in section 1509.38 of the Revised Code. The application, at a 337
minimum, shall require the landowner to provide the same 338
information as is required to be included in the application for a 339
permit to plug and abandon under section 1509.13 of the Revised 340
Code. The application shall be accompanied by a copy of a proposed 341
contract to plug the well prepared by a contractor regularly 342
engaged in the business of plugging oil and gas wells. The 343
proposed contract shall require the contractor to furnish all of 344
the materials, equipment, work, and labor necessary to plug the 345
well properly and shall specify the price for doing the work, 346
including a credit for the equipment appurtenant to the well that 347
was forfeited to the state through the operation of division 348
(C)(2) of this section. Expenditures under division (D)(2)(a) of 349
this section shall be consistent with the expenditures for 350
activities described in division (D)(1) of this section. The 351
application also shall be accompanied by the permit fee required 352
by section 1509.13 of the Revised Code unless the chief, in the 353
chief's discretion, waives payment of the permit fee. The 354
application constitutes an application for a permit to plug and 355
abandon the well for the purposes of section 1509.13 of the 356
Revised Code. 357

(b) Within thirty days after receiving an application and 358
accompanying proposed contract under division (D)(2)(a) of this 359
section, the chief shall determine whether the plugging would 360
comply with the applicable requirements of this chapter and 361
applicable rules adopted and orders issued under it and whether 362

the cost of the plugging under the proposed contract is 363
reasonable. If the chief determines that the proposed plugging 364
would comply with those requirements and that the proposed cost of 365
the plugging is reasonable, the chief shall notify the landowner 366
of that determination and issue to the landowner a permit to plug 367
and abandon the well under section 1509.13 of the Revised Code. 368
Upon approval of the application and proposed contract, the chief 369
shall transfer ownership of the equipment appurtenant to the well 370
to the landowner. The chief may disapprove an application 371
submitted under division (D)(2)(a) of this section if the chief 372
determines that the proposed plugging would not comply with the 373
applicable requirements of this chapter and applicable rules 374
adopted and orders issued under it, that the cost of the plugging 375
under the proposed contract is unreasonable, or that the proposed 376
contract is not a bona fide, arm's length contract. 377

(c) After receiving the chief's notice of the approval of the 378
application and permit to plug and abandon a well under division 379
(D)(2)(b) of this section, the landowner shall enter into the 380
proposed contract to plug the well. 381

(d) Upon determining that the plugging has been completed in 382
compliance with the applicable requirements of this chapter and 383
applicable rules adopted and orders issued under it, the chief 384
shall reimburse the landowner for the cost of the plugging as set 385
forth in the proposed contract approved by the chief. The 386
reimbursement shall be paid from the oil and gas well fund. If the 387
chief determines that the plugging was not completed in accordance 388
with the applicable requirements, the chief shall not reimburse 389
the landowner for the cost of the plugging, and the landowner or 390
the contractor, as applicable, promptly shall transfer back to 391
this state title to and possession of the equipment appurtenant to 392
the well that previously was transferred to the landowner under 393
division (D)(2)(b) of this section. If any such equipment was 394

removed from the well during the plugging and sold, the landowner 395
shall pay to the chief the proceeds from the sale of the 396
equipment, and the chief promptly shall pay the moneys so received 397
to the treasurer of state for deposit into the oil and gas well 398
fund. 399

The chief may establish an annual limit on the number of 400
wells that may be plugged under division (D)(2) of this section or 401
an annual limit on the expenditures to be made under that 402
division. 403

As used in division (D)(2) of this section, "plug" and 404
"plugging" include the plugging of the well and the restoration of 405
the land surface disturbed by the plugging. 406

(E) Expenditures from the oil and gas well fund for the 407
purpose of division (B)(2) of this section may be made pursuant to 408
contracts entered into by the chief with persons who agree to 409
furnish all of the materials, equipment, work, and labor as 410
specified and provided in such a contract. The competitive bidding 411
requirements of Chapter 153. of the Revised Code do not apply if 412
the chief reasonably determines that an emergency situation exists 413
requiring immediate action for the correction of the applicable 414
health or safety risk. A contract or purchase of materials for 415
purposes of addressing the emergency situation is not subject to 416
division (B) of section 127.16 of the Revised Code. The chief, 417
designated representatives of the chief, and agents or employees 418
of persons contracting with the chief under this division may 419
enter upon any land, public or private, for the purpose of 420
performing the work. 421

(F) Contracts entered into by the chief under this section 422
are not subject to any of the following: 423

(1) Chapter 4115. of the Revised Code; 424

(2) Section 153.54 of the Revised Code, except that the 425

contractor shall obtain and provide to the chief as a bid guaranty 426
a surety bond or letter of credit in an amount equal to ten per 427
cent of the amount of the contract; 428

(3) Section 4733.17 of the Revised Code. 429

(G) The owner of land on which a well is located who has 430
received notice under division (C)(1)(b) of this section, in lieu 431
of plugging the well in accordance with division (D)(2) of this 432
section, may cause ownership of the well to be transferred to an 433
owner who is lawfully doing business in this state and who has met 434
the financial responsibility requirements established under 435
section 1509.07 of the Revised Code, subject to the approval of 436
the chief. The transfer of ownership also shall be subject to the 437
landowner's filing the appropriate forms required under section 438
1509.31 of the Revised Code and providing to the chief sufficient 439
information to demonstrate the landowner's or owner's right to 440
produce a formation or formations. That information may include a 441
deed, a lease, or other documentation of ownership or property 442
rights. 443

The chief shall approve or disapprove the transfer of 444
ownership of the well. If the chief approves the transfer, the 445
owner is responsible for operating the well in accordance with 446
this chapter and rules adopted under it, including, without 447
limitation, all of the following: 448

(1) Filing an application with the chief under section 449
1509.06 of the Revised Code if the owner intends to drill deeper 450
or produce a formation that is not listed in the records of the 451
division for that well; 452

(2) Taking title to and possession of the equipment 453
appurtenant to the well that has been identified by the chief as 454
having been abandoned by the former owner; 455

(3) Complying with all applicable requirements that are 456

necessary to drill deeper, plug the well, or plug back the well. 457

(H) The chief shall issue an order that requires the owner of 458
a well to pay the actual documented costs of a corrective action 459
that is described in division (B)(2) of this section concerning 460
the well. The chief shall transmit the money so recovered to the 461
treasurer of state who shall deposit the money in the state 462
treasury to the credit of the oil and gas well fund. 463

(I) The chief may engage in cooperative projects under this 464
section with any agency of this state, another state, or the 465
United States; any other governmental agencies; or any state 466
university or college as defined in section 3345.27 of the Revised 467
Code. A contract entered into for purposes of a cooperative 468
project is not subject to division (B) of section 127.16 of the 469
Revised Code. 470

Sec. 1509.074. There is hereby created in the state treasury 471
the oil and gas well inspection fund. Seven per cent of the money 472
from the tax levied in divisions (A)(10) and (11) of section 473
5749.02 of the Revised Code shall be credited to the fund. The 474
chief shall use money in the fund to pay for administrative costs 475
associated with conducting inspections of oil and gas wells, 476
including training and hiring individuals to conduct inspections. 477

Sec. 5749.01. As used in this chapter: 478

(A) "Ton" shall mean two thousand pounds as measured at the 479
point and time of severance, after the removal of any impurities, 480
under such rules and regulations as the tax commissioner may 481
prescribe. 482

(B) "Taxpayer" means any person required to pay the tax 483
levied by Chapter 5749. of the Revised Code. 484

(C) "Natural resource" means all forms of coal, salt, 485
limestone, dolomite, sand, gravel, ~~natural~~ gas, condensate, and 486

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| oil. | 487 |
| (D) "Owner," has <u>"well," and "horizontal well" have</u> the same | 488 |
| meaning <u>meanings</u> as in section 1509.01 of the Revised Code. | 489 |
| (E) "Person" means any individual, firm, partnership, | 490 |
| association, joint stock company, corporation, or estate, or | 491 |
| combination thereof. | 492 |
| (F) "Return" means any report or statement required to be | 493 |
| filed pursuant to Chapter 5749. of the Revised Code used to | 494 |
| determine the tax due. | 495 |
| (G) "Severance" means the extraction or other removal of a | 496 |
| natural resource from the soil or water of this state. | 497 |
| (H) "Severed" means the point at which the natural resource | 498 |
| has been separated from the soil or water in this state. | 499 |
| (I) "Severer" means any person who actually removes the | 500 |
| natural resources from the soil or water in this state. | 501 |
| (J) <u>"British thermal unit" means the measure of heat energy</u> | 502 |
| <u>required to raise the temperature of one pound of water by one</u> | 503 |
| <u>degree fahrenheit at a specified temperature.</u> | 504 |
| (K) <u>"Condensate" means liquid hydrocarbons that were</u> | 505 |
| <u>originally in the gaseous phase in the reservoir.</u> | 506 |
| (L) <u>"Gas" means all hydrocarbons that are in a gaseous state</u> | 507 |
| <u>at standard temperature and pressure.</u> | 508 |
| Sec. 5749.02. (A) For the purpose of providing revenue to | 509 |
| administer the state's coal mining and reclamation regulatory | 510 |
| program, to meet the environmental and resource management needs | 511 |
| of this state, <u>to provide funding for the state's oil and gas</u> | 512 |
| <u>regulatory program, to provide revenue to local governments, to</u> | 513 |
| <u>fund the severance tax trust fund,</u> and to reclaim land affected by | 514 |
| mining, an excise tax is hereby levied on the privilege of | 515 |

engaging in the severance of natural resources from the soil or 516
water of this state. The tax shall be imposed upon the severer and 517
shall be: 518

(1) Ten cents per ton of coal; 519

(2) Four cents per ton of salt; 520

(3) Two cents per ton of limestone or dolomite; 521

(4) Two cents per ton of sand and gravel; 522

(5) Ten cents per barrel of oil; 523

(6) Two and one-half cents per thousand cubic feet of natural 524
gas; 525

(7) One cent per ton of clay, sandstone or conglomerate, 526
shale, gypsum, or quartzite; 527

(8) Except as otherwise provided in this division or in rules 528
adopted by the reclamation forfeiture fund advisory board under 529
section 1513.182 of the Revised Code, an additional fourteen cents 530
per ton of coal produced from an area under a coal mining and 531
reclamation permit issued under Chapter 1513. of the Revised Code 532
for which the performance security is provided under division 533
(C)(2) of section 1513.08 of the Revised Code. Beginning July 1, 534
2007, if at the end of a fiscal biennium the balance of the 535
reclamation forfeiture fund created in section 1513.18 of the 536
Revised Code is equal to or greater than ten million dollars, the 537
rate levied shall be twelve cents per ton. Beginning July 1, 2007, 538
if at the end of a fiscal biennium the balance of the fund is at 539
least five million dollars, but less than ten million dollars, the 540
rate levied shall be fourteen cents per ton. Beginning July 1, 541
2007, if at the end of a fiscal biennium the balance of the fund 542
is less than five million dollars, the rate levied shall be 543
sixteen cents per ton. Beginning July 1, 2009, not later than 544
thirty days after the close of a fiscal biennium, the chief of the 545

division of mineral resources management shall certify to the tax 546
commissioner the amount of the balance of the reclamation 547
forfeiture fund as of the close of the fiscal biennium. Any 548
necessary adjustment of the rate levied shall take effect on the 549
first day of the following January and shall remain in effect 550
during the calendar biennium that begins on that date. 551

(9) An additional one and two-tenths cents per ton of coal 552
mined by surface mining methods; 553

(10) Seven and one-half per cent of the product of the 554
metered quarterly volume of oil or condensate severed through use 555
of a horizontal well multiplied by the average of the daily 556
closing spot price for the quarterly reporting period for oil or 557
condensate as established by the tax commissioner under division 558
(D)(2) of this section; 559

(11)(a) If the British thermal unit measurement of gas 560
severed through use of a horizontal well is equal to or less than 561
one thousand fifty per cubic foot, seven and one-half per cent of 562
the product of the metered quarterly volume of gas severed through 563
use of the horizontal well multiplied by the quarterly average of 564
the daily closing spot price of gas for the quarterly reporting 565
period as established by the tax commissioner under division 566
(D)(1) of this section; 567

(b) If the British thermal unit measurement of gas severed 568
through use of a horizontal well is greater than one thousand 569
fifty per cubic foot but less than or equal to one thousand two 570
hundred per cubic foot, the rate established by the tax 571
commissioner under division (E)(1) of this section multiplied by 572
the metered quarterly volume of gas severed through use of the 573
horizontal well; 574

(c) If the British thermal unit measurement of gas severed 575
through use of a horizontal well is greater than one thousand two 576

hundred per cubic foot but less than or equal to one thousand 577
three hundred fifty per cubic foot, the rate established by the 578
tax commissioner under division (E)(2) of this section multiplied 579
by the metered quarterly volume of gas severed through use of the 580
horizontal well; 581

(d) If the British thermal unit measurement of gas severed 582
through use of a horizontal well is greater than one thousand 583
three hundred fifty per cubic foot, the rate established by the 584
tax commissioner under division (E)(3) of this section multiplied 585
by the metered quarterly volume of gas severed through use of the 586
horizontal well. 587

(B) Of the moneys received by the treasurer of state from the 588
tax levied in division (A)(1) of this section, four and 589
seventy-six-hundredths per cent shall be credited to the 590
geological mapping fund created in section 1505.09 of the Revised 591
Code, eighty and ninety-five-hundredths per cent shall be credited 592
to the coal mining administration and reclamation reserve fund 593
created in section 1513.181 of the Revised Code, and fourteen and 594
twenty-nine-hundredths per cent shall be credited to the 595
unreclaimed lands fund created in section 1513.30 of the Revised 596
Code. 597

The money received by the treasurer of state from the tax 598
levied in division (A)(2) of this section shall be credited to the 599
geological mapping fund. 600

Of the moneys received by the treasurer of state from the tax 601
levied in divisions (A)(3) and (4) of this section, seven and 602
five-tenths per cent shall be credited to the geological mapping 603
fund, forty-two and five-tenths per cent shall be credited to the 604
unreclaimed lands fund, and the remainder shall be credited to the 605
surface mining fund created in section 1514.06 of the Revised 606
Code. 607

Of the moneys received by the treasurer of state from the tax 608
levied in divisions (A)(5) and (6) of this section, ninety per 609
cent shall be credited to the oil and gas well fund created in 610
section 1509.02 of the Revised Code and ten per cent shall be 611
credited to the geological mapping fund. All of the moneys 612
received by the treasurer of state from the tax levied in division 613
(A)(7) of this section shall be credited to the surface mining 614
fund. 615

All of the moneys received by the treasurer of state from the 616
tax levied in division (A)(8) of this section shall be credited to 617
the reclamation forfeiture fund. 618

All of the moneys received by the treasurer of state from the 619
tax levied in division (A)(9) of this section shall be credited to 620
the unreclaimed lands fund. 621

The money received by the treasurer of state from the tax 622
levied in divisions (A)(10) and (11) of this shall be credited as 623
follows: 624

(1) Forty-seven per cent to the impacted subdivision fund 625
created in section 5749.18 of the Revised Code; 626

(2) Twenty per cent to the nonimpacted subdivision fund 627
created in section 5749.18 of the Revised Code; 628

(3) Eleven and seven-tenths per cent to the severance tax 629
trust fund created in section 190.01 of the Revised Code; 630

(4) Nine per cent to the immediate removal fund created in 631
section 3745.12 of the Revised Code; 632

(5) Seven per cent to the well inspection fund created in 633
section 1509.074 of the Revised Code; 634

(6) Four per cent to the oil and gas well fund created in 635
section 1509.02 of the Revised Code; 636

(7) One and three-tenths per cent to the severance tax trust 637

administrative fund created in section 190.02 of the Revised Code. 638

(C) When, at the close of any fiscal year, the chief finds 639
that the balance of the reclamation forfeiture fund, plus 640
estimated transfers to it from the coal mining administration and 641
reclamation reserve fund under section 1513.181 of the Revised 642
Code, plus the estimated revenues from the tax levied by division 643
(A)(8) of this section for the remainder of the calendar year that 644
includes the close of the fiscal year, are sufficient to complete 645
the reclamation of all lands for which the performance security 646
has been provided under division (C)(2) of section 1513.08 of the 647
Revised Code, the purposes for which the tax under division (A)(8) 648
of this section is levied shall be deemed accomplished at the end 649
of that calendar year. The chief, within thirty days after the 650
close of the fiscal year, shall certify those findings to the tax 651
commissioner, and the tax levied under division (A)(8) of this 652
section shall cease to be imposed for the subsequent calendar year 653
after the last day of that calendar year on coal produced under a 654
coal mining and reclamation permit issued under Chapter 1513. of 655
the Revised Code if the permittee has made tax payments under 656
division (A)(8) of this section during each of the preceding five 657
full calendar years. Not later than thirty days after the close of 658
a fiscal year, the chief shall certify to the tax commissioner the 659
identity of any permittees who accordingly no longer are required 660
to pay the tax levied under division (A)(8) of this section for 661
the subsequent calendar year. 662

(D) Not later than fifteen days after the close of each 663
calendar quarter, the tax commissioner shall establish and post on 664
the department of taxation's web site the average daily closing 665
spot price or factor, as applicable, for each quarterly reporting 666
period as follows: 667

(1) For the purposes of division (A)(11) of this section, the 668
average daily closing spot price for gas shall be calculated by 669

dividing the sum of the daily closing spot price for gas as 670
reported on the New York mercantile exchange index for each day in 671
the quarter by the number of days in the quarter. 672

(2) For the purposes of division (A)(10) of this section, the 673
average daily closing spot price for oil and condensate shall be 674
calculated by dividing the sum of the daily closing spot price for 675
oil and condensate as reported for west Texas intermediate on the 676
New York mercantile exchange index for each day in the quarter by 677
the number of days in the quarter. 678

(3) For the purposes of division (E) of this section, the 679
average daily closing spot price for natural gas liquids shall be 680
calculated by dividing the sum of the daily closing spot prices 681
for natural gas liquids as reported on the Mont Belvieu NGL index 682
for each day in the quarter by the number of days in the quarter. 683

(E) Not later than fifteen days after the close of each 684
calendar quarter, the tax commissioner shall calculate and post on 685
the department of taxation's web site the rate of the tax levied 686
under divisions (A)(11)(b) to (d) of this section, which the 687
commissioner shall calculate for each quarterly reporting period 688
as follows: 689

(1) For the purposes of division (A)(11)(b) of this section, 690
the sum of the average daily closing spot price for gas 691
established under division (D)(1) of this section multiplied by 692
seven and one-half per cent multiplied by nine thousand three 693
hundred twenty-nine ten-thousandths, plus the average daily 694
closing spot price for natural gas liquids established under 695
division (D)(3) of this section multiplied by seven and one-half 696
per cent multiplied by two and one-half; 697

(2) For the purposes of division (A)(11)(c) of this section, 698
the sum of the average daily closing spot price for gas 699
established under division (D)(1) of this section multiplied by 700

seven and one-half per cent multiplied by eight thousand two 701
hundred thirty-two ten-thousandths, plus the average daily closing 702
spot price for natural gas liquids established under division 703
(D)(3) of this section multiplied by seven and one-half per cent 704
multiplied by five and one-half; 705

(3) For the purposes of division (A)(11)(d) of this section, 706
the sum of the average daily closing spot price for gas 707
established under division (D)(1) of this section multiplied by 708
seven and one-half per cent multiplied by seven thousand three 709
hundred sixty-six ten-thousandths, plus the average daily closing 710
spot price for natural gas liquids established under division 711
(D)(3) of this section multiplied by seven and one-half per cent 712
multiplied by eight and one-half. 713

Sec. 5749.18. (A) As used in this section: 714

(1) "Impacted subdivision" means a county, township, or 715
municipal corporation located in an area of this state that is or 716
will be a major producer of oil and gas from horizontal wells, as 717
designated and certified by the chief of the division of oil and 718
gas resources management in the department of natural resources 719
pursuant to division (B) of this section. 720

(2) "Nonimpacted subdivision" means a county, township, or 721
municipal corporation that is not an impacted subdivision. 722

(3) "Current operating expenses" and "permanent improvement" 723
have the same meanings as in section 5705.01 of the Revised Code. 724

(B) On or after the thirty-first day of July of each year, 725
the chief of the division of oil and gas resources management in 726
the department of natural resources shall determine each county, 727
township, or municipal corporation that is an impacted subdivision 728
and certify that determination to the tax commissioner. 729

(C)(1) There is hereby created in the state treasury the 730

impacted subdivision fund. Forty-seven per cent of the moneys from 731
the tax levied in divisions (A)(10) and (11) of section 5749.02 of 732
the Revised Code shall be credited to the fund. Investment 733
earnings on the balance in the fund shall be credited to the fund. 734
The tax commissioner shall distribute money in the fund to 735
impacted subdivisions pursuant to division (C)(2) of this section. 736

(2) The tax commissioner, on or before the thirty-first day 737
of August of each year, shall distribute moneys in the impacted 738
subdivision fund to the severance tax fund of each impacted 739
subdivision. The payment to each impacted county or municipal 740
corporation shall be allocated based on the following factors: 741

(a) The proportion of employees who are employed in oil, gas, 742
or condensate production operations and who reside in any such 743
county's unincorporated territory or in the part of the territory 744
of any such municipal corporations situated within the county to 745
the total number of such employees reported as residents in the 746
county as a whole; 747

(b) The proportion of the population in any such county's 748
unincorporated territory or in the part of the territory of any 749
such municipal corporation situated within the county to the total 750
population in the county, as such population is reported in the 751
most recently published population estimate from the development 752
services agency; 753

(c) The proportion of centerline road miles in any such 754
county's unincorporated territory or in the part of the territory 755
of any such municipal corporation situated within the county to 756
the total centerline road miles in the county, as determined 757
annually by the department of transportation. 758

(3) The tax commissioner shall credit one-half of the 759
county's allocation calculated under division (C)(2) of this 760
section to the severance tax fund of the impacted county. The 761

commissioner shall credit the remaining one-half of the county's 762
allocation to the severance tax fund of each impacted township in 763
the county based on the proportions in divisions (C)(2)(a) to (c) 764
of this section, except that the employment, population, and 765
centerline road miles factors for the unincorporated territory of 766
each impacted township shall be compared to those for the 767
unincorporated area of the county as a whole. 768

(D)(1) There is hereby created in the state treasury the 769
nonimpacted subdivision fund. Twenty per cent of the moneys from 770
the tax levied in divisions (A)(10) and (11) of section 5749.02 of 771
the Revised Code shall be credited to the fund. Investment 772
earnings on the balance in the fund shall be credited to the fund. 773
The tax commissioner shall distribute moneys in the fund to 774
nonimpacted subdivisions pursuant to division (D)(2) of this 775
section. 776

(2) The tax commissioner, on or before the thirty-first day 777
of August of each year, shall distribute moneys in the nonimpacted 778
subdivision fund to the severance tax fund of each nonimpacted 779
subdivision. The payment to each nonimpacted county or municipal 780
corporation shall be allocated based on the following factors: 781

(a) The proportion of employees who are employed in oil, gas, 782
or condensate production operations and who reside in any such 783
county's unincorporated territory or in the part of the territory 784
of any such municipal corporation situated within the county to 785
the total number of such employees reported as residents in the 786
county as a whole; 787

(b) The proportion of the population in any such county's 788
unincorporated territory or in the part of the territory of any 789
such municipal corporation situated within the county to the total 790
population in the county, as such population is reported in the 791
most recently published population estimate from the development 792
services agency; 793

(c) The proportion of centerline road miles in any such 794
county's unincorporated territory or in the part of the territory 795
of any such municipal corporation situated within the county to 796
the total centerline road miles in the county, as determined 797
annually by the department of transportation. 798

(3) The tax commissioner shall credit one-half of the 799
county's allocation calculated under division (D)(2) of this 800
section to the severance tax fund of the nonimpacted county. The 801
commissioner shall credit the remaining one-half of the county's 802
allocation to the severance tax fund of each nonimpacted township 803
in the county based on the proportions in divisions (D)(2)(a) to 804
(c) of this section, except that the employment, population, and 805
centerline road miles factors for the unincorporated territory of 806
each nonimpacted township shall be compared to those for the 807
unincorporated territory of the county as a whole. 808

(E) Impacted and nonimpacted subdivisions shall use revenue 809
received under this section solely for permanent improvements and 810
current operating expenses. 811

(F) Not later than the first day of March each year, the 812
commissioner shall send every severer who is subject to the tax 813
levied under division (A)(5), (6), (10), or (11) of section 814
5749.02 of the Revised Code a form on which the producer shall 815
report to the department of taxation the name and address of the 816
severer and the names of the counties and the municipal 817
corporations or townships in which the severer's employees 818
employed in production operations maintain their actual residences 819
as given by the employees, including the number of employees for 820
each such municipal corporation or unincorporated area of each 821
such county and township. 822

A severer may use and submit any other report form in lieu of 823
the form sent by the commissioner that contains the same 824
information as prescribed in the commissioner's form. The report 825

shall be due by the thirtieth day of April of each year. 826

(G) On or before August 30, 2014, each county, township, and 827
municipal corporation shall create a severance tax fund in each 828
respective subdivision's treasury to which the tax commissioner 829
shall credit revenue distributed under this section. 830

(H) The commissioner shall adopt rules in accordance with 831
Chapter 119. of the Revised Code to administer the distribution of 832
the impacted subdivision fund and the nonimpacted subdivision 833
fund, including the weight that each of the factors in divisions 834
(C)(2)(a) to (c) and (D)(2)(a) to (c) of this section shall be 835
given, which shall apply uniformly across impacted subdivisions 836
and uniformly across nonimpacted subdivisions. 837

Section 2. That existing sections 1509.02, 1509.071, 5749.01, 838
and 5749.02 of the Revised Code are hereby repealed. 839

Section 3. The amendment or enactment by this act of sections 840
190.01, 190.02, 190.03, 109.04, 190.05, 1509.02, 1509.071, 841
1509.074, 5749.01, 5749.02, and 5749.18 of the Revised Code 842
applies to the severance of natural resources occurring in 843
calendar quarters beginning on or after October 1, 2013. 844

Section 4. The amendment or enactment by this act of sections 845
190.01, 190.02, 190.03, 109.04, 190.05, 1509.02, 1509.071, 846
1509.074, 5749.01, 5749.02, and 5749.18 of the Revised Code below 847
is exempt from the referendum under Ohio Constitution, Article II, 848
Section 1d and section 1.471 of the Revised Code and therefore 849
takes effect immediately when this act becomes law. 850

Section 5. Section 5749.02 of the Revised Code is presented 851
in this act as a composite of the section as amended by both Am. 852
Sub. H.B. 1 and S.B. 73 of the 128th General Assembly. The General 853
Assembly, applying the principle stated in division (B) of section 854

| | |
|---|-----|
| 1.52 of the Revised Code that amendments are to be harmonized if | 855 |
| reasonably capable of simultaneous operation, finds that the | 856 |
| composite is the resulting version of the section in effect prior | 857 |
| to the effective date of the section as presented in this act. | 858 |