

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3072**

4 (By Delegates Hunt, Marcum, R. Phillips and Williams)

5
6 (Originating in the House Committee on Finance.)

7
8 [March 29, 2013]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §11-13DD-1, §11-13DD-
12 2, §11-13DD-3, §11-13DD-4 and §11-13DD-5, all relating to
13 providing a tax credit to coal producers who sell coal to
14 taxpayers who increase their consumption of West Virginia coal
15 in this state for the purpose of increasing coal production
16 and coal related employment in West Virginia.

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

18 That the Code of West Virginia, 1931, as amended, be amended
19 by adding thereto a new article, designated §11-13DD-1, §11-13DD-
20 2, §11-13DD-3, §11-13DD-4 and §11-13DD-5, all to read as follows:

21 **ARTICLE 13DD. WEST VIRGINIA COAL EMPLOYMENT ENHANCEMENT ACT.**

22 **§11-13DD-1. Legislative finding.**

23 The Legislature finds that this state and this region are
24 blessed with large quantities of mineable coal that is suitable for

1 use as fuel to generate electricity and for other industrial uses;
2 that other coal producing states in the region offer incentives to
3 businesses to consume coal produced in those states; that there are
4 sound economic reasons for locating electric power generating
5 facilities and other industrial facilities that consume coal in the
6 coal fields; and that many West Virginia miners work in mines
7 located in this state and that the state will benefit by
8 encouraging additional production of West Virginia coal.
9 Therefore, encouraging greater utilization of coal produced by West
10 Virginia miners and consumed at West Virginia power plants and
11 industrial facilities, is in the public interest and promotes the
12 general welfare of the people of this state, in that it will
13 increase employment opportunities for West Virginia residents.

14 **§11-13DD-2. Definitions.**

15 (1) *Base year.* - The term "base year" means the calendar year
16 ending on December 31, 2012.

17 (2) *Eligible coal.* - The term "eligible coal" means coal
18 produced from a mine located in this state and upon which the
19 severance tax imposed by subsection (b), section three, article
20 thirteen-a of this chapter was paid.

21 (3) *Eligible taxpayer.* - The term "eligible taxpayer" means
22 any person subject to the severance tax imposed by subsection (b),
23 section b, article thirteen-a of this chapter that during the tax
24 year produces and sells eligible coal that is consumed at a power

1 plant or industrial facility located in this state and certified as
2 qualified coal by the purchaser.

3 (4) Qualified coal. - The term "qualified coal" means the
4 number of tons of eligible coal consumed at a power plant or
5 industrial facility located in this state during the tax year, in
6 excess of the number of tons of eligible coal consumed at that
7 power plant or industrial facility during the base year.

8 (5) Other terms used in this article have the meanings
9 ascribed to them in section four, article ten of this chapter or
10 section one, article thirteen of this chapter, unless the context
11 in which it is used in this article clearly requires another
12 meaning.

13 **§11-13DD-3. Credit allowed; amount of credit; effective date.**

14 (a) An eligible taxpayer shall be allowed a credit, as
15 determined under subsection (b) of this section against its
16 liability for taxes imposed by this state as provided in subsection
17 (c) of this section.

18 (b) Amount of credit. - The credit allowed by this subsection
19 is an amount equal to \$3 per ton multiplied by the number of tons
20 of qualified coal produced by the eligible taxpayer during the tax
21 year: Provided, That if the amount of severance tax imposed by
22 subsection (b), section three, article thirteen-a of this chapter,
23 and paid by the producer of the qualified coal was less than \$3 per
24 ton, then the amount of credit allowed to the eligible taxpayer by

1 this section is an amount equal to the amount of severance tax paid
2 per ton on the qualified coal multiplied by the number of tons of
3 qualified coal consumed by the eligible taxpayer during the tax
4 year.

5 (c) Application of the current year credit allowance. - An
6 eligible taxpayer that produces qualified coal may apply the credit
7 allowed under this article solely to reduce its liability for
8 severance tax imposed by subsection three-b, article thirteen-a of
9 this chapter.

10 (d) Unused credit. - If any credit remains after application
11 of subsection (c) of this section, the amount thereof is carried
12 forward to each ensuing tax year until used as provided in
13 subsection (c) of this section or until the expiration of the third
14 taxable year subsequent to the tax year. If any unused credit
15 remains after the third subsequent year, the amount thereof is
16 forfeited.

17 (e) Effective date. - The credit allowed by this section shall
18 apply to tax liabilities for calendar years beginning on or after
19 January 1, 2013.

20 **§11-13DD-4. Certification by purchasers of qualified coal.**

21 (a) A person purchasing eligible coal for consumption at a
22 power plant or industrial facility located in this state during the
23 tax year shall, if timely requested by the eligible taxpayer
24 producing and selling the coal, certify the number of tons of

1 qualified coal that was purchased from the eligible taxpayer during
2 the tax year. A person requested to certify coal as qualified coal
3 to an eligible taxpayer, shall not certify tonnage in excess of the
4 limits established in section four, article thirteen-DD of this
5 chapter as qualified coal during any tax year. Such certifications
6 for the tax year shall be provided to the eligible taxpayer no
7 later than thirty days following the end of the calendar year.

8 (b) All certifications shall be provided to the eligible
9 taxpayer in the form prescribed by the tax commissioner and provide
10 such information as he deems necessary for determining compliance
11 with this article. An employee who signs the certification on
12 behalf of a proprietorship, corporation, partnership or a group or
13 combination acting as a unit shall be presumed to have authority to
14 make and sign the certification on behalf of his or her employer.

15 **§11-13DD-5. Credit recapture; interest; penalties; additions to**
16 **tax; statute of limitations.**

17 If it appears upon audit or otherwise that an eligible
18 taxpayer has improperly claimed the credit allowed by this article,
19 the amount improperly claimed and which the eligible taxpayer was
20 not entitled to take shall be recaptured. Amended returns shall be
21 filed for any tax year for which the credit was improperly taken.
22 Any additional taxes due under this chapter shall be remitted with
23 the amended return or returns filed with the tax commissioner,
24 along with interest, as provided in section seventeen, article ten

1 of this chapter, and a ten percent penalty, which may be waived by
2 the tax commissioner if the taxpayer shows that the overclaimed
3 amount was due to reasonable cause and not due to willful neglect,
4 and such other penalties and additions to tax as may be applicable
5 pursuant to the provisions of article ten of this chapter.
6 Notwithstanding the provisions of article ten of this chapter, the
7 statute of limitations for the issuance of an assessment of tax by
8 the tax commissioner shall be five years from the date of the
9 filing of any tax return on which this credit was taken or five
10 years from the date of payment of any tax liability calculated
11 pursuant to the assertion of this credit, whichever is later.