

COMMITTEE SUBSTITUTE

FOR

**H. B. 3072**

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(BY DELEGATE(S) HUNT, MARCUM, R. PHILLIPS AND WILLIAMS)

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(Originating in the House Committee on Finance.)

[March 29, 2013]

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

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

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

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

**§11-13DD-1. Legislative finding.**

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

**§11-13DD-2. Definitions.**

1        (1) *Base year.* – The term “base year” means the calendar  
2   year ending on December 31, 2012.

3       (2) Eligible coal. – The term “eligible coal” means coal  
4       produced from a mine located in this state and upon which the  
5       severance tax imposed by subsection (b), section three, article  
6       thirteen-a of this chapter was paid.

7       (3) Eligible taxpayer. – The term “eligible taxpayer” means  
8       any person subject to the severance tax imposed by subsection  
9       (b), section b, article thirteen-a of this chapter that during the tax  
10       year produces and sells eligible coal that is consumed at a power  
11       plant or industrial facility located in this state and certified as  
12       qualified coal by the purchaser.

13       (4) Qualified coal. – The term “qualified coal” means the  
14       number of tons of eligible coal consumed at a power plant or  
15       industrial facility located in this state during the tax year, in  
16       excess of the number of tons of eligible coal consumed at that  
17       power plant or industrial facility during the base year.

18       (5) Other terms used in this article have the meanings  
19       ascribed to them in section four, article ten of this chapter or  
20       section one, article thirteen of this chapter, unless the context in  
21       which it is used in this article clearly requires another meaning.

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

1        (a) An eligible taxpayer shall be allowed a credit, as deter-  
2        mined under subsection (b) of this section against its liability for  
3        taxes imposed by this state as provided in subsection (c) of this  
4        section.

5        (b) *Amount of credit.* - The credit allowed by this subsection  
6        is an amount equal to \$3 per ton multiplied by the number of  
7        tons of qualified coal produced by the eligible taxpayer during  
8        the tax year: *Provided*, That if the amount of severance tax  
9        imposed by subsection (b), section three, article thirteen-a of this  
10       chapter, and paid by the producer of the qualified coal was less  
11       than \$3 per ton, then the amount of credit allowed to the eligible  
12       taxpayer by this section is an amount equal to the amount of  
13       severance tax paid per ton on the qualified coal multiplied by the  
14       number of tons of qualified coal consumed by the eligible  
15       taxpayer during the tax year.

16       (c) *Application of the current year credit allowance.* - An  
17       eligible taxpayer that produces qualified coal may apply the  
18       credit allowed under this article solely to reduce its liability for  
19       severance tax imposed by subsection three-b, article thirteen-a  
20       of this chapter.

21 (d) Unused credit. – If any credit remains after application  
22 of subsection (c) of this section, the amount thereof is carried  
23 forward to each ensuing tax year until used as provided in  
24 subsection (c) of this section or until the expiration of the third  
25 taxable year subsequent to the tax year. If any unused credit  
26 remains after the third subsequent year, the amount thereof is  
27 forfeited.

28 (e) Effective date. – The credit allowed by this section shall  
29 apply to tax liabilities for calendar years beginning on or after  
30 January 1, 2013.

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

1 (a) A person purchasing eligible coal for consumption at a  
2 power plant or industrial facility located in this state during the  
3 tax year shall, if timely requested by the eligible taxpayer  
4 producing and selling the coal, certify the number of tons of  
5 qualified coal that was purchased from the eligible taxpayer  
6 during the tax year. A person requested to certify coal as  
7 qualified coal to an eligible taxpayer, shall not certify tonnage in  
8 excess of the limits established in section four, article thirteen-  
9 DD of this chapter as qualified coal during any tax year. Such

10 certifications for the tax year shall be provided to the eligible  
11 taxpayer no later than thirty days following the end of the  
12 calendar year.

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

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

1 If it appears upon audit or otherwise that an eligible taxpayer  
2 has improperly claimed the credit allowed by this article, the  
3 amount improperly claimed and which the eligible taxpayer was  
4 not entitled to take shall be recaptured. Amended returns shall be  
5 filed for any tax year for which the credit was improperly taken.  
6 Any additional taxes due under this chapter shall be remitted  
7 with the amended return or returns filed with the tax commis-  
8 sioner, along with interest, as provided in section seventeen,

9 article ten of this chapter, and a ten percent penalty, which may  
10 be waived by the tax commissioner if the taxpayer shows that the  
11 overclaimed amount was due to reasonable cause and not due to  
12 willful neglect, and such other penalties and additions to tax as  
13 may be applicable pursuant to the provisions of article ten of this  
14 chapter. Notwithstanding the provisions of article ten of this  
15 chapter, the statute of limitations for the issuance of an assess-  
16 ment of tax by the tax commissioner shall be five years from the  
17 date of the filing of any tax return on which this credit was taken  
18 or five years from the date of payment of any tax liability  
19 calculated pursuant to the assertion of this credit, whichever is  
20 later.

