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**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2003*

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**ENROLLED**

**SENATE BILL NO.** 443

(By Senators Chafin, Bailey and Helmick )

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**PASSED** March 8, 2003

**In Effect** 90 days from **Passage**

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### Senate Bill No. 443

(BY SENATORS CHAFIN, HELMICK AND BAILEY)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section three-e, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing the selection and funding of economic and infrastructure projects under the direction of the director of the West Virginia development office.

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

That section three-e, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 13A. SEVERANCE TAXES.**

#### **§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.**

- 1 (a) The Legislature hereby finds and declares the follow-
- 2 ing:

3 (1) That some mining operations in this state process coal  
4 to create a saleable clean coal product;

5 (2) That the by-product, waste or residue created from  
6 processing coal is commonly deposited in what are known  
7 as refuse or gob piles;

8 (3) That, as a result of technological developments and  
9 other factors, the material contained in some refuse or gob  
10 piles located in this state can be recovered and further  
11 processed to produce saleable clean coal; and

12 (4) That, under the existing laws of this state, coal  
13 produced from processing material contained in refuse,  
14 gob piles, slurry ponds, pond fines or other sources of  
15 waste coal would be subject to the annual privilege tax  
16 imposed on the severance of coal pursuant to section three  
17 of this article and the minimum severance tax imposed by  
18 section three, article twelve-b of this chapter.

19 Based on the findings in this subsection, the Legislature  
20 concludes that an incentive to extracting and recovering  
21 material contained in refuse, gob piles and other sources  
22 of waste coal located in this state and subsequently  
23 processing, washing and preparing this material to pro-  
24 duce coal should be implemented to encourage the produc-  
25 tion of this coal from refuse or gob piles located in this  
26 state.

27 (b) *Imposition of tax.* — In lieu of: (i) The annual  
28 privilege tax imposed on the severance of coal imposed by  
29 section three of this article; (ii) the additional tax on  
30 severance, extraction and production of coal imposed by  
31 section six of this article; and (iii) the minimum severance  
32 tax imposed by section three, article twelve-b of this  
33 chapter for the privilege of engaging or continuing within  
34 this state in the business of extracting and recovering  
35 material from a refuse, gob pile or other sources of waste  
36 coal and subsequently processing, washing and preparing  
37 this extracted or recovered material to produce coal for

38 sale, profit or commercial use, there is hereby levied and  
39 shall be collected from every person exercising that  
40 privilege an annual privilege tax.

41 (c) *Rate and measure of tax.* — The tax imposed in  
42 subsection (b) of this section is two and one-half percent  
43 of the gross value of the coal produced, as shown by the  
44 gross proceeds derived from the sale of the coal by the  
45 producer, except as otherwise provided in this article.

46 (d) *Tax in addition to other taxes.* — The tax imposed by  
47 this section applies to all persons extracting and recover-  
48 ing material from refuse, gob piles or other sources of  
49 waste coal located in this state and subsequently process-  
50 ing, washing and preparing this extracted and recovered  
51 material to produce coal for sale, profit or commercial use  
52 and shall be in addition to all other taxes imposed by law:  
53 *Provided*, That the tax imposed by this section is in lieu of  
54 the tax imposed by sections three and six of this article  
55 and section three, article twelve-b of this chapter.

56 (e) *Exemption.* — The tax imposed in subsection (b) of  
57 this section shall not apply to any electrical power  
58 cogeneration plant burning material from its wholly  
59 owned refuse or gob pile.

60 (f) *Dedication of taxes collected, creation of fund.* —

61 (1) There is continued in the state treasury a fund  
62 entitled the “waste coal-producing counties fund” which  
63 shall be a revolving fund that shall carry over each fiscal  
64 year. The taxes collected under the provisions of this  
65 section shall be deposited in the waste coal-producing  
66 counties fund and are dedicated to the county commissions  
67 of the counties in which the refuse, gob piles or other  
68 sources of waste coal are located from which taxable  
69 waste coal production has occurred during the year for use  
70 in economic development and infrastructure improve-  
71 ments. The economic and infrastructure projects are to be  
72 in accordance with the rules promulgated under the

73 synthetic fuel-producing counties grant fund program, as  
74 determined by the director of the West Virginia develop-  
75 ment office: *Provided*, That the county shall use ninety  
76 percent of the funds for infrastructure improvement and  
77 ten percent of the funds for economic development.

78 (2) Moneys in the waste coal-producing counties fund  
79 shall be distributed by the state treasurer annually to the  
80 counties in which the refuse, gob piles or other sources of  
81 waste coal are located, from which taxable waste coal  
82 production has occurred during the year, in an amount  
83 prorated to the number of tons of taxable waste coal  
84 produced in each county during the preceding year. The  
85 distribution shall be paid separate from any other payment  
86 of moneys to the county by the treasurer. For purposes of  
87 this subdivision, the term "ton" means two thousand  
88 pounds.

89 (3) The office of chief inspector shall annually determine  
90 that counties' expenditures of moneys distributed under  
91 this section is in compliance with the requirements of this  
92 section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Carly Wilson*

.....  
Chairman Senate Committee

*Greg Butcher*

.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell E. Thomas*

.....  
Clerk of the Senate

*Gregory D. Sawyer*

.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*

.....  
President of the Senate

*Frank Sikes*

.....  
Speaker House of Delegates

The within is approved this the 1<sup>st</sup>

Day of April, 2003.

*Bob Wise*

.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3-20-03

Time 9:50 AM