E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3060

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(BY DELEGATES KOMINAR, ASHLEY, CARMICHAEL, VARNER,
WHITE AND PETHTEL)

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(Originating in the Committee on Finance)
[February 17, 2011]

A BILL to amend and reenact §11-24-11b of the Code of West
Virginia, 1931, as amended, relating to creating a permanent
method for determining the allowance for certain utilities of tax
credits for the remainder of their net operating loss carryovers
that existed as of December 31, 2006.

Be it enacted by the Legislature of West Virginia:

That §11-24-11b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11b. Credit for utility taxpayers with net operating loss carryovers that existed as of December 31, 2006.

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

2   taxpayer a nonrefundable credit against its primary tax

3   liability imposed under this article for any net operating loss

4   carryovers that exist as of December 31, 2006.

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

6   the business and occupation taxes prescribed by article

7   thirteen of this chapter and exercising any privilege taxable

8   under section two-o, article thirteen of this chapter.

9   (2) "Eligible taxpayer" also includes an affiliated group

10   of taxpayers if:

11   (A) For tax years beginning on or before December 31,

12   2008, an affiliated group of taxpayers if the group elects to

13   file a consolidated corporation net income tax return under

14   this article if one or more affiliates included in the affiliated

15   group   would   qualify   as   an   eligible   taxpayer   under

16   subdivision (1) of this subsection; or

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

18   taxpayer otherwise eligible under this section that is engaged in

19   a unitary business with one or more other taxpayers and is

20   required to file a combined report under this article.

21   (c) *Amount of credit.* -- The amount of credit allowed

22   shall   be   equal   to   one-quarter   percent   of   the   eligible

23   taxpayer's   West   Virginia   net   operating   loss   carryovers

24   allowed by subsection (d), section six of this article that ~~exist~~

25   existed as of December 31, 2006. Effective for tax years

26   beginning on or after January 1, 2009, the credit is an amount

27   equal to the following subtraction:

28   (1) The product of the amount of net operating loss

29   accrued before January 1, 2007, that is taken in the current

30   tax year, multiplied by nine percent, minus

31   (2) The product of the amount of net operating loss

32   accrued before January 1, 2007, that is taken in the current

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

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

35   shall be taken against the tax liabilities of the eligible

36   taxpayer under this article as shown on its annual return for

37   the ~~taxable~~ tax year in which its net operating loss carryovers

38   are utilized, as provided in subsection (d), section six of this

39   article. Any credit remaining after application against the

40   eligible taxpayer's tax liabilities for the current year may be

41   carried forward to subsequent tax years until ~~used~~ the fifth

42   taxable year following the tax year when the remaining

43   current balance of the eligible taxpayer's West Virginia net

44   operating loss carryovers allowed by subsection (d), section

45   six of this article that existed as of December 3l, 2006,

46   decreased by net operating loss used or applied in each tax

47   year beginning on or after January 1, 2007, is zero. For

48   purposes of determining the remaining current balance of the

49   eligible taxpayer's West Virginia net operating loss allowed

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

51   December 31, 2006, decreased by net operating loss used or

52   applied in each tax year beginning on or after January 1,

53   2007 under this section, a first in, first out, net operating loss

54   usage computation shall apply.