

1                                   **Senate Bill No. 366**

2 (By Senators McCabe, Cann, Facemire, Green, D. Hall, Walters and  
3                                   Kessler (Mr. President))

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5           [Introduced February 25, 2013; referred to the Committee on  
6 Transportation and Infrastructure; and then to the Committee on  
7                                   Finance.]

**FISCAL  
NOTE**

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12 A BILL to amend and reenact §11-6D-2, §11-6D-4 and §11-6D-6 of the  
13 Code of West Virginia, 1931, as amended; and to amend said  
14 code by adding thereto a new section, designated §11-6D-10,  
15 all relating generally to use of alternative-fuel motor  
16 vehicles; eliminating the availability of a tax credit for  
17 vehicles that are capable of running on ethanol and certain  
18 fuel mixtures containing ethanol, methanol or other alcohols;  
19 removing the requirement that a converted vehicle must operate  
20 exclusively on an alternative fuel in order to take the  
21 credit; eliminating a rule requirement; allowing pass-through  
22 entities to distribute credits to pass-through equity owners  
23 in any manner such equity owners see fit; permitting the

1 transfer of tax credits for purchase of alternative-fuel  
2 vehicles, conversion to an alternative-fuel vehicle or  
3 construction of alternative-fuel vehicle infrastructure;  
4 setting forth how those transfers of tax credits may be  
5 accomplished; providing an exception; and permitting  
6 government entities and nonprofit entities to utilize certain  
7 tax credits.

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

9 That §11-6D-2, §11-6D-4 and §11-6D-6 of the Code of West  
10 Virginia, 1931, as amended, be amended and reenacted; and that said  
11 code be amended by adding thereto a new section, designated  
12 §11-6D-10, all to read as follows:

13 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.**

14 **§11-6D-2. Definitions.**

15 As used in this article, the following terms have the meanings  
16 ascribed to them in this section:

17 (a) "Alternative fuel" includes:

18 (1) Compressed natural gas;

19 (2) Liquefied natural gas;

20 (3) Liquefied petroleum gas;

21 ~~(4) Ethanol;~~

22 ~~(5) Fuel mixtures that contain eighty-five percent or more by~~  
23 ~~volume, when combined with gasoline or other fuels, of the~~

1 following:

2 ~~(A) Methanol;~~

3 ~~(B) Ethanol; or~~

4 ~~(C) Other alcohols;~~

5 ~~(6)~~ (4) Natural gas hydrocarbons and derivatives;

6 ~~(7)~~ (5) Hydrogen;

7 ~~(8)~~ (6) Coal-derived liquid fuels; and

8 ~~(9)~~ (7) Electricity, including electricity from solar energy.

9 (b) "Alternative-fuel motor vehicle" means a motor vehicle  
10 that as a new or retrofitted or converted fuel vehicle:

11 (1) Operates solely on one alternative fuel;

12 (2) Is capable of operating on one or more alternative fuels,  
13 singly or in combination; or

14 (3) Is capable of operating on an alternative fuel and is also  
15 capable of operating on gasoline or diesel fuel.

16 (c) "Bi-fueled" means the ability of an alternative-fuel motor  
17 vehicle to operate on an alternative fuel and another form of fuel.

18 (d) "Plug-in hybrid electric vehicle" means:

19 (1) A plug-in hybrid electric vehicle manufactured by an  
20 established motor vehicle manufacturer of plug-in hybrid electric  
21 vehicles that can operate solely on electric power and that is  
22 capable of recharging its battery from an on-board generation  
23 source and an off-board electricity source; and

1           (2) A plug-in hybrid electric vehicle conversion that provides  
2 an increase in city fuel economy of seventy-five percent or more as  
3 compared to a comparable nonhybrid version vehicle for a minimum of  
4 twenty miles and that is capable of recharging its battery from an  
5 on-board generation source and an off-board electricity source. A  
6 vehicle is comparable if it is the same model year and the same  
7 vehicle class as established by the United States Environmental  
8 Protection Agency and is comparable in weight, size and use. Fuel  
9 economy comparisons shall be made using city fuel economy standards  
10 in a manner that is substantially similar to the manner in which  
11 city fuel economy is measured in accordance with procedures set  
12 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

13           (e) "Qualified alternative fuel vehicle refueling  
14 infrastructure" means property owned by the applicant for the tax  
15 credit and used for storing alternative fuels and for dispensing  
16 such alternative fuels into fuel tanks of motor vehicles,  
17 including, but not limited to, compression equipment, storage tanks  
18 and dispensing units for alternative fuel at the point where the  
19 fuel is delivered: *Provided*, That the property is installed and  
20 located in this state and is not located on a private residence or  
21 private home.

22           (f) "Qualified alternative fuel vehicle home refueling  
23 infrastructure" means property owned by the applicant for the tax

1 credit located on a private residence or private home and used for  
2 storing alternative fuels and for dispensing such alternative fuels  
3 into fuel tanks of motor vehicles, including, but not limited to,  
4 compression equipment, storage tanks and dispensing units for  
5 alternative fuel at the point where the fuel is delivered or for  
6 providing electricity to plug-in hybrid electric vehicles or  
7 electric vehicles: *Provided*, That the property is installed and  
8 located in this state.

9 (g) "Taxpayer" means any natural person, corporation, limited  
10 liability company or partnership subject to the tax imposed under  
11 article twenty-one, article twenty-three or article twenty-four of  
12 this chapter or any combination thereof and, for the purposes of  
13 transferability as allowed pursuant to section ten of this article,  
14 state, county and municipal governmental entities and nonprofit  
15 entities.

16 **§11-6D-4. Eligibility for credit.**

17 A taxpayer is eligible to claim the credit against tax  
18 provided in this article if he or she:

19 (a) Converts a motor vehicle that is presently registered in  
20 West Virginia to operate ~~exclusively~~ on an alternative fuel as  
21 defined in subdivision (a), section two of this article or any  
22 combination of an alternative fuel and any other fuel; or

23 (b) Purchases from an original equipment manufacturer or an

1 after-market conversion facility or any other automobile retailer,  
2 a new dedicated or bi-fueled alternative-fuel motor vehicle for  
3 which the taxpayer then obtains a valid West Virginia registration;  
4 or

5 (c) Constructs or purchases and installs qualified alternative  
6 fuel vehicle refueling infrastructure or qualified alternative fuel  
7 vehicle home refueling infrastructure that is capable of dispensing  
8 alternative fuel for alternative-fuel motor vehicles.

9 (d) The credit provided in this article is not available to  
10 and may not be claimed by any taxpayer under any obligation  
11 pursuant to any federal or state law, policy or regulation to  
12 convert to the use of alternative fuels for any motor vehicle.

13 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**  
14 **refueling infrastructure and qualified alternative**  
15 **fuel vehicle home refueling infrastructure.**

16 (a) For taxable years beginning on and after January 1, 2011,  
17 but prior to January 1, 2014, the amount of the credit allowed  
18 under this article for qualified alternative fuel vehicle refueling  
19 infrastructure is equal to an amount of fifty percent of the total  
20 costs directly associated with the construction or purchase and  
21 installation of the alternative fuel vehicle refueling  
22 infrastructure up to a maximum of \$250,000: *Provided*, That if the  
23 qualified alternative fuel vehicle refueling infrastructure is

1 generally accessible for public use, the amount of the credit  
2 allowed will be multiplied by 1.25 and the maximum amount allowable  
3 will be \$312,500. The amount of credit allowed may not exceed the  
4 cost of construction of the alternative fuel vehicle refueling  
5 infrastructure.

6 (b) For taxable years beginning on and after January 1, 2014,  
7 but prior to January 1, 2016, the amount of the credit allowed  
8 under this article for qualified alternative fuel vehicle refueling  
9 infrastructure is equal to an amount of fifty percent of the total  
10 costs directly associated with the construction or purchase and  
11 installation of the alternative fuel vehicle refueling  
12 infrastructure up to a maximum of \$200,000: *Provided*, That if the  
13 qualified alternative fuel vehicle refueling infrastructure is  
14 generally accessible for public use, the amount of the credit  
15 allowed will be multiplied by 1.25 and the maximum amount allowable  
16 will be \$250,000. The amount of credit allowed may not exceed the  
17 cost of construction of the alternative fuel vehicle refueling  
18 infrastructure.

19 (c) For taxable years beginning on and after January 1, 2016,  
20 but prior to January 1, 2022, the amount of the credit allowed  
21 under this article for qualified alternative fuel vehicle refueling  
22 infrastructure is equal to an amount of fifty percent of the total  
23 costs directly associated with the construction or purchase and

1 installation of the alternative fuel vehicle refueling  
2 infrastructure up to a maximum of \$150,000: *Provided*, That if the  
3 qualified alternative fuel vehicle refueling infrastructure is  
4 generally accessible for public use, the amount of the credit  
5 allowed will be multiplied by 1.25 and the maximum amount allowable  
6 will be \$187,500. The amount of credit allowed may not exceed the  
7 cost of construction of the alternative fuel vehicle refueling  
8 infrastructure.

9 (d) For taxable years beginning on and after January 1, 2011,  
10 the amount of the credit allowed under this article for qualified  
11 alternative fuel vehicle home refueling infrastructure is equal to  
12 an amount of fifty percent of the total costs directly associated  
13 with the construction or purchase and installation of the  
14 alternative fuel vehicle home refueling infrastructure up to a  
15 maximum of \$10,000.

16 (e) The cost of construction of the alternative fuel vehicle  
17 refueling infrastructure or alternative fuel vehicle home refueling  
18 infrastructure eligible for a tax credit under this section does  
19 not include costs associated with exploration, development or  
20 production activities necessary for severing natural resources from  
21 the soil or ground.

22 (f) When the taxpayer is a pass-through entity treated like a  
23 partnership for federal and state income tax purposes, the credit



1 allowed under this article for the year shall flow through to the  
2 equity owners of the pass-through entity in ~~the same~~ any manner  
3 that distributive share flows through to the equity owners. ~~and in~~  
4 ~~accordance with any legislative rule the Tax Commissioner may~~  
5 ~~propose for legislative approval in accordance with article three,~~  
6 ~~chapter twenty-nine-a of this code to administer this section.~~

7 (g) No credit allowed by this article may be applied against  
8 employer withholding taxes imposed by article twenty-one of this  
9 chapter.

10 **§11-6D-10. Transfer or sale of credit.**

11 (a) For purposes of this article and notwithstanding any  
12 provision in the code to the contrary, a state, county or municipal  
13 governmental entity and a nonprofit entity constitute a "taxpayer"  
14 as that term is defined in section two of this article and are  
15 entitled to take and transfer tax credits which are provided in  
16 this article. Any entity may transfer and sell the right to a tax  
17 credit issued pursuant to this article for liquefied natural gas  
18 vehicles, compressed natural gas vehicles, natural gas hydrocarbon  
19 and derivative vehicles and qualified alternative-fuel vehicle  
20 refueling infrastructure to any taxpayer, subject to the following  
21 conditions:

22 (1) A single transfer or sale may involve one or more  
23 transferees, assignees or purchasers. A transfer or sale of the

1 credits may involve multiple transfers to one or more transferees,  
2 assignees or purchasers.

3       (2) Transferors and sellers shall apply to the tax department  
4 for approval of any transfer, sale or assignment of the tax credit.  
5 Any amount of the tax credit that has been transferred or assigned  
6 is subject to the same limitations and conditions that apply to  
7 transferor's or seller's entitlement, use and application of the  
8 credit. The application for sale, transfer or assignment of the  
9 credit shall include the transferor's tax credit balance prior to  
10 transfer, if any, the name of the seller, the transferor's  
11 remaining tax credit balance after transfer, if any, all tax  
12 identification numbers for both transferor, if any, and transferee,  
13 the date of transfer, the amount transferred and any other  
14 information required by the Tax Commissioner. The Tax Commissioner  
15 shall either approve or disapprove the application for sale,  
16 transfer or assignment of the tax credit within thirty days of  
17 receipt of the application. In the event the Tax Commissioner  
18 denies the application for sale, transfer or assignment of the tax  
19 credit, the Tax Commissioner shall provide the reason for such  
20 denial: *Provided*, That the total amount of tax credits authorized  
21 to be transferred by state, county and municipal governmental  
22 entities and nonprofit entities in any one calendar year in the  
23 aggregate shall not exceed \$2 million for qualified

1 alternative-fuel motor vehicle tax credits and \$2 million for  
2 qualified alternative-fuel vehicle refueling infrastructure tax  
3 credits.

4 (3) The Tax Commissioner may not approve the transfer or  
5 assignment of a tax credit to a taxpayer if the seller or  
6 transferor has an outstanding tax obligation with the state of West  
7 Virginia.

8 (b) The transferee, assignee or purchaser shall apply the tax  
9 credits as required by this article and is subject to all  
10 conditions and limitations of this article.

11 (c) For purposes of this section, any proceeds received by the  
12 transferor for its assignment or sale of the tax credits allowed  
13 pursuant to this section are exempt from the West Virginia  
14 consumers sales and service tax and use tax and from the  
15 corporation net income tax and personal income tax.

16 (d) The purpose of this section is to authorize any entity to  
17 take and transfer tax credits provided in this article, and  
18 specifically allow government entities and nonprofit entities to  
19 utilize certain tax credits issued pursuant to this article.

NOTE: The purpose of this bill is to eliminate the availability of a tax credit for vehicles that are capable of running on ethanol and certain fuel mixtures containing ethanol, methanol or other alcohols. The bill removes the requirement that a converted vehicle must operate exclusively on an alternative fuel in order to take the credit. The bill eliminates a rule

requirement. The bill allows pass-through entities to distribute credits to pass-through equity owners in any manner the equity owners see fit. The bill permits the transfer of tax credits for purchase of alternative-fuel vehicles, conversion to an alternative-fuel vehicle or construction of alternative-fuel vehicle infrastructure. The bill sets forth how those transfer of tax credits may be accomplished. The bill allows government entities and nonprofit entities to utilize certain tax credits.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§11-6D-10 is new; therefore, strike-throughs and underscoring have been omitted.