

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 3062**

**FISCAL  
NOTE**

BY DELEGATES MALLOW, FORSHT, BOOTH, BRIDGES,

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[Introduced March 11, 2021; Referred to the Committee on

Energy and Manufacturing then Finance]

1 A BILL to amend and reenact §5C-2-1 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §11-6A-5a of said code; and to amend and reenact §11-13A-6 of said code,  
 3 all relating to ensuring that coal remains the primary source of power in West Virginia  
 4 during emergency weather events; limiting the new amount of permits to construct wind  
 5 power plant, wind power farm, or “windmills” for power generally in West Virginia; and  
 6 providing that for each new wind powered facility built in West Virginia, there is an offset  
 7 in the amount of taxes paid by new and existing coal fired power plants.

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

**CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.**

**ARTICLE 2. WEST VIRGINIA CLEAN COAL TECHNOLOGY ACT.**

**§5C-2-1. Legislative findings.**

1 (a) The Legislature finds that:

2 (1) Coal is an important fuel source for keeping the household energy costs low in the  
 3 State of West Virginia;

4 (2) Continued protection of the state’s environment, public health and welfare requires that  
 5 new emissions reduction technologies that protect and improve air quality be evaluated for their  
 6 environmental effectiveness and economic viability;

7 (3) The diversity of fuel used to generate electricity is a significant factor in providing  
 8 reliable and economical energy to the citizens of the State of West Virginia;

9 (4) The price of electricity generated with coal has remained relatively unchanged over the  
 10 past twenty years;

11 (5) The continued recovery and utilization of coal resources are important to the state’s  
 12 economy;

13 (6) Advancements in clean coal technology clearly demonstrate that electricity from coal  
 14 can be produced in a more efficient, economical and environmentally friendly manner; and

15 (7) Advancements in alternative coal usage has produced useful household, commercial  
16 and industrial technologies.

17 (b) The Legislature determines that, consistent with the protection of the public health and  
18 welfare, the protection of air quality, the protection of the environment, the operation of existing  
19 industries, the enhancement of the long-term economic health and the improved reliability of  
20 electric generation in the state, it is a goal of this state's energy policy that technologies be  
21 explored to increase the efficiencies and decrease the emissions from electricity generated by  
22 coal.

23 (c) It is the policy of this state that clean coal technologies and alternative coal uses will  
24 be explored in order to:

25 (1) Preserve fuel diversity and maintain reliable, low-cost sources of electric power;

26 (2) Identify technologies for reducing the emissions from existing coal-fired electric  
27 generation; and

28 (3) Identify new, cleaner coal-fired electric generation technologies that may be used to  
29 provide new generating capacity.

30 (d) The West Virginia Legislature recognizes that when emergency weather situations  
31 arise, such as ice storms, snow storms, flooding, etc., clean burning West Virginia coal is the only  
32 source of reliable power, and that other forms of energy production, such as wind power or solar  
33 power, are simply not adequate to meet the needs of West Virginians. In these emergency  
34 situations, West Virginians can count on coal to keep the lights on.

## CHAPTER 11. TAXATION.

### ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

#### §11-6A-5a. Wind power projects; permit limits.

1 (a) Notwithstanding any other provisions of this article, a power project designed,  
2 constructed or installed to convert wind into electrical energy shall be subject to the provisions of

3 this section.

4 (b) Each wind turbine installed at a wind power project and each tower upon which the  
5 turbine is affixed shall be considered to be personal property that is a pollution control facility for  
6 purposes of this article and, subject to an allocation of the value of project property determined  
7 by the Tax Commissioner in accordance with this section, all of the value associated with the wind  
8 turbine and tower shall be accorded salvage valuation: *Provided*, That the portion of the total  
9 value of the facility assigned salvage value in accordance with this section shall, on and after July  
10 1, 2007, be no greater than seventy-nine percent of the total value of the facility. All personal  
11 property at a wind power project other than a wind turbine and tower shall not be accorded salvage  
12 valuation and shall not be considered to be personal property that is a pollution control facility.  
13 For purposes of this section, "wind turbine and tower" is limited to: The rotor, consisting of the  
14 blades and the supporting hub; the drive train, which includes the remaining rotating parts such  
15 as the shafts, gearbox, coupling, a mechanical brake and the generator; the nacelle and main  
16 frame, including the wind turbine housing, bedplate and the yaw system; the turbine transformer;  
17 the machine controls; the tower; and the tower foundation.

18 (c) There shall be a limit to the number of permits issued for wind-based power plants in  
19 the State of West Virginia, and there shall be no more than two (2) wind-based power projects  
20 per year to be approved. The Legislature has the discretion to modify this amount, should there  
21 be a change in circumstance to warrant such a modification.

## **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.**

**§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of State Treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public**

**purposes; special funds in counties and municipalities; ~~and~~ requiring special county and municipal budgets and reports thereon; and allowing offset for new wind based power projects.**

1 (a) Additional coal severance tax. — Upon every person exercising the privilege of  
2 engaging or continuing within this state in the business of severing coal, or preparing coal (or both  
3 severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an  
4 additional severance tax, the amount of which shall be equal to the value of the coal severed or  
5 prepared (or both severed and prepared), against which the tax imposed by section three of this  
6 article is measured as shown by the gross proceeds derived from the sale of the coal by the  
7 producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this  
8 subsection is in addition to the tax imposed by section three of this article, and this additional tax  
9 is referred to in this section as the "additional tax on coal".

10 (b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article  
11 ten of the West Virginia Constitution. Seventy-five percent of the net proceeds of this additional  
12 tax on coal shall be distributed by the State Treasurer in the manner specified in this section to  
13 the various counties of this state in which the coal upon which this additional tax is imposed was  
14 located at the time it was severed from the ground. Those counties are referred to in this section  
15 as the "coal-producing counties". The remaining 25 percent of the net proceeds of this additional  
16 tax on coal shall be distributed among all the counties and municipalities of this state in the  
17 manner specified in this section.

18 (c) The additional tax on coal shall be due and payable, reported and remitted as  
19 elsewhere provided in this article for the tax imposed by section three of this article, and all of the  
20 enforcement and other provisions of this article shall apply to the additional tax. In addition to the  
21 reports and other information required under the provisions of this article and the tonnage reports  
22 required to be filed under the provisions of section seventy-seven, article two, chapter twenty-  
23 two-a of this code, the Tax Commissioner is hereby granted plenary power and authority to

24 promulgate reasonable rules requiring the furnishing by producers of such additional information  
25 as may be necessary to compute the allocation required under the provisions of subsection (f) of  
26 this section. The Tax Commissioner is also hereby granted plenary power and authority to  
27 promulgate such other reasonable rules as may be necessary to implement the provisions of this  
28 section: *Provided*, That notwithstanding any language contained in this code to the contrary, the  
29 gross amount of additional tax on coal collected under this article shall be paid over and distributed  
30 without the application of any credits against the tax imposed by this section.

31 (d) In order to provide a procedure for the distribution of 75 percent of the net proceeds of  
32 the additional tax on coal to the coal-producing counties, the special fund known as the "county  
33 coal revenue fund" established in the State Treasurer's office by chapter one hundred sixty-two,  
34 acts of the Legislature, 1985 regular session, as amended and reenacted in subsequent acts of  
35 the Legislature, is hereby continued. In order to provide a procedure for the distribution of the  
36 remaining 25 percent of the net proceeds of the additional tax on coal to all counties and  
37 municipalities of the state, without regard to coal having been produced therein, the special fund  
38 known as the "all counties and municipalities revenue fund" established in the State Treasurer's  
39 office by chapter one hundred sixty-two, acts of the Legislature, 1985 regular session, as  
40 amended and reenacted in subsequent acts of the Legislature, is hereby redesignated as the "all  
41 counties and municipalities coal revenue fund" and is hereby continued.

42 Seventy-five percent of the net proceeds of such additional tax on coal shall be deposited  
43 in the county coal revenue fund and 25 percent of the net proceeds shall be deposited in the all  
44 counties and municipalities coal revenue fund, from time to time, as the proceeds are received by  
45 the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties  
46 and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

47 (e) The moneys in the county coal revenue fund and the moneys in the all counties and  
48 municipalities coal revenue fund shall be allocated among and distributed quarterly to the counties  
49 and municipalities entitled to the moneys by the State Treasurer in the manner specified in this

50 section. On or before each distribution date, the State Treasurer shall determine the total amount  
51 of moneys in each fund which will be available for distribution to the respective counties and  
52 municipalities entitled to the moneys on that distribution date. The amount to which a coal-  
53 producing county is entitled from the county coal revenue fund shall be determined in accordance  
54 with subsection (f) of this section, and the amount to which every county and municipality is  
55 entitled from the all counties and municipalities coal revenue fund shall be determined in  
56 accordance with subsection (g) of this section. After determining as set forth in subsection (f) and  
57 subsection (g) of this section the amount each county and municipality is entitled to receive from  
58 the respective fund or funds, a warrant of the State Auditor for the sum due to each county or  
59 municipality shall issue and a check drawn thereon making payment of such amount shall  
60 thereafter be distributed to each such county or municipality.

61 (f) The amount to which a coal-producing county is entitled from the county coal revenue  
62 fund shall be determined by: (1) Dividing the total amount of moneys in the fund then available  
63 for distribution by the total number of tons of coal mined in this state during the preceding quarter;  
64 and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the  
65 ground in the county during the preceding quarter.

66 (g) The amount to which each county and municipality is entitled from the all counties and  
67 municipalities coal revenue fund shall be determined in accordance with the provisions of this  
68 subsection. For purposes of this subsection "population" means the population as determined by  
69 the most recent decennial census taken under the authority of the United States:

70 (1) The treasurer shall first apportion the total amount of moneys available in the all  
71 counties and municipalities coal revenue fund by multiplying the total amount in the fund by the  
72 percentage which the population of each county bears to the total population of the state. The  
73 amount thus apportioned for each county is the county's "base share".

74 (2) Each county's base share shall then be subdivided into two portions. One portion is  
75 determined by multiplying the base share by that percentage which the total population of all

76 unincorporated areas within the county bears to the total population of the county, and the other  
77 portion is determined by multiplying the base share by that percentage which the total population  
78 of all municipalities within the county bears to the total population of the county. The former portion  
79 shall be paid to the county and the latter portion is the "municipalities' portion" of the county's  
80 base share. The percentage of the latter portion to which each municipality in the county is entitled  
81 shall be determined by multiplying the total of the latter portion by the percentage which the  
82 population of each municipality within the county bears to the total population of all municipalities  
83 within the county.

84 (h) All counties and municipalities shall create a "coal severance tax revenue fund" which  
85 shall be the depository for moneys distributed to any county or municipality under the provisions  
86 of this section, from either or both special funds. Moneys in the coal severance tax revenue fund,  
87 in compliance with subsection (i) of this section, may be expended by the county commission or  
88 governing body of the municipality for such public purposes as the county commission or  
89 governing body shall determine to be in the best interest of the people of its respective county or  
90 municipality.

91 (i) All unexpended balances remaining in coal severance tax revenue fund at the close of  
92 a fiscal year shall be reappropriated to the budget of the county commission or governing body  
93 for the subsequent fiscal year. The reappropriation shall be entered as an amendment to the new  
94 budget and submitted to the Tax Commissioner on or before July 15, of the current budget year.

95 (j) The State Tax Commissioner shall retain for the benefit of the state from the additional  
96 taxes on coal collected the amount of \$35,000 annually as a fee for the administration of such  
97 additional tax by the Tax Commissioner.

98 (k) For each new wind power plant or wind power project constructed in West Virginia per  
99 year, there shall be a 5% reduction in the amount of coal severance tax levied on coal mines and  
100 coal powered plants in West Virginia.

NOTE: The purpose of this bill is to limit the number of permits to construct wind power



plants, wind power farms, or “windmills” for power generally in West Virginia; to provide that for each new wind powered facility built in West Virginia, there is an offset in the amount of taxes paid by new and existing coal fired power plants; and to ensure that coal remains the primary source of power in West Virginia during emergency weather events.

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