WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2716

FISCAL NOTE

By Delegates Barnhart, Bridges, and Foggin

[Introduced ; referred

to the Committee on]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, §11-13NN-7, §11-13NN-8, §11-13NN-9, §11-13NN-10, and §11-13NN-11, relating to establishing a road or highway infrastructure improvement projects or coal production and processing facilities tax credit for taxpayers subject to the tax imposed by West Virginia Code; specifying a short title; specifying legislative findings and purpose for new credit; defining terms; specifying the amount of the credit, application of credit, and carry forward of unused credit; requiring filing of application for road or highway infrastructure improvement project credit as condition precedent to claiming credit, specifying procedure for application for certification, contents of application and limitation on maximum amount of credits which can be approved; specifying computation of qualified investment in coal production and processing facilities; allowing transfer of credits to successors; providing for forfeiture of unused tax credits and redetermination of credit allowed; providing penalties for failure to maintain records of qualified property; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. TAX CREDIT FOR ROAD AND HIGHWAY INFRASTRUCTURE IMPROVEMENTS AND COAL PRODUCTION AND PROCESSING FACILITIES.

§11-13NN-1. Short title.

This article may be cited as the "West Virginia Road and Highways Infrastructure Improvements and Coal Production and Processing Facilities Tax Credit Act".

§11-13NN-2. Legislative finding and purpose.

The Legislature finds that the establishment and maintenance of infrastructure projects, including a system of good roads and highways in this state, and making of capital investments by taxpayers subject to the tax imposed by §11-13A-1 *et seq.*, is in the public interest, encourages greater capital investment by other businesses in the coal producing areas of this state, increases economic opportunity in this state and thereby promotes the general welfare of the people of this state. In order to promote the private investment in infrastructure improvements to roads and highways in this state, and capital investment by coal severance tax taxpayers there is hereby enacted a road and highways infrastructure improvements and coal production and processing facilities tax credit.

§11-13NN-3. Definitions.

(a) *General.* -- When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) *Terms defined.* --

(1) *Corporation.* -- The term "corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(2) *Designee.* -- The term "designee" in the phrase "or his or her designee", when used in reference to the Transportation Secretary, means any officer or employee of the Department of Transportation duly authorized by the Transportation Secretary directly, or indirectly by one or more delegations of authority, to perform the functions mentioned or described in this article.

(3) *Eligible taxpayer.* -- The term "eligible taxpayer" means any person who makes a qualified expenditure in a certified road or highway infrastructure improvement project or coal production and processing facility and who is subject to the tax imposed by chapter three, article thirteen-a of this chapter. "Eligible taxpayer" shall also include an affiliated group of taxpayers if the group elects to file a consolidated severance tax return under article thirteen-a of this chapter.

(4) *Expenditures for road or highway infrastructure improvement projects or coal production and processing facilities.*

(A) *Included expenditures for road or highway infrastructure improvement projects.* -- The term "expenditures for road or highway infrastructure improvement projects" includes payments made by an eligible taxpayer for labor done, tangible personal property, materials, services or supplies furnished in furtherance of a road or highway infrastructure improvement project. In addition, the term "expenditures for road or highway infrastructure improvement projects" includes the cost of the real property and improvements thereto, purchased by an eligible taxpayer and donated to the state in furtherance of a road or highway infrastructure improvement project and the fair market value of real property and improvements thereto owned by an eligible taxpayer and donated to the state in furtherance of a road or highway infrastructure improvement project.

(B) *Included expenditures for coal production and processing facilities.* -- The term "expenditures for coal production and processing facilities" includes payments made by an eligible taxpayer for labor done, tangible personal property, materials, services, or supplies furnished in furtherance of the construction, installation, or fabrication of haulroads, ventilation structures, mine shafts, slopes, boreholes, dewatering structures, preparation plants, loadouts, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors at a coal mine or coal production or processing facility. In addition, the term "expenditures for coal production and processing facilities" includes the cost of the real property, improvements thereto, and the cost of machinery and equipment, including the cost of repairs, upgrades, or refurbishments of the machinery and equipment, purchased or leased by an eligible taxpayer and directly used as part of a coal production or processing facility. Examples of machinery and equipment that qualify as "expenditures for coal production" include, but are not limited to the cost to purchase, lease, or repair items such as: continuous miners, longwall miners (including repair, refurbishment, or replacement of associated shears, shields, or hydraulics), highwall miners, augers, roof bolters, excavators, dozers, haulage vehicles, equipment used in blasting related to surface mining, conveyor belts, car-dumps, chain conveyors, ventilation fans, man trips, roof trusses, and shuttle cars.

(C) *Excluded expenditures.* -- The terms "expenditures for road or highway infrastructure improvement projects" and "expenditures for coal production and processing facilities" exclude purchases of property and services acquired:

(i) From a person whose relationship to the person making the expenditure would result in the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January 2004.

(ii) By one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner can waive this requirement if the expenditure is for property or services acquired from a related person for fair market value.

(D) *Related person.* -- The term "related person" means:

(i) A corporation, partnership, association, or trust controlled by the taxpayer;

(ii) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(iii) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

(iv) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

(c) *Includes and including.* -- The terms "includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) *Partnership and partner.* -- The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(e) *Person.* -- The term "person" includes any natural person, corporation, or partnership.

(f) *Road or highway.* -- The terms "road" and "highway" are used interchangeably herein and for purposes of this article shall have the same meaning as the terms "road", "public road", and "highway", as defined in §17-1-3.

(g) *Road or highway infrastructure improvement.* -- The term "road or highway infrastructure improvement" means the construction, improvement, repair, upgrade, and modernization of roads, public roads and highways in this state for the purpose of widening, increasing weight limits, enhancing safety, improving traffic flow, or otherwise facilitating the commercial transportation of goods or passengers within this state or the ingress and egress of vehicles to commercial and industrial sites, consistent with the purposes for which this article was enacted.

(h) *Tax Commissioner.* -- The term "Tax Commissioner" means the Commissioner of the West Virginia State Tax Department.

(i) *Taxpayer.* --The term "taxpayer" means any person subject to the tax imposed by section three, article thirteen-a of this chapter.

(j) *Transportation Secretary or Secretary of Transportation.* -- The terms "Transportation Secretary" and "Secretary of Transportation" are used interchangeably herein and mean the Secretary of the Department of Transportation of the state of West Virginia.

§11-13NN-4. Credit allowed; amount of credit; application of credit; carry forward of unused credit for 10 years.

(a) *Credit allowed.* -- An eligible taxpayer shall be allowed a credit against a portion of its annual severance tax liability. The amount of this credit shall be determined and applied as hereinafter provided in this article.

(b) *Amount of credit.* -- The amount of credit allowable is determined by multiplying the amount of the taxpayer's expenditures for road or highway infrastructure improvement projects (as determined and certified by the Secretary of Transportation), plus the amount of the taxpayer's qualified investment in coal production and processing facilities, by 50%. The product of this calculation establishes the maximum amount of credit allowable under this article.

(c) *Application of credit.* -- The amount of credit allowable may be taken against up to 20% of taxpayer's annual severance tax liability imposed by section three, article thirteen-a of this chapter. Where taxpayer's expenditure involves a road or highway infrastructure improvement the credit may be taken in the year the improvement is completed, as certified by the Transportation Secretary. Where the expenditure involves coal production and processing facilities, the credit may be taken in the year the property is first placed into service or use by the taxpayer. The annual credit allowance shall be taken in the manner prescribed in section six of this article. The aggregate annual credit allowance may be claimed by taxpayer against its severance tax liability shown on its monthly tax returns at the rate of one-twelfth of the annual credit allowance per month.

(d) *Unused credit.* -- If any credit remains after application of subsection (c) of this section, the amount thereof may be carried forward to each ensuing tax year until used or until the expiration of the ninth taxable year subsequent to the year in which the credit was first available. If any unused credit remains after the 10th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(e) *Placed in service or use.* -- For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for

depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13NN-5. Application for road or highway infrastructure improvement project; contents of application; review of credit application; limitation on total credits authorized; taking of credit.

(a) *Application for credit required.* -- Notwithstanding any provision of this article to the contrary, no credit shall be allowed or applied under this article for any expenditure for road or highway infrastructure improvements until the person asserting a claim for the allowance of credit receives certification of the project from the Transportation Secretary, as provided in this section. Applications for certification of a road or highway infrastructure improvement project shall be filed with the Transportation Secretary and approved prior to the commencement of any project construction.

(b) *Contents of application for certification.* -- Applications for certification of a road or highway infrastructure improvement project shall contain a detailed description of the project, all engineering drawings required to construct the infrastructure improvements contemplated by the project application, a list of contractors who will work on the project, a description of the work each contractor will perform, the project timetable, a detailed breakdown of the cost of the project, the amount of credit requested and any other information which the Transportation Secretary or his or her designee require.

(c) *Review of application.* -- Once a project application is filed, the Transportation Secretary shall work with taxpayer to ensure that the application contains all of the information required by this section. Applications for credit may be supplemented or amended at any time after filing until all of the information required by subsection (b) has been provided. Once a complete application has been filed, the Transportation Secretary shall review it to determine whether the project should be certified as eligible for credit under this article.

(d) *Limitation on total credits authorized.* -- The Secretary is authorized to certify no more than $100,000 of expenditures for road or highway infrastructure improvements as eligible for the credit provided in this article. The Secretary shall keep track of the total expenditures approved and will cease accepting applications once the expenditure limit has been reached.

(e) *Taking of credit.* -- The eligible taxpayer claiming the credit for certified expenditures for road or highway infrastructure improvements shall include information supporting the computation of the credit and any other information the Transportation Secretary requires with its severance tax returns filed under this chapter.

§11-13NN-6. Qualified investment in coal production and processing facilities.

(a) *General.* -- The qualified investment in coal production and processing facilities is the applicable percentage of the cost of each expenditure for coal production and processing facilities which is placed in service or use in this state by the taxpayer during the taxable year.

(b) *Applicable percentage.* -- For the purpose of subsection (a), the applicable percentage of any property is determined under the following table:

If useful life is:	The applicable percentage is:
Less than 4 years:	0%
4 years or more but less than 6 years:	33 1/3%
6 years or more but less than 8 years:	66 2/3%
8 years or more:	100%

The useful life of any property, for purposes of this section, is determined as of the date the property is first placed in service or use in this state by the taxpayer, determined in accordance with such rules and requirements the Tax Commissioner may prescribe.

(c) *Cost.* -- For purposes of subsection (a), the cost of each property purchased for business expansion is determined under the following rules:

(1) *Trade-ins.* -- Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.

(2) *Damaged, destroyed, or stolen property.* -- If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) *Rental property.* --

(A) The cost of real property acquired by written lease for a primary term of 10 years or longer is 100 % of the rent reserved for the primary term of the lease, not to exceed 20 years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is 100% of the rent reserved for the primary term of the lease, not to exceed 20 years: *Provided,* That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) *Self-constructed property.* -- In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

§11-13NN-7. Transfer of tax credit to successors.

(a) *Mere change in form of business.* -- The tax credit allowed in this article shall not be lost by reason of a mere change in the form of conducting the business in this state, if the transfer or business retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the project.

(b) *Transfer or sale to successor.* -- The tax credit allowed in this article shall not be lost by reason of any transfer or sale of the stock or assets of the eligible taxpayer to a successor business which continues to operate in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year.

§11-13NN-8. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) *Disposition of property or cessation of use.* -- If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section eight of this article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under section six of this article, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under section six of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the business of the taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with taxpayer's annual severance tax return.

(b) *Cessation of operation of coal production or processing facility.* -- If during any taxable year the taxpayer ceases operation of a coal production or processing facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the credit is forfeited. Additionally, except when the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine the amount of credit allowed by reducing the applicable percentage of cost of the property allowed under section six of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual severance tax return, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.

§11-13NN-9. Identification of qualified property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified property:

Its identity;

Its actual or reasonably determined cost;

Its straight-line depreciation life;

The month and taxable year in which it was placed in service;

The amount of credit taken; and

The date it was disposed of or otherwise ceased to be qualified property.

§11-13NN-10. Failure to keep records of qualified property.

A taxpayer who does not keep the records required for identification of qualified property is subject to the following rules:

(a) A taxpayer is treated as having disposed of, during the taxable year, any qualified property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(b) If a taxpayer cannot establish when qualified property on which the credit was claimed was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as having placed the property in service in the next most recent year.

§11-13NN-11. Effective date.

The credit allowed by this article shall be allowed for tax years beginning on or after the first day of January 2025.

NOTE: The purpose of this bill is to create a credit against the severance tax to encourage private companies to make infrastructure improvements to highways, roads and bridges in this state. The bill limits the total amount of road and highway infrastructure improvement credits which can be certified by the Secretary of Transportation. The bill seeks to encourage greater capital investment in coal production and processing facilities. The bill will increase economic opportunity in this state. The bill authorizes the claiming of the credits. Finally, the bill provides for an effective date.

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