

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 185

(By Senators Kessler (Mr. President) and M. Hall,
By Request of the Executive)

[Originating in the Committee on Finance;
reported March 27, 2013.]

A BILL to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, all relating to the tax credit for alternative-fuel motor vehicles and qualified alternative-fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure; setting forth legislative findings; defining terms; restricting credit to purchases of and conversions to natural gas-fueled motor

vehicles and liquefied petroleum gas-fueled motor vehicles; narrowing allowance of credit for alternative-fuel motor vehicle purchases, alternative-fuel motor vehicle conversions and alternative-fuel motor vehicle refueling infrastructure; outlining eligibility for credit and cessation of eligibility for credit for specified construction, purchases, expenditures, investments, installations or conversions made on or after cessation dates or tax years as specified; requiring that not more than one tax credit be granted under said article six-d, or any combination of articles set forth in said chapter eleven for purchase of an alternative-fuel motor vehicle or for costs relating to conversion of a motor vehicle to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure; providing amount of credit for qualified alternative-fuel vehicle refueling infrastructure; providing limitations on credit; allowing pass-through entities to distribute credits to pass-through equity owners in any manner such equity owners see fit; providing for the

termination of tax credit for alternative-fuel motor vehicles purchased after December 31, 2017; providing for the termination of tax credit for motor vehicles converted to operate on alternative fuel after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring on or after April 15, 2013; providing for the termination of tax credit for purchases of motor vehicles that operate on fuels other than compressed natural gas or liquefied natural gas, or liquefied petroleum gas, occurring on or after April 15, 2013; providing for the termination of tax credit for conversions of motor vehicles to operate on fuels other than compressed natural gas or liquefied natural gas or liquefied petroleum gas occurring on or after April 15, 2013; providing limitations and restrictions of credit carryover; and providing that credit is nontransferable.

Be it enacted by the Legislature of West Virginia:

That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX
CREDIT.**

§11-6D-1. Legislative findings and purpose.

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the
3 Legislature hereby finds that the use of natural gas-based
4 alternative fuels is in the public interest and promotes the
5 general welfare of the people of this state insofar as it
6 addresses serious concerns for our environment and our
7 state's and nation's dependence on foreign oil as a source of
8 energy. The Legislature further finds that ~~this state has an~~
9 ~~abundant supply of alternative fuels and an extensive supply~~
10 ~~network and that,~~ by encouraging the use of
11 ~~alternatively-fueled~~ natural gas-fueled and liquefied

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12 petroleum gas-fueled motor vehicles, the state will be
13 reducing its dependence on foreign oil and attempting to
14 improve its air quality. The Legislature further finds that the
15 wholesale cost of fuel for certain ~~alternatively-fueled~~ natural
16 gas-fueled and liquefied petroleum gas-fueled motor vehicles
17 is significantly lower than the cost of ~~fueling~~ fuel for
18 traditional motor vehicles. ~~with oil based fuels~~

19 However, because the cost of motor vehicles which
20 utilize ~~alternative-fuel~~ natural gas-fueled or liquefied
21 petroleum gas- fueled technologies remains high in relation
22 to motor vehicles that employ more traditional technologies,
23 citizens of this state who might otherwise choose ~~an~~
24 ~~alternatively-fueled~~ a natural gas-fueled or liquefied
25 petroleum gas-fueled motor vehicle are forced by economic
26 necessity to continue using motor vehicles that are fueled by
27 more conventional means. Additionally, the availability of
28 commercial ~~and residential~~ infrastructure to support
29 ~~alternatively-fueled~~ natural gas-fueled and liquefied

30 petroleum gas-fueled vehicles available to the public is
31 inadequate to encourage the use of ~~alternatively-fueled~~
32 natural gas-fueled and liquefied petroleum gas-fueled motor
33 vehicles. It is the intent of the Legislature that the alternative
34 fuel motor vehicle tax credit previously expired in 2006 be
35 hereby reinstated with changes and amendments as set forth
36 herein. Therefore, in order to encourage the use of
37 ~~alternatively-fueled~~ natural gas-fueled and liquefied
38 petroleum gas-fueled motor vehicles and possibly reduce
39 unnecessary pollution of our environment and reduce our
40 dependence on foreign sources of energy, there is hereby
41 created an alternative-fuel motor vehicles tax credit and an
42 alternative-fuel vehicle refueling infrastructure tax credit.

§11-6D-2. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section.

3 (a) “*Alternative fuel*”. – ~~includes~~

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4 (1) For purchase or installations occurring on and after
5 January 1, 2011, but prior to April 15, 2013, the term
6 “alternative fuel” means and includes:

7 ~~(1)~~ (A) Compressed natural gas;

8 ~~(2)~~ (B) ~~Liquified~~ Liquefied natural gas;

9 ~~(3)~~ (C) ~~Liquified~~ Liquefied petroleum gas;

10 ~~(4)~~ (D) Ethanol;

11 ~~(5)~~ (E) Fuel mixtures that contain eighty-five percent or
12 more by volume, when combined with gasoline or other
13 fuels, of the following:

14 ~~(A)~~ (i) Methanol;

15 ~~(B)~~ (ii) Ethanol; or

16 ~~(C)~~ (iii) Other alcohols;

17 ~~(6)~~ (F) Natural gas hydrocarbons and derivatives;

18 ~~(7)~~ (G) Hydrogen;

19 ~~(8)~~ (H) Coal-derived liquid fuels; and

20 ~~(9)~~ (I) Electricity, including electricity from solar energy.

21 (2) For purchases or installations occurring on or after
22 April 15, 2013, the term “alternative fuel” means and is
23 limited to:

24 (A) Compressed natural gas;

25 (B) Liquefied natural gas; or

26 (C) Liquefied petroleum gas.

27 (b) “Alternative-fuel motor vehicle” or “qualified motor
28 vehicle” means a motor vehicle that as a new or retrofitted or
29 converted fuel vehicle:

30 (1) Operates solely on one alternative fuel;

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

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

35 (c) “Bi-fueled motor vehicle” means a motor vehicle
36 fueled from two or more tanks, each of which stores a
37 separate type of fuel, which has the ability of an
38 ~~alternative-fuel motor vehicle~~ to operate on an alternative

39 fuel and another form of fuel. “Bi-fueled motor vehicles” as
40 here defined are alternative-fuel motor vehicles.

41 (d) “Liquefied petroleum gas” means fuel commonly
42 known and designated as “liquefied petroleum gas” or “LP
43 gas.” The term “liquefied petroleum gas” also means and
44 includes:

45 (1) Propane;

46 (2) Butane; or

47 (3) A mix of gasses used as motor fuel which is
48 predominantly propane or butane, or predominantly a
49 mixture of propane and butane.

50 (†) (e) “Plug-in hybrid electric vehicle” means:

51 (1) A plug-in hybrid electric vehicle manufactured by an
52 established motor vehicle manufacturer of plug-in hybrid
53 electric vehicles that can operate solely on electric power and
54 that is capable of recharging its battery from an on-board
55 generation source and an off-board electricity source; and

56 (2) A plug-in hybrid electric vehicle conversion that
57 provides an increase in city fuel economy of seventy-five
58 percent or more as compared to a comparable nonhybrid
59 version vehicle for a minimum of twenty miles and that is
60 capable of recharging its battery from an on-board generation
61 source and an off-board electricity source. A vehicle is
62 comparable if it is the same model year and the same vehicle
63 class as established by the United States Environmental
64 Protection Agency and is comparable in weight, size and use.
65 Fuel economy comparisons shall be made using city fuel
66 economy standards in a manner that is substantially similar
67 to the manner in which city fuel economy is measured in
68 accordance with procedures set forth in 40 C. F. R. 600 as in
69 effect on January 1, 2011.

70 ~~(e)~~ (f) “Qualified alternative fuel vehicle refueling
71 infrastructure” means property owned by the applicant for the
72 tax credit and used for storing alternative fuels and for
73 dispensing such alternative fuels into fuel tanks of motor

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74 vehicles, including, but not limited to, natural gas supply
75 lines, compression equipment, storage tanks and dispensing
76 units for alternative fuel at the point where the fuel is
77 delivered into a motor vehicle for consumption: *Provided*,
78 That the property is installed and located in this state and is
79 not located in or on a private residence or private home.

80 (f) (g) “Qualified alternative-fuel vehicle home refueling
81 infrastructure” means property owned by the applicant for the
82 tax credit located on a private residence or private home and
83 used for storing alternative fuels and for dispensing such
84 alternative fuels into fuel tanks of motor vehicles, including,
85 but not limited to, compression equipment, storage tanks and
86 dispensing units for alternative fuel at the point where the
87 fuel is delivered or for providing electricity to plug-in hybrid
88 electric vehicles or electric vehicles: *Provided*, That the
89 property is installed and located in this state.

90 (g) (h) “Taxpayer” means any natural person,
91 corporation, limited liability company or partnership subject

92 to the tax imposed under article twenty-one, article
93 twenty-three or article twenty-four of this chapter or any
94 combination thereof.

**§11-6D-3. Credit allowed for alternative-fuel motor vehicles and
qualified alternative-fuel vehicle refueling
infrastructure; application against personal income
tax, business franchise tax or corporate net income
tax; effective date.**

1 The tax credits for the purchase of alternative-fuel motor
2 vehicles or conversion to alternative-fuel motor vehicles,
3 qualified alternative-fuel vehicle refueling infrastructure and
4 qualified alternative-fuel vehicle home refueling
5 infrastructure provided in this article may be applied against
6 the tax liability of a taxpayer imposed by the provisions of
7 either article twenty-one, article twenty-three or article
8 twenty-four of this chapter, but in no case may more than one
9 tax credit be granted under this article or any combination of
10 articles set forth in this chapter for ~~the same~~ purchase of an

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11 alternative-fuel motor vehicle or for costs relating to
12 conversion to an alternative-fuel motor vehicle, or for costs
13 associated with alternative-fuel vehicle refueling
14 infrastructure or for costs associated with alternative-fuel
15 home refueling infrastructure as defined in ~~subdivision (b)~~;
16 ~~section two~~ of this article. This credit shall be available for
17 those tax years beginning on or after January 1, 2011, but
18 shall not be available for, or with relation to, any purchase,
19 expenditure, investment, installation, construction or
20 conversion made in any tax year beginning after the
21 termination dates specified in this article, as applicable to
22 specified purchases, expenditures, investments, installations,
23 construction or conversions.

§11-6D-4. Eligibility for credit.

1 A taxpayer is eligible to claim the credit against tax
2 provided in this article if ~~he or she~~ the taxpayer:

3 (a) Converts a motor vehicle that is presently registered
4 in West Virginia to operate exclusively on an alternative fuel

5 as defined in ~~subdivision (a), section two of this article~~ or to
6 operate as a bi-fueled alternative-fuel motor vehicle; or

7 (b) Purchases from an original equipment manufacturer
8 or an after-market conversion facility or any other
9 automobile retailer, a new dedicated alternative-fuel motor
10 vehicle or bi-fueled alternative-fuel motor vehicle for which
11 the taxpayer then obtains a valid West Virginia registration;
12 or

13 (c) Constructs or purchases and installs qualified
14 alternative-fuel vehicle refueling infrastructure ~~or qualified~~
15 ~~alternative-fuel vehicle home refueling infrastructure~~ that is
16 capable of dispensing alternative fuel for alternative-fuel
17 motor vehicles.

18 (d) (1) The credit provided in this article is not available
19 to and may not be claimed by any taxpayer under any
20 obligation pursuant to any federal or state law, policy or
21 regulation to convert to the use of alternative fuels for any
22 motor vehicle.

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23 (2) The credit provided in this article is not available to
24 and may not be claimed by any taxpayer for construction or
25 purchase and installation of alternative-fuel vehicle home
26 refueling infrastructure on or after April 15, 2013.

27 (e) The credit provided in this article for purchase of an
28 alternative-fuel motor vehicle or conversion of a motor
29 vehicle to an alternative-fuel motor vehicle, is not available
30 to and may not be claimed by any taxpayer in, or for, any tax
31 year in which the taxpayer did not own the alternative-fuel
32 motor vehicle for which the claim is filed on the last day of
33 the taxpayer's tax year for which the credit is claimed.

34 (f) Effective date. –

35 The amendments to this article enacted in the 2013
36 Regular Legislative Session shall be effective upon passage.

§11-6D-5. Amount of credit for alternative-fuel motor vehicles.

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to termination or cessation of this credit as
3 specified in this article, the amount of the credit allowed

4 under this article for an alternative-fuel motor vehicle that
5 weighs less than twenty-six thousand pounds is thirty-five
6 percent of the purchase price of the alternative-fuel motor
7 vehicle up to a maximum amount of \$7,500 or fifty percent
8 of the actual cost of converting from a traditionally fueled
9 motor vehicle to an alternative-fuel motor vehicle up to a
10 maximum amount of \$7,500.

11 (b) For taxable years beginning on and after January 1,
12 2011, but prior to termination or cessation of this credit as
13 specified in this article, the amount of the credit allowed
14 under this article for an alternative-fuel motor vehicle that
15 weighs more than twenty-six thousand pounds is thirty-five
16 percent of the purchase price of the alternative-fuel motor
17 vehicle up to a maximum amount of \$25,000 or fifty percent
18 of the actual cost of converting from a traditionally fueled
19 motor vehicle to an alternative-fuel motor vehicle up to a
20 maximum amount of \$25,000.

§11-6D-6. Amount of credit for qualified alternative-fuel vehicle refueling infrastructure.

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to January 1, 2014, the amount of the credit
3 allowed under this article for qualified alternative-fuel
4 vehicle refueling infrastructure is equal to ~~an amount of~~ fifty
5 percent of the total costs directly associated with the
6 construction or purchase and installation of the alternative-
7 fuel vehicle refueling infrastructure up to a maximum of
8 \$250,000: *Provided*, That if the qualified alternative-fuel
9 vehicle refueling infrastructure is generally accessible for
10 public use, the amount of the credit allowed will be
11 multiplied by 1.25 and the maximum amount allowable will
12 be \$312,500. The amount of credit allowed may not exceed
13 the cost of construction of the alternative-fuel vehicle
14 refueling infrastructure.

15 (b) For taxable years beginning on and after January 1,
16 2014, but prior to ~~January 1, 2016~~ termination or cessation of

17 this credit as specified in this article, the amount of the credit
18 allowed under this article for qualified alternative-fuel
19 vehicle refueling infrastructure is equal to ~~an amount of fifty~~
20 twenty percent per facility of the total costs directly
21 associated with the construction or purchase and installation
22 of the alternative fuel vehicle refueling infrastructure up to a
23 maximum of ~~\$200,000~~ ~~Provided, That if the qualified~~
24 ~~alternative fuel vehicle refueling infrastructure is generally~~
25 ~~accessible for public use, the amount of the credit allowed~~
26 ~~will be multiplied by 1.25 and the maximum amount~~
27 ~~allowable will be \$250,000. The amount of credit allowed~~
28 ~~may not exceed the cost of construction of the alternative fuel~~
29 ~~vehicle refueling infrastructure~~ \$400,000 per facility.

30 (c) ~~For taxable years beginning on and after January 1,~~
31 ~~2016, but prior to January 1, 2022, the amount of the credit~~
32 ~~allowed under this article for qualified alternative fuel~~
33 ~~vehicle refueling infrastructure is equal to an amount of fifty~~
34 ~~percent of the total costs directly associated with the~~

~~35 construction or purchase and installation of the alternative
36 fuel vehicle refueling infrastructure up to a maximum of
37 \$150,000. Provided, That if the qualified alternative fuel
38 vehicle refueling infrastructure is generally accessible for
39 public use, the amount of the credit allowed will be
40 multiplied by 1.25 and the maximum amount allowable will
41 be \$187,500. The amount of credit allowed may not exceed
42 the cost of construction of the alternative fuel vehicle
43 refueling infrastructure.~~

~~44 (d) For taxable years beginning on and after January 1,
45 2011, the amount of the credit allowed under this article for
46 qualified alternative fuel vehicle home refueling
47 infrastructure is equal to an amount of fifty percent of the
48 total costs directly associated with the construction or
49 purchase and installation of the alternative fuel vehicle home
50 refueling infrastructure up to a maximum of \$10,000.~~

51 (e) (c) The cost of construction of the alternative-fuel
52 vehicle refueling infrastructure or alternative-fuel vehicle

53 home refueling infrastructure eligible for a tax credit under
54 this ~~section~~ article does not include costs associated with
55 exploration, development or production activities necessary
56 for severing natural resources from the soil or ground.

57 ~~(f)~~ (d) When the taxpayer is a pass-through entity treated
58 like a partnership for federal and state income tax purposes,
59 the credit allowed under this article for the year shall flow
60 through to the equity owners of the pass-through entity in ~~the~~
61 ~~same~~ any-manner that such equity owners see fit and is not
62 required to flow through such equity owners in the same
63 manner as distributive share flows through to the equity
64 owners and in accordance with any legislative rule the Tax
65 Commissioner may propose for legislative approval in
66 accordance with article three, chapter twenty-nine-a of this
67 code to administer this section.

68 ~~(g)~~ (e) No credit allowed by this article may be applied
69 against employer withholding taxes imposed by article
70 twenty-one of this chapter.

§11-6D-7. Duration of availability of credit.

1 No person is eligible to receive a tax credit under this
2 article for:

3 (1) An alternative-fuel motor vehicle purchased after
4 December 31, ~~2021~~ 2017;

5 (2) A vehicle converted to an alternative-fuel motor
6 vehicle after December 31, ~~2021~~ 2017; ~~or~~

7 (3) The construction or purchase and installation of
8 qualified alternative-fuel vehicle refueling infrastructure ~~or~~
9 ~~qualified alternative fuel vehicle home refueling~~
10 ~~infrastructure~~ occurring after December 31, ~~2021~~ 2017;

11 (4) The construction or purchase and installation of
12 qualified alternative-fuel vehicle home refueling
13 infrastructure occurring on or after April 15, 2013;

14 (5) Purchases of motor vehicles that operate on fuels
15 other than compressed natural gas, liquefied natural gas or
16 liquefied petroleum gas, occurring on or after April 15, 2013;
17 or

18 (6) Conversions of motor vehicles to operate on fuels
19 other than compressed natural gas, liquefied natural gas or
20 liquefied petroleum gas, occurring on or after April 15, 2013.

§11-6D-9. Carryover credit allowed; recapture of credit.

1 (a) If the alternative-fuel motor vehicle tax credit allowed
2 under this article in ~~any~~ the first taxable year in which the tax
3 credit is allowable to offset tax exceeds the taxpayer's tax
4 liability as determined in accordance with article twenty-one,
5 article twenty-three ~~or~~ and article twenty-four of this chapter
6 for that taxable year, the excess may be applied for not more
7 than the four next succeeding taxable years until the ~~full~~
8 ~~amount of the~~ excess tax credit is used or the end of the
9 fourth next succeeding taxable year, whichever occurs first.
10 Any excess credit remaining at the end of the fourth next
11 succeeding taxable year shall be forfeited.

12 (b) If the qualified alternative-fuel vehicle refueling
13 infrastructure tax credit allowed under this article in any
14 taxable year exceeds the taxpayer's tax liability as

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15 determined in accordance with article twenty-one, article
16 twenty-three or article twenty-four of this chapter for that
17 taxable year, the excess may be applied for succeeding
18 taxable years until the full amount of the excess tax credit is
19 used.

20 (c) No carry back to a prior taxable year is allowed for
21 the amount of any unused credit in any taxable year.

22 (c) (d) A tax credit is subject to recapture, elimination or
23 reduction if it is determined by the State Tax Commissioner
24 that a taxpayer was not entitled to the credit, in whole or in
25 part, in the tax year in which it was claimed by the taxpayer.
26 The amount of credit that flows through to equity owners of
27 a ~~passthrough~~ pass-through entity may be recaptured or
28 recovered from either the taxpayer or the equity owners in
29 the discretion of the Tax Commissioner.

30 (e) The tax credit allowed under this article may not be
31 sold, transferred or assigned to any person or entity. The tax
32 credit allowed under this article does not attach to or follow

33 the qualified motor vehicle or qualified infrastructure upon
34 sale, resale, transfer, assignment or any other change of
35 ownership of such vehicle or infrastructure. Credit shall not
36 be available to any successor owner of any qualified motor
37 vehicle or any qualified infrastructure property for which the
38 credit was available to the original owner or predecessor
39 owner.