

1 State of Arkansas  
2 86th General Assembly  
3 First Extraordinary Session, 2008  
4

Call Item 3

# A Bill

HOUSE BILL 1004

5 By: Representatives Sullivan, Petrus, Cooper, Abernathy, L. Cowling, Harrelson, Stewart, Adcock,  
6 Blount, T. Bradford, J. Brown, Cash, Chesterfield, Cornwell, Davenport, George, Hardwick, Hardy,  
7 House, Hoyt, Jeffrey, D. Johnson, J. Johnson, Kidd, W. Lewellen, Lovell, Maloch, Maxwell, Moore,  
8 Overbey, Patterson, Pickett, Powers, Reep, J. Roebuck, Sample, Saunders, Shelby, L. Smith, Wagner,  
9 Wills, Wyatt

## For An Act To Be Entitled

13 AN ACT TO INCREASE THE SEVERANCE TAX RATE ON  
14 NATURAL GAS; AND FOR OTHER PURPOSES.

### Subtitle

17 AN ACT TO INCREASE THE SEVERANCE TAX  
18 RATE ON NATURAL GAS.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23 SECTION 1. Legislative findings and intent.

24 (a) The General Assembly has determined that the severance tax rate on  
25 natural gas should be increased and that there should be different rates of  
26 tax for different categories of natural gas.

27 (b) Amendment 19 of the Arkansas Constitution required this act to be  
28 passed by at least three-fourths of the members of the Senate and at least  
29 three-fourths of the members of the House of Representatives.

30 (c) In order to implement the increase in the severance tax rate, the  
31 General Assembly has identified the following four categories of natural gas,  
32 each as defined in Arkansas Code § 26-58-101:

33 (1) High-cost gas;

34 (2) Marginal gas;

35 (3) New discovery gas; and

36 (4) All natural gas that is not defined as high-cost gas,



1 marginal gas, or new discovery gas.

2 (d) To increase the severance tax rate, the General Assembly used the  
 3 method of levying a specific tax rate on each category so that any future  
 4 legislative enactment that would have the effect of increasing the rate of  
 5 severance tax on any of those categories of natural gas as defined by § 26-  
 6 58-101 will also be subject to the three-fourths vote requirement of  
 7 Amendment 19 of the Arkansas Constitution.

8

9 SECTION 2. Effective January 1, 2009, Arkansas Code § 19-6-201(9),  
 10 classifying and enumerating general revenues of this State, is amended to  
 11 read as follows:

12 (9) Seventy-five percent (75%) of all severance taxes, with the  
 13 exception of the taxes paid to sever timber and timber products, the  
 14 severance tax collected on natural gas, and those portions of severance taxes  
 15 designated as special revenues in § 19-6-301, as enacted by Acts 1947, No.  
 16 136, and all laws amendatory thereto, §§ 26-58-101 – 26-58-103, 26-58-106 –  
 17 26-58-111, 26-58-114 – 26-58-116, 26-58-118 – 26-58-120, 26-58-123, and 26-  
 18 58-124;

19

20 SECTION 3. Effective January 1, 2009, Arkansas Code § 19-6-201,  
 21 classifying and enumerating general revenues of this State, is amended to add  
 22 an additional subdivision to read as follows:

23 (57) Five percent (5%) of the severance tax collected on natural gas  
 24 at the rates enacted by § 26-58-111(5).

25

26 SECTION 4. Effective January 1, 2009, Arkansas Code § 19-6-301(18),  
 27 classifying and enumerating special revenues of this State, is amended to  
 28 read as follows:

29 (18) Revenue received from saw timber and timber products severance  
 30 taxes and twenty-five percent (25%) of all other severance taxes, with the  
 31 exception of the severance tax collected on natural gas, as enacted by Acts  
 32 1947, No. 136, and all laws amendatory thereto, §§ 26-58-101 – 26-58-103, 26-  
 33 58-106 – 26-58-111, 26-58-114 – 26-58-116, 26-58-118 – 26-58-120, 26-58-123,  
 34 and 26-58-124;

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36 SECTION 5. Effective January 1, 2009, Arkansas Code § 19-6-301,

1 classifying and enumerating special revenues of this State, is amended to add  
 2 an additional subdivision to read as follows:

3 (238) Ninety-five percent (95%) of the severance tax collected on  
 4 natural gas at the rates enacted by § 26-58-111(5).

5  
 6 SECTION 6. Effective January 1, 2009, Arkansas Code § 26-58-101, is  
 7 amended to add additional subdivisions to read as follows:

8 26-58-101. Definitions.

9 As used in this subchapter:

10 (1) "Acquired", when used in reference to the severance tax on  
 11 timber, means the time when timber is first weighed or measured by a primary  
 12 processor after severance;

13 (2) "Completion" or "completed" means the act of making a well  
 14 capable of producing gas;

15 (3) "Conventional gas well" means any gas well that is not  
 16 classified as a high-cost gas well;

17 (4) "Date of first production", when used in reference to a  
 18 particular gas well, means the first day in the month that the gas well  
 19 produces natural gas for sale;

20 ~~(2)~~(5) "Director" means the Director of the Department of  
 21 Finance and Administration or any of his or her duly appointed deputies or  
 22 agents;

23 (6) "High-cost gas" means natural gas that is:

24 (A) Produced from any gas well completed within a shale  
 25 formation, including, but not limited to, the Fayetteville Shale, the  
 26 Woodford Shale, the Moorefield Shale and the Chattanooga Shale Formations, or  
 27 their stratigraphic equivalents, as described in published stratigraphic  
 28 nomenclature recognized by the Arkansas Geological Survey;

29 (B) Produced from any gas well in which the production is  
 30 from a completion that is located at a depth of more than 12,500 feet below  
 31 the surface of the earth, where the term "depth" means the length of the  
 32 maximum continuous drilling string of drill pipe used between the drill bit  
 33 face and the drilling rig's kelly bushing;

34 (C) Produced from a tight gas formation;

35 (D) Produced from geopressured brine; or

36 (E) Occluded natural gas produced from coal seams;

1           (7) “High-cost gas well” means any gas well that is completed as  
 2 a well capable of producing high-cost gas;

3           (8)(A) “Marginal gas”, when used in reference to a conventional  
 4 gas well, means all natural gas produced from the conventional gas well  
 5 beginning on the date the conventional gas well is incapable of producing  
 6 more than 250 Mcf per day, as determined by the Director of the Arkansas Oil  
 7 and Gas Commission using the current wellhead deliverability rate methodology  
 8 utilized by the Oil and Gas Commission, during the calendar month for which  
 9 the severance tax report is filed.

10           (B) “Marginal gas”, when used in reference to a high-cost  
 11 gas well, means all natural gas produced from the high-cost gas well  
 12 beginning on the date the high-cost gas well is incapable of producing more  
 13 than 100 Mcf per day, as determined by the Director of the Oil and Gas  
 14 Commission using the current wellhead deliverability rate methodology  
 15 utilized by the Oil and Gas Commission, during the calendar month for which  
 16 the severance tax report is filed.

17           (C) “Marginal gas” shall include production from all zones  
 18 and multilateral branches at a single well without regard to whether the  
 19 production is separately metered.

20           (D) “Marginal gas” shall not include gas produced from:

21                   (i) A high-cost gas well during the thirty-six (36)  
 22 month period provided in § 26-58-127(b)(1);

23                   (ii) A high-cost gas well during any allowed  
 24 extension provided in § 26-58-127(b)(2); or

25                   (iii) A new discovery gas well during the twenty-  
 26 four (24) month period provided in § 26-58-127(a);

27           (9) “Marginal gas well” means any gas well that produces or is  
 28 capable of producing marginal gas, as determined by the Director of the Oil  
 29 and Gas Commission using the current wellhead deliverability rate methodology  
 30 utilized by the Oil and Gas Commission;

31           (10) “Market value”, when used in reference to the rate of  
 32 severance tax on natural gas, means the producer’s actual cash receipts from  
 33 the sale of natural gas to the first purchaser less the actual costs to the  
 34 producer of dehydrating, treating, compressing, and delivering the gas to the  
 35 purchaser;

36           ~~(3)~~(11) “Natural resources” means all natural products of the

1 soil or water of Arkansas including, but not limited to, asphalt, barite,  
 2 bauxite, chalk, chert, clay, cinnabar, coal, diamonds, fuller's earth,  
 3 natural gas, granite, gravel, gypsum, iron, lead ore, lignite, limestone,  
 4 manganese and manganiferous ores, marble, marl, mussel shells, novaculite,  
 5 oil, ochre, pearls and other precious stones, phosphate, salt, sand, shale,  
 6 slate, shells, stone and stone products, sulphur, titanium ore, and zinc ore;

7 (12) "New discovery gas" means natural gas that is produced from  
 8 a new discovery gas well;

9 (13) "New discovery gas well" means any conventional gas well  
 10 that is completed as a well capable of producing gas;

11 (14) "Payout" means the date the cumulative working interest  
 12 revenues from a high-cost gas well equal the sum of:

13 (A) All drilling and completion costs incurred in  
 14 connection with the high-cost gas well; and

15 (B) All operating costs incurred or accrued in connection  
 16 with the operation of the high-cost gas well during the period of cost  
 17 recovery;

18 ~~(4)~~(15) "Point of severance" means the place at which  
 19 transportation of timber or natural resources, excluding natural gas, ~~or~~  
 20 ~~timber~~ has been or is about to be commenced for use or processing after being  
 21 severed;

22 ~~(5)~~(16) "Primary processor" means any person, firm, corporation,  
 23 or other entity engaged in business as a sawmill, chipper mill, stud mill,  
 24 square mill, plywood or veneer mill, whole tree chipping mill, post, pole, or  
 25 piling plant, charcoal plant, processed board mill, bolt working mill, pulp  
 26 mill, planing or surfacing mill, or other mill or facility where timber first  
 27 undergoes any processing after harvesting;

28 ~~(6)~~(17) "Producer" means any person, firm, receiver, or other  
 29 fiduciary, corporation, or association, who or which engages in the business  
 30 of severing natural resources or timber;

31 ~~(7)~~(18) "Purchaser" means any person, firm, receiver, or other  
 32 fiduciary, corporation, or association, consignor, agent, or other dealer, by  
 33 whatever name called, who or which acquires title outright or conditionally  
 34 to any interest in severed natural resources or timber;

35 ~~(8)~~(A)(19)(A) "Sever", "severed", or "severing" mean natural  
 36 resources cut, mined, dredged, or otherwise taken or removed for commercial

1 purposes from the soil or water.

2 (B) However, “sever”, “severed”, or “severing” as defined  
 3 in this subdivision ~~(8)~~(19) do not apply to any natural gas returned to any  
 4 formation, in recycling, repressuring, pressure maintenance operation, or  
 5 other operation, for the production of oil or any other liquid hydrocarbon.

6 (C) Further, “sever”, “severed”, or “severing” as defined  
 7 in this subdivision ~~(8)~~(19) do not apply to any hydrocarbons in gaseous or  
 8 liquid form which are burned, used, consumed, or otherwise employed in oil  
 9 and gas operations including but not limited to, secondary recovery  
 10 operations and fuel for engines in the same leasehold, drilling, or  
 11 production unit, or unit area of a unitized reservoir from which such  
 12 hydrocarbons are produced;

13 (20) “Tight gas formation” means any natural gas bearing  
 14 formation that:

15 (A) Has previously been determined by Oil and Gas  
 16 Commission orders or field rules to be a low permeability formation,  
 17 including:

18 (i) Booneville and Chismville-OR# 84-2003-07;

19 (ii) Gragg-OR# 89-2004-07;

20 (iii) Waveland-OR# 86-2007-07;

21 (iv) Rich Mountain-OR# 304-2006-09;

22 (v) Mansfield-OR# 28-2003-03; and

23 (vi) Witcherville and Excelsior-OR# 103-2005-07; or

24 (B) Is determined by the Director of the Oil and Gas  
 25 Commission to have an estimated in situ permeability of one-tenth milliDarcy  
 26 (0.1 mD) or less; or

27 (C) Is determined to be a tight gas formation by field  
 28 rules, general rules, or orders issued by the Director of the Oil and Gas  
 29 Commission;

30 ~~(9)~~(21) “Timber” means either softwood or hardwood species of  
 31 trees suitable for use as sawlogs, pulpwood, veneer bolts or billets, stave  
 32 bolts or billets, and splits, handle and other bolts or billets including  
 33 chemical wood, cross ties, posts, poles, piling, chips, charcoal, or any now  
 34 known or hereafter discovered use of wood or wood pulp;

35 ~~(10)~~(22) “Time of severance” means the date on which  
 36 transportation of timber or natural resources, excluding natural gas, ~~or~~

1 ~~timber~~ has been or is about to be commenced for their use or processing after  
 2 being severed; and

3 ~~(11)(23)~~ "Transporter" means any person, firm, receiver, or  
 4 other fiduciary, corporation, or association, who or which transports severed  
 5 natural resources or timber ~~from the point of severance, or other to any~~  
 6 point within, across, or out of the State of Arkansas.

7  
 8 SECTION 7. Effective January 1, 2009, Arkansas Code § 26-58-111(5),  
 9 which established the rate of severance tax levied on natural gas extraction,  
 10 is amended to read as follows:

11 (5) On natural gas, ~~three tenths of one cent (0.3¢) per one~~  
 12 ~~thousand cubic feet (1,000 cu.ft.)~~ the following percent of the market value  
 13 of the natural gas severed within the State of Arkansas:

14 (A) On new discovery gas, as defined in § 26-58-101(12),  
 15 the severance tax rate shall be one and one-half percent (1.5%) for the time  
 16 period provided in § 26-58-127(a);

17 (B) On high-cost gas, as defined in § 26-58-101(6), the  
 18 severance tax rate shall be one and one-half percent (1.5%) for the time  
 19 periods provided in § 26-58-127(b);

20 (C) On marginal gas, as defined in § 26-58-101(8), the  
 21 severance tax rate shall be one and one-quarter percent (1.25%); and

22 (D) On all natural gas which is not defined as new  
 23 discovery gas, high-cost gas, or marginal gas, the severance tax rate shall  
 24 be five percent (5%);

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 26 SECTION 8. Effective January 1, 2009, Arkansas Code § 26-58-124(a),  
 27 which allocates distribution of the severance tax, is amended to read as  
 28 follows:

29 (a) All taxes, penalties, and costs collected by the Director of the  
 30 Department of Finance and Administration under the provisions of this  
 31 subchapter, except for the taxes, penalties, and costs collected on natural  
 32 gas, shall be deposited into the State Treasury to the credit of the State  
 33 Apportionment Fund.

34  
 35 SECTION 9. Effective January 1, 2009, Arkansas Code § 26-58-124, which  
 36 allocates distribution of the severance tax, is amended to add an additional

1 subsection to read as follows:

2 (c) All taxes, penalties, and costs collected by the Director of the  
 3 Department of Finance and Administration on natural gas shall be deposited in  
 4 the State Treasury as follows:

5 (1) Five percent (5%) of the funds shall be deposited as general  
 6 revenues; and

7 (2) Ninety-five percent (95%) of the funds shall be classified  
 8 as special revenues and shall be distributed as set forth in the Arkansas  
 9 Highway Revenue Distribution Law, § 27-70-201 et seq.

10  
 11 SECTION 10. Effective January 1, 2009, Arkansas Code Title 26, Chapter  
 12 58, Subchapter 1 is amended to add the following new sections to read as  
 13 follows:

14 26-58-127. Cost recovery periods for new discovery gas and high-cost  
 15 gas.

16 (a)(1) The one and one-half percent (1.5%) severance tax rate on new  
 17 discovery gas shall apply to the first twenty-four (24) consecutive calendar  
 18 months beginning on the date of first production from the new discovery gas  
 19 well, regardless of whether production commenced prior to January 1, 2009;  
 20 provided, however, that all production attributable to the period prior to  
 21 January 1, 2009 shall be taxed at the rate in effect prior to January 1,  
 22 2009.

23 (2) At the end of the twenty-four (24) month period, the  
 24 severance tax rate under § 26-58-111(5)(C) or § 26-58-111(5)(D), as  
 25 applicable, shall apply.

26 (b)(1) The one and one-half percent (1.5%) severance tax rate on high-  
 27 cost gas shall apply to the first thirty-six (36) consecutive calendar months  
 28 beginning on the date of first production from the high-cost gas well,  
 29 regardless of whether production commenced prior to January 1, 2009;  
 30 provided, however, that all production attributable to the period prior to  
 31 January 1, 2009 shall be taxed at the rate in effect prior to January 1,  
 32 2009.

33 (2) If a high-cost gas well has not achieved payout by the end  
 34 of the thirty-six (36) month period, the one and one-half percent (1.5%)  
 35 severance tax rate shall be extended until the earlier to occur of:

36 (A) Payout of the high-cost gas well; or



1                   (B) Twelve (12) months following the expiration of the  
 2                   original thirty-six (36) month period.

3                   (3) The severance tax rate under § 26-58-111(5)(C) or § 26-58-  
 4                   111(5)(D), as applicable, shall apply to high-cost gas at the later of the  
 5                   expiration of the thirty-six (36) month period or any allowed extension.

6  
 7                   26-58-128. Determination of New Discovery Gas, High-Cost Gas or  
 8                   Marginal Gas.

9                   (a) The producer of a proposed or existing gas well may apply, at any  
 10                   time, to the Director of the Oil and Gas Commission for determination that  
 11                   the well qualifies as a new discovery gas well, a high-cost gas well, or a  
 12                   marginal gas well.

13                   (b) The Director of the Oil and Gas Commission may require an  
 14                   applicant to provide any information required to administer this section.

15                   (c) The Director of the Oil and Gas Commission shall make the  
 16                   determination within fifteen (15) calendar days of the application by the  
 17                   producer and the producer shall attach the determination to its severance tax  
 18                   form next due.

19  
 20                   26-58-129. Natural gas severance tax payment, apportionment of  
 21                   severance tax between royalty owner and producer, and authority for  
 22                   rulemaking.

23                   (a) The severance tax on natural gas shall be paid in the manner  
 24                   provided in Title 26, Chapter 58.

25                   (b) The portion of the severance tax that is required to be deducted  
 26                   from the royalty owner or other interest shall be calculated in the same  
 27                   manner as the portion of the severance tax borne by the producer.

28                   (c) The Department of Finance and Administration may promulgate the  
 29                   rules necessary to enforce the provisions of this act.

30  
 31                   SECTION 11. Effective January 1, 2009, Arkansas Code § 27-70-202(a),  
 32                   classifying and enumerating highway revenues of this State, is amended to add  
 33                   an additional subdivision to read as follows:

34                   (3) Ninety-five percent (95%) of the severance tax levied and  
 35                   collected on natural gas under § 26-58-111(5).

36

1           SECTION 12.   EMERGENCY CLAUSE.  It is found and determined by the  
2 General Assembly that state and local roads and highways are in need of  
3 substantial expansion, maintenance and repair, and that additional funding is  
4 necessary to address this need.  It is also found and determined that  
5 increasing development and exploitation of natural gas resources in the  
6 Fayetteville Shale Play and in other areas of this state has significantly  
7 increased the burden and wear and tear on state and local roads and highway,  
8 further exacerbating the need for maintenance and repair.  It is also found  
9 and determined that previous surpluses in state revenue have been largely  
10 spent to improve public education and educational facilities in this state,  
11 as was required by the Constitution as interpreted by the Arkansas Supreme  
12 Court in the Lake View case and additional revenues must be generated from  
13 other sources to address the needs of our roads and highways.  It is further  
14 found and determined that due to recent and dramatic increases in the price  
15 of gasoline, and the fact that funds for highways are generated from a flat  
16 per-gallon tax, the increasing use of more fuel-efficient vehicles has caused  
17 a condition in which revenue for roads and highways has not kept pace with  
18 the wear and tear caused by vehicular use.  It is further found and  
19 determined that immediate enactment of this bill is necessary to provide  
20 adequate time for various administrative agencies of state government to  
21 prepare the necessary reporting forms and instructions, to educate taxpayers  
22 responsible for paying the additional taxes levied herein, and take other  
23 steps necessary for the proper implementation and administration of this act.  
24 Therefore, the General Assembly hereby finds and declares that an emergency  
25 exists, pursuant to Article V, § 38 of the Arkansas Constitution, and this  
26 Act, being necessary for the immediate preservation of the public peace,  
27 health and safety, shall be in full force and effect from and after January  
28 1, 2009.

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