

1                                   **H. B. 2554**

2                    (By Delegates Howell, Canterbury, C. Miller,  
3                    Sobonya, Ellem, Carmichael, Sumner, Duke,  
4                    Kominar, White and R. Phillips)

5  
6                    [Introduced January 19, 2011; referred to the  
7                    Committee on Energy, Industry and Labor, Economic  
8                    Development and Small Business then the Judiciary.]  
9

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11       adding thereto a new article, designated §22-29-1, §22-29-2,  
12       §22-29-3 and §22-29-4, all relating to creating the Intrastate  
13       Coal and Use Act; establishing that the environmental  
14       regulation of coal and certain coal products mined and used  
15       within the state are exclusively regulated by the West  
16       Virginia Department of Environmental Protection; stating the  
17       legislative authority; and defining terms.

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

19       That the Code of West Virginia, 1931, as amended, be amended  
20 by adding thereto a new article, designated §22-29-1, §22-29-2,  
21 §22-29-3 and §22-29-4, all to read as follows:

22 **ARTICLE 29. ENVIRONMENTAL REGULATION OF COAL MINED AND USED WITHIN**  
23                                   **THE STATE.**

24 **§22-29-1. Short title.**

25       This article may be cited as the "Intrastate Coal and Use Act"

26 **§22-29-2. Authority.**

1       The Legislature declares that the authority for this article  
2 is as follows:

3       (1) The Tenth Amendment to the United States Constitution  
4 guarantees to the states and their people all powers not granted to  
5 the federal government elsewhere in the Constitution and reserves  
6 to the state and people of West Virginia certain powers as they  
7 were understood at the time that West Virginia was admitted to  
8 statehood in 1863. The guaranty of those powers is a matter of  
9 contract between the state and people of West Virginia and the  
10 United States as of the time that the compact with the United  
11 States was agreed upon and adopted by West Virginia and the United  
12 States in 1863.

13       (2) The Ninth Amendment to the United States Constitution  
14 guarantees to the people rights not granted in the Constitution and  
15 reserves to the people of West Virginia certain rights as they were  
16 understood at the time that West Virginia was admitted to statehood  
17 in 1863. The guaranty of those rights is a matter of contract  
18 between the state and people of West Virginia and the United States  
19 as of the time that the compact with the United States was agreed  
20 upon and adopted by West Virginia and the United States in 1863.

21       (3) Section two, Article I of the West Virginia Constitution,  
22 states: "The government of the United States is a government of  
23 enumerated powers, and all powers not delegated to it, nor  
24 inhibited to the states, are reserved to the states or to the

1 people thereof.” Specifically enumerated among those “powers so  
2 reserved to the states is the exclusive regulation of their own  
3 internal government and police; and it is the high and solemn duty  
4 of the several departments of government, created by this  
5 Constitution, to guard and protect the people of this state from  
6 all encroachments upon the rights so reserved.”

7 (4) The regulation of intrastate commerce, including the  
8 natural environment as affected by intrastate business, is vested  
9 in the states under the Ninth and Tenth Amendments to the United  
10 States Constitution and is specifically retained by the State of  
11 West Virginia according to Section 2, Article I of the West  
12 Virginia Constitution.

13 **§22-29-3. Definitions.**

14 As used in this article, the following definitions apply:

15 (1) "Borders of West Virginia" means the boundaries of the  
16 State of West Virginia described in Section 1, Article II of the  
17 West Virginia Constitution.

18 (2) The term "coal mine" means those operations removing coal  
19 from a coal seam or seams, whether aboveground or underground.

20 (3) "Chemically altered coal product" means any product  
21 derived principally from coal, including, but not limited to, coke  
22 or liquid fuels derived from coal by any process.

23 **§22-29-4. Requirements.**

24 (a) In light of the above findings, environmental regulation

1 in West Virginia for all purposes of regulating business activity  
2 performed in West Virginia, when the products of such business  
3 activities are held, maintained, or retained within the borders of  
4 West Virginia, is the principal responsibility of the West Virginia  
5 Department of Environmental Protection.

6       (b) Any West Virginia coal mine producing coal which is used  
7 commercially or privately in West Virginia and which is consumed or  
8 otherwise remains within the borders of West Virginia and any West  
9 Virginia facility producing chemically altered coal products used  
10 commercially or privately in West Virginia which remain within the  
11 borders of West Virginia shall be issued a permit to operate by the  
12 West Virginia Department of Environmental Protection once the West  
13 Virginia Department of Environmental Protection has certified that  
14 the mine or facility is compliant with all applicable state and  
15 federal laws or state and federal regulation.

16       (c) A sample from each vein of coal in a mine and a sample of  
17 coal from each West Virginia source used at a facility producing a  
18 chemically altered coal product shall be placed on record with the  
19 West Virginia Department of Environmental Protection to verify the  
20 West Virginia origin of the coal produced and used.

21       (d) The Legislature declares that the United States  
22 Environmental Protection Agency, acting under the color of  
23 authority of Congress to regulate interstate commerce, lacks the  
24 authority to deny permits of operation to such coal mines and

1 facilities as the products of these mines and facilities have not  
2 traveled in interstate commerce.

3 (e) This article applies to coal and to any chemically altered  
4 coal product mined or produced in West Virginia from basic  
5 materials which can be manufactured without the inclusion of any  
6 significant components imported from another state.

7 (f) This article applies only to the issuance of a permit of  
8 operation to a coal mine or facility producing chemically altered  
9 coal products, the issuance of which permit is required by the  
10 Clean Water Act or by another equivalent state or federal statute  
11 or regulation. Nothing in this section shall be construed to limit  
12 the effect of any other state or federal statute or regulation.

NOTE: The purpose of this bill is to create the Intrastate Coal and Use Act. The bill establishes that the environmental regulation of coal and certain coal products mined and used within the state are exclusively regulated by the West Virginia Department of Environmental Protection. The bill states the legislative authority and defines terms.

This article is new; therefore, it has been completely underscored.