By: Representative Staples To: Ways and Means

HOUSE BILL NO. 968

AN ACT TO AMEND SECTION 27-25-701, MISSISSIPPI CODE OF 1972, TO INCLUDE CARBON DIOXIDE WITHIN THE DEFINITION OF THE TERM "GAS" FOR PURPOSES OF THE GAS SEVERANCE TAX LAWS; TO AMEND SECTION 27-25-703, MISSISSIPPI CODE OF 1972, TO REMOVE THE GAS SEVERANCE TAX EXEMPTION PROVIDED FOR GAS LAWFULLY INJECTED INTO THE EARTH FOR CYCLING, REPRESSURING, LIFTING OR ENHANCING THE RECOVERY OF OIL; TO PROVIDE A GAS SEVERANCE TAX EXEMPTION FOR THE PRODUCTION OF CARBON DIOXIDE THAT IS SOLD OR OTHERWISE USED FOR INDUSTRIAL OR COMMERCIAL PURPOSES IN THIS STATE SUCH AS RAW MATERIALS OR COMPONENTS IN THE MANUFACTURING PROCESS OR OIL PRODUCTION BY USE OF AN ENHANCED OIL RECOVERY METHOD; TO PROVIDE THAT AN AMOUNT EQUAL TO THE GAS SEVERANCE TAX REVENUE DEPOSITED INTO THE STATE GENERAL FUND DURING THE PRECEDING FISCAL YEAR SHALL BE ANNUALLY ALLOCATED AND DISTRIBUTED BY THE DEPARTMENT OF REVENUE TO COUNTIES AND MUNICIPALITIES FOR USE ON THE REPAIR, MAINTENANCE AND RECONSTRUCTION OF ROADS, STREETS AND BRIDGES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 27-25-701, Mississippi Code of 1972, is amended as follows:

27-25-701. Whenever used in this article, the following words and terms shall have the definition and meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(a) "Tax commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Annual" means the calendar year or the taxpayer's fiscal year when permission is obtained from the commissioner to use a fiscal year as a tax period in lieu of a calendar year.

(d) "Value" means the sale price, or market value, at the mouth of the well. If the gas is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the commissioner shall determine the value of the gas subject to tax, considering the sale price for cash of gas of like quality in the same or nearest gas-producing field.

(e) "Taxpayer" means any person liable for the tax imposed by this article.

(f) "Gas" means natural and casinghead gas and any gas or vapor taken from below the surface of the soil or water in this state, including carbon dioxide, regardless of whether produced from a gas well or from a well also productive of oil or any other product *** * ***.

(g) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from such stratum with oil.

(h) "Severed" means the extraction or withdrawing by any means whatsoever, from below the surface of the soil or water, of any gas.

(i) "Person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular number.

(j) "Producer" means any person owning, controlling, managing or leasing any oil or gas property, or oil or gas well, and any person who produces in any manner any gas by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any gas or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(k) "Engaging in business" means any act or acts engaged in (personal or corporate) by producers, or parties at interest, the result of which gas is severed from the soil or water, for storage, transport or manufacture, or by which there is an exchange of money, or goods, or thing of value, for gas which has been or is in process of being severed from the soil or water.

(l) "Production" means the total gross amount of gas produced, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this article shall be measured or determined by meter readings showing one hundred percent (100%) of the full volume expressed in cubic feet at a standard base and flowing temperature of sixty (60) degrees Fahrenheit and at the absolute pressure at which the gas is sold and purchased; correction to be made for pressure according to Boyle's law, and for specific gravity according to the gravity at which the gas is sold and purchased or if not so specified, according to test made by the balance method.

(m) "Gathering system" means the pipelines, compressors, pumps, regulators, separators, dehydrators, meters, metering installations and all other property used in gathering gas from the well from which it is produced if such properties are owned by other than the operator, and all such properties, if owned by the operator, beyond the first metering installation that is nearest the well.

(n) "Discovery well" means any well producing gas from a single pool in which a well has not been previously produced in paying quantities after testing.

(o) "Development wells" means all gas-producing wells other than discovery wells and replacement wells.

(p) "Replacement well" means a well drilled on a drilling and/or production unit to replace another well which is drilled in the same unit and completed in the same pool.

(q) "Three-dimensional seismic" means data which is regularly organized in three (3) orthogonal directions and thus suitable for interpretation with a three-dimensional software package on an interactive work station.

(r) "Two-year inactive well" means any oil or gas well certified by the State Oil and Gas Board as having not produced oil or gas in more than a total of thirty (30) days during a twelve-consecutive-month period in the two (2) years before the date of certification.

(s) "Horizontally drilled well" means a well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

(t) "Horizontally drilled recompletion well" means an existing well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

SECTION 2. Section 27-25-703, Mississippi Code of 1972, is amended as follows:

27-25-703. (1) (a) Except as otherwise provided in this section, there is hereby levied, to be collected as provided in this article, annual privilege taxes upon every person engaging or continuing within this state in the business of producing, or severing gas from below the soil or water for sale, transport, storage, profit or for commercial use. The amount of the tax shall be measured by the value of the gas produced and shall be levied and assessed at a rate of six percent (6%) of the value of the gas at the point of production, except as otherwise provided in subsection (4) of this section.

(b) (i) The tax shall be levied and assessed at the rate of one and three-tenths percent (1.3%) of the value of the gas at the point of production on gas produced from a horizontally drilled well or from any horizontally drilled recompletion well from which production commences from and after July 1, 2013, for a period of thirty (30) months beginning on the date of first sale of production or until payout of the well cost is achieved, whichever first occurs. Thereafter, the tax shall be levied and assessed as provided for in paragraph (a) of this subsection.

(ii) Payout of a horizontally drilled well or horizontally drilled recompletion well shall be deemed to have occurred the first day of the next month after gross revenues, less royalties and severance taxes, equal to the cost to drill and complete the well.

(iii) Each operator must apply by letter to the State Oil and Gas Board for the reduced rate provided in this paragraph (b), and shall provide the board with the status of payout on a semiannual basis of any horizontally drilled well or horizontally drilled recompletion well by signed affidavit executed by a company representative.

(iv) This paragraph (b) shall be repealed from and after July 1, 2018; however, any horizontally drilled well or horizontally drilled recompletion well from which production commences before July 1, 2018, shall be taxed as provided for in this paragraph (b) notwithstanding that the repeal of this paragraph (b) has become effective.

(2) The tax is levied upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state, but not levied *** * *** upon gas lawfully vented or flared in connection with the production of oil, nor upon gas condensed into liquids on which the oil severance tax of six percent (6%) is paid *** * ***. <u>In addition, the tax levied under this section shall not be levied upon the production of carbon dioxide that is sold for or otherwise used for industrial or commercial purposes in this state such as raw materials or components in the manufacturing process or oil production by use of an enhanced oil recovery method.</u> The tax shall accrue at the time the gas is produced or severed from the soil or water, and in its natural, unrefined or unmanufactured state.

(3) Natural gas and condensate produced from any wells for which drilling is commenced after March 15, 1987, and before July 1, 1990, shall be exempt from the tax levied under this section for a period of two (2) years beginning on the date of first sale of production from such wells.

(4) (a) Any well which begins commercial production of occluded natural gas from coal seams on or after March 20, 1990, and before July 1, 1993, shall be taxed at the rate of three and one-half percent (3-1/2%) of the gross value of the occluded natural gas from coal seams at the point of production for a period of five (5) years after such well begins production.

(b) Any well which begins commercial production of occluded natural gas from coal seams on or after July 1, 2004, and before July 1, 2007, shall be taxed at the rate of three percent (3%) of the gross value of the occluded natural gas from coal seams at the point of production for a period of five (5) years beginning on the date of the first sale of production from such well.

(5) (a) Natural gas produced from discovery wells for which drilling or re-entry commenced on or after April 1, 1994, but before July 1, 1999, shall be exempt from the tax levied under this section for a period of five (5) years beginning on the earlier of one (1) year from completion of the well or the date of first sale from such well, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from discovery wells as described in this paragraph (a) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be exempt for an entire

period of five (5) years, notwithstanding that the repeal of this provision has become effective. Natural gas produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after January 1, 1994, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of three (3) years. The reduced rate of assessment of natural gas produced from development wells or replacement wells as described in this paragraph (a) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before January 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Natural gas produced from discovery wells for which drilling or re-entry commenced on or after July 1, 1999, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of five (5) years beginning on the earlier of one (1) year from completion of the well or the date of first sale from such well, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of natural gas produced from discovery wells as described in this paragraph (b) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective. Natural gas produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after July 1, 1999, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of three (3) years. The reduced rate of assessment of natural gas produced from development wells or replacement wells as described in this paragraph (b) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before January 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(6) (a) Gas produced from a development well for which drilling commenced on or after April 1, 1994, but before July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well, shall be assessed at a rate of three percent (3%) of the value of the gas at the point of production for a period of five (5) years, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of gas produced from a development well as described in this subsection and for which three-dimensional seismic was utilized shall be repealed from and

after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(b) Gas produced from a development well for which drilling commenced on or after July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well, shall be assessed at a rate of three percent (3%) of the value of the gas at the point of production for a period of five (5) years, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of gas produced from a development well as described in this paragraph (b) and for which three-dimensional seismic was utilized shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(7) (a) Natural gas produced before July 1, 1999, from a two-year inactive well as defined in Section 27-25-701 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production

from such well, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from an inactive well as described in this subsection shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Natural gas produced on or after July 1, 1999, from a two-year inactive well as defined in Section 27-25-701 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from an inactive well as described in this paragraph (b) shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(8) The State Oil and Gas Board shall have the exclusive authority to determine the qualification of wells defined in paragraphs (n) through (t) of Section 27-25-701.

SECTION 3. (1) An amount equal to the gas severance tax revenue derived from the tax levied on the production of carbon dioxide under Section 27-25-703 and deposited into the State General Fund during the preceding fiscal year shall be annually allocated and distributed by the Department of Revenue in the manner provided in this section. The Department of Revenue shall make the distributions as follows:

(a) An amount equal to one-half (1/2) of such severance tax revenue shall be distributed on or before January 31, 2019, and each succeeding January 31 thereafter; and

(b) An amount equal to one-half (1/2) of such severance tax revenue shall be distributed on or before June 30, 2019, and each succeeding June 30 thereafter. The distributions shall be made from General Fund revenue collections for the month of January or June, as the case may be.

(2) (a) Of the distributions made under subsection (1) of this section, two-thirds (2/3) of the amount of such distributions shall be allocated to counties in this state in the following proportions:

(i) One-third (1/3) shall be allocated to all counties in equal shares,

(ii) One-third (1/3) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state, and

(iii) One-third (1/3) shall be allocated to counties based on the proportion that the rural population of a county bears to the total rural population in all counties of the state, according to the latest federal decennial census. Funds allocated to a county under this paragraph (a) shall be used for repair, maintenance and/or reconstruction of roads, streets and bridges in the county.

(b) Of the distributions made under subsection (1) of this section, one-third (1/3) of the amount of such distributions shall be allocated to municipalities in this state based on the proportion that the amount of sales tax revenue distributed to a municipality during the preceding fiscal year under Section 27-65-75(1)(a) bears to the total amount of sales tax revenue distributed to all municipalities during the preceding fiscal year under Section 27-65-75(1)(a). Funds allocated to a municipality under this paragraph (b) shall be used for repair, maintenance and/or reconstruction of roads, streets and bridges in the municipality.

SECTION 4. This act shall take effect and be in force from and after July 1, 2018.