2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 3060**

5 (By Delegates Kominar, Ashley, Carmichael, Varner,
6 White and Pethtel)

7 (Originating in the Committee on Finance)

8 [February 17, 2011]

9

10

11 A BILL to amend and reenact §11-24-11b of the Code of West

12 Virginia, 1931, as amended, relating to creating a permanent

13 method for determining the allowance for certain utilities of

14 tax credits for the remainder of their net operating loss

15 carryovers that existed as of December 31, 2006.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §11-24-11b of the Code of West Virginia, 1931, as

18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 24. CORPORATION NET INCOME TAX.**

20 **§11-24-11b. Credit for utility taxpayers with net operating loss**

21 **carryovers that existed as of December 31, 2006**.

22 (a) *General.* -- There shall be allowed to every eligible

23 taxpayer a nonrefundable credit against its primary tax liability

24 imposed under this article for any net operating loss carryovers

25 that exist as of December 31, 2006.

26 (b)(1) "Eligible taxpayer" means any person subject to the

1 business and occupation taxes prescribed by article thirteen of

2 this chapter and exercising any privilege taxable under section

3 two-o, article thirteen of this chapter.

4   (2) "Eligible taxpayer" also includes ~~an affiliated group of~~

5 ~~taxpayers if~~:

6   (A) For tax years beginning on or before December 31, 2008, an

7 affiliated group of taxpayers if the group elects to file a

8 consolidated corporation net income tax return under this article

9 if one or more affiliates included in the affiliated group would

10 qualify as an eligible taxpayer under subdivision (1) of this

11 subsection; or

12   (B) For tax years beginning on or after January 1, 2009, any

13 taxpayer otherwise eligible under this section that is engaged in

14 a unitary business with one or more other taxpayers and is required

15 to file a combined report under this article.

16   (c) *Amount of credit.* -- The amount of credit allowed shall be

17 equal to one-quarter percent of the eligible taxpayer's West

18 Virginia net operating loss carryovers allowed by subsection (d),

19 section six of this article that ~~exist~~ existed as of December 31,

20 2006. Effective for tax years beginning on or after January 1,

21 2009, the credit is an amount equal to the following subtraction:

22   (1) The product of the amount of net operating loss accrued

23 before January 1, 2007, that is taken in the current tax year,

24 multiplied by nine percent, minus

25   (2) The product of the amount of net operating loss accrued

26 before January 1, 2007, that is taken in the current tax year

1 multiplied by the tax rate for the current year..

2 (d) *Application of credit.* -- The amount of credit allowed

3 shall be taken against the tax liabilities of the eligible taxpayer

4 under this article as shown on its annual return for the ~~taxable~~

5 tax year in which its net operating loss carryovers are utilized,

6 as provided in subsection (d), section six of this article. Any

7 credit remaining after application against the eligible taxpayer's

8 tax liabilities for the current year may be carried forward to

9 subsequent tax years until ~~used~~ the fifth taxable year following

10 the tax year when the remaining current balance of the eligible

11 taxpayer's West Virginia net operating loss carryovers allowed by

12 subsection (d), section six of this article that existed as of

13 December 31, 2006, decreased by net operating loss used or applied

14 in each tax year beginning on or after January 1, 2007, is zero.

15 For purposes of determining the remaining current balance of the

16 eligible taxpayer's West Virginia net operating loss allowed by

17 subsection (d), section six of this article that existed as of

18 December 31, 2006, decreased by net operating loss used or applied

19 in each tax year beginning on or after January 1, 2007 under this

20 section, a first in, first out, net operating loss usage

21 computation shall apply.