WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

ENROLLED

Com. Sub. for

HOUSE BILL No. 2076

(By Mr. Delegates Flanigan and Carpenter)

Passed March 9, 1991

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2076
(By Delegates Flanigan and Carper)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section two-a, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen-d, chapter eleven, by adding thereto a new section designated section three-d, all relating to directing the office of community and industrial development to study and promote the development of a coal-based synthetic fuel industry; and creating a credit against tax for investment in new industrial facilities for producing coal based liquids used to produce synthetic motor fuel and synthetic special fuel.

Be it enacted by the Legislature of West Virginia:

That section two-a, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article thirteen-d, chapter eleven of said code be amended by adding thereto a new section designated section three-d, all to read as follows:

CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-2a. General powers of the office.
The office of community and industrial development shall have the authority and duty to:

(1) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business;

(2) Investigate and study conditions affecting West Virginia business, industry and commerce; collect and disseminate information, and engage in technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department;

(3) Plan and develop an effective economic information service that will directly assist business, education and labor and also encourage businesses outside the state to use industrial office facilities, professional, labor, financial and recreational facilities, services and products from within the state;

(4) Encourage and develop commerce with other states and nations and devise methods of removing trade barriers that hamper the free flow of commerce between this and other states and nations and for these purposes cooperate with governmental, quasi-public and private organizations in formulating and promoting the adoption of compacts and agreements helpful to commerce and labor;

(5) Conduct or encourage research designed to further new and more extensive uses of the natural, human, professional, technical and other resources of the state with a view to the development of new products, industrial processes, services and markets;

(6) Compile periodically a census of business and industry in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;

(7) Study long-range trends and developments in the industries, commerce and economic health of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation and location of businesses within the state;
(8) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their byproducts; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state;

(9) Study and promote the development of a coal-based synthetic fuel industry in West Virginia and investigate and propose to the Legislature statutory initiatives which would encourage such development.

(10) To establish as an independent entity at West Virginia University in cooperation with and involving other West Virginia colleges and universities a center for economic research. The center shall be under the control and supervision of a director, who shall be appointed by the president of West Virginia University. The center shall employ such staff economists or statisticians, such research assistants and secretaries, each of whom shall serve on a part-time basis and may be members of the faculty or staff of West Virginia University or any other college or university in the state. In addition, the center may employ student interns;

(11) The center shall provide the governor's office of community and industrial development, commissioner of tourism and parks and the Legislature with an analysis of the quality of economic data pertaining to West Virginia. The center shall recommend ways to obtain additional information necessary to better understand the state's economy and to devise better economic development strategies. The center is directed to establish priorities and coordinate its economic research functions with the governor and the Legislature. To accomplish this purpose the advisory board created for the institute of public affairs in section one, article twenty-six-b, chapter eighteen of this code, shall serve as the advisory board to the center. The director of the center shall serve as the chairman of the advisory board. The center shall publish results of its research, maintain a comprehensive library with supporting computer data bases and shall, upon request, provide a
review of the economy and major policy issues to the joint committee on government and finance;

(12) During its first year of operation, the center shall include in its research topics the desirability of establishing a detailed gross state products series, modeled after the national income and products accounts and the desirability of constructing a periodic input/output table for the state. It shall review the quality of current statistics relating to employment and prices and statistics relating to poverty and the distribution of income and wealth. The center may study the feasibility of, and, based upon such study, establish a West Virginia econometric model project;

(13) Where deficiencies are found in existing data sources, the center shall publish conclusions regarding the benefits to be derived from gathering additional or better information and shall make operational recommendations on the best possible methods for obtaining the desired information;

(14) The director of the center or members of its staff shall meet on a regular basis with the director of the governor's office of community and industrial development, the commissioner of tourism and parks, other officials of the department and members of the Legislature to provide the results of its research and to provide policy advice and analysis;

(15) The center shall develop and maintain an inventory of research efforts of universities and colleges and other institutions or businesses within the state and a register of scientific and technological research facilities in the state. That function may be performed by contract with the center for education and research with industry of the board of regents;

(16) The governor's office of community and industrial development shall assist, promote, encourage, develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers and the investment of capital by foreign countries in this state;
(17) The governor's office of community and industrial development shall cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade and foreign investment activities in the state of West Virginia;

(18) The governor's office of community and industrial development shall consider establishing a source of funding credit guarantees and insurance to support export development not otherwise available to West Virginia small and medium sized businesses;

(19) The governor's office of community and industrial development shall develop a strategic plan for the economic development of the state, its regions and specific industries including tourism, manufacturing, timber, agriculture and other rural development, coal, oil, gas and other extractive resources, retail, service, distribution and small businesses. Such a plan shall emphasize a coordinated effort of the public and private sector toward balanced growth for the state. Such plan shall include, but is not limited to, the following:

(A) Assessing the state's economic strengths and weaknesses;

(B) Developing and recommending short, intermediate and long-term economic goals and plans, together with options;

(C) Identifying barriers to economic growth and diversification in the state;

(D) Recommending implementation procedures and options utilizing and maximizing existing public and private mechanism;

(E) Fostering and supporting scientific and technological research in this state in cooperation with the federal government, the various offices and divisions of the department of commerce and other state and local governmental agencies, educational institutions, non-profit institutions and organizations, business enterprises and others concerned with scientific and technological research development;
(F) Developing a program to attract investment in research and development in high technology industries;
(G) Conducting a series of studies to determine the feasibility of constructing natural gas transmission lines, electric power generating facilities and coal processing plants to be owned, either in whole or in part, or to be operated, either in whole or in part, by the state of West Virginia; and
(H) Maintaining a library of research materials, including computer data bases, to accomplish the goals of the division.

CHAPTER 11. TAXATION.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.

§11-13D-3d. Amount of credit allowed and application of credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

(a) Credit allowed. — There shall be allowed to eligible taxpayers which have made qualified investment of at least forty million dollars in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel. The amount of credit shall be determined as hereinafter provided in this section. Taxpayers who have not placed at least forty million dollars of qualified investment in service or use over a period of one year or less in a new industrial facility used to produce synthetic motor fuel or synthetic special fuel shall not be entitled to credit under this section.

(b) Credit amount for qualified investment purchased and placed in service or use in a new industrial facility
for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel, after the thirtieth day of June, one thousand nine hundred ninety-one. — For property purchased or leased by an eligible taxpayer and placed in service or use after the thirtieth day of June, one thousand nine hundred ninety-one, as part of a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel the amount of allowable credit shall be equal to one hundred percent of the qualified investment (as determined under section four of this article), and shall reduce that portion of the taxpayer's business franchise tax under article twenty-three of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment, and that portion of the taxpayer's corporation net income tax under article twenty-four of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment; subject to the following conditions and limitations:

(1) The total amount of credit allowable to all persons claiming credit under this section shall not exceed ten million dollars during any fiscal year of this state. If and to the extent credit is claimed under this section in excess of ten million dollars in any fiscal year of this state the amount in excess of ten million dollars is lost. In determining which taxpayer or taxpayers loses credit under this subdivision (1), the loss of credit shall apply first to qualified investment property most recently placed in service or use, going backwards in time, until the tax commissioner determines that the total amount of credit allowed under this section is not in excess of ten million dollars.

(2) The qualified investment must result in the creation of at least ten new jobs.

(3) If during any taxable year of the ten year tax credit allowance period, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment property is less than ten, the credit allowance for that taxable year is forfeited.
(4) Tax year time limitations for application of credit; credit forfeiture.

(A) The amount of this credit allowable shall be applied over a time period of up to ten tax years.

(B) This credit shall first be applied against tax liabilities in the manner specified in subdivision (2) of this subsection (b), beginning with the tax year during which the qualified investment was first placed in service or use in this state by the eligible taxpayer.

(C) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) of this subdivision (1) shall then be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (b) for the tax year immediately succeeding the tax year during which the qualified investment was first placed in service or use in this state and for each succeeding tax year thereafter up through the ninth tax year subsequent to the first tax year in which the qualified investment property was first placed in service or use.

(D) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) and then paragraph (C) of this subdivision shall be forfeited and shall not carry forward to any subsequent tax year.

(E) No carryback of credit to a prior tax year shall be allowed.

(2) Tax liability percentage offset limitations.

(A) This credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel shall first be applied to reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit, in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d and thirteen-e, of this chapter and under chapter five-e of this code and all other tax credits provided in this code, shall not reduce the annual
business franchise tax liability for such tax year below
fifty percent of the amount of the annual tax liability
which would otherwise be imposed for such tax year in
the absence of this credit and all credits against such
tax, except the credits set forth in section seventeen,
article twenty-three of this chapter.

(B) After application of this credit against business
franchise tax as provided in paragraph (A) of this
subdivision (2), the remaining credit for qualified
investment in a new industrial facility for producing
coal-based liquids used to produce synthetic motor fuel
or synthetic special fuel (if any) shall then be applied
to reduce the annual West Virginia corporation net
income tax liability imposed under article twenty-four
of this chapter for the tax year by an amount such that
this credit in combined application with all other
applicable credits allowable under articles thirteen-c,
thirteen-d, thirteen-f and thirteen-g of this chapter and
under sections ten, eleven, eleven-a, twelve, twenty-two
and twenty-three-a, article twenty-four of this chapter
and under chapters five-e and eighteen-b of this code
and all other tax credits provided in this code, shall not
reduce the annual corporation net income tax liability
for such tax year below fifty percent of the amount of
the annual tax liability which would otherwise be
imposed for such tax year in the absence of this credit
and all other credits against tax, except the credits set
forth in sections nine and nine-a, article twenty-four of
this chapter.

(C) After application of this credit against business
franchise tax under paragraph (A) of this subdivision
(2), and then against corporation net income tax under
paragraph (B) of this subdivision (2), the remaining
credit for qualified investment in a new industrial
facility for producing coal-based liquids used to produce
synthetic motor fuel or synthetic special fuel (if any)
shall then be applied to further reduce the annual West
Virginia business franchise tax liability imposed under
article twenty-three of this chapter for the tax year by
an amount such that this credit shall not reduce the
annual business franchise tax liability for such tax year
below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2) and then against corporation net income tax under paragraph (B) of this subdivision (2), and then against business franchise tax under paragraph (C) of this subdivision (2), the remaining credit for qualified investment in new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(c) Application for credit required. —

(1) Application required. — No credit shall be allowed or applied under this section for any investment in any new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel until the person asserting a claim for the allowance of credit under this article makes written application to the tax commissioner for allowance of credit as provided in this section and receives written certification of its claim from the tax commissioner. An application for credit shall be filed, in such form as the tax commissioner shall prescribe, prior to the date when qualified investment property is first placed in service or use, and all information required by such form shall be provided. No credit shall be taken by a taxpayer applicant or prospective applicant pursuant to this section until certification has been issued by the tax commissioner.
(2) Failure to file. — The failure to timely apply for certification under this subsection (c) shall result in forfeiture of the credit otherwise allowable under this section.

(d) Definitions. — For purposes of this section:

(1) "Synthetic motor fuel" means any product suitable for use in an internal combustion engine except special fuel as defined in this section, containing at least ten percent coal-based liquids blended to meet specifications.

(2) "Synthetic special fuel" means special fuel containing at least ten percent coal-based liquids blended to meet specifications.

(e) Report by the governor's office of community and industrial development. — The governor's office of community and industrial development shall produce a report to the Legislature to be presented during the regular legislative session of one thousand nine hundred and ninety-two. Such report shall state the identity of taxpayers who have received this credit and shall contain an analysis of the expansion and growth of facilities in this state producing coal based liquids used to produce synthetic fuels, the expansion of commerce resulting from the creation of this credit, and the number of jobs created as a result of this credit. The report of the governor's office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.

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

Homer Heck
Chairman Senate Committee

Ernest S. Neurot
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darryl E. Kills
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Peter Courage
President of the Senate

Robert C. Marcum
Speaker of the House of Delegates

The within is approved this the 2nd day of April, 1991.

Yarker, Governor