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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

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SECRETARY OF STATE

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.

1 The office of community and industrial development
2 shall have the authority and duty to:

3 (1) Promote and encourage the location and develop-
4 ment of new business in the state and the maintenance
5 and expansion of existing business;

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

12 (3) Plan and develop an effective economic informa-
13 tion service that will directly assist business, education
14 and labor and also encourage businesses outside the
15 state to use industrial office facilities, professional,
16 labor, financial and recreational facilities, services and
17 products from within the state;

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

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

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

35 (7) Study long-range trends and developments in the
36 industries, commerce and economic health of the state,
37 and analyze the reasons underlying such trends; study
38 costs and other factors affecting successful operation
39 and location of businesses within the state;

40 (8) Initiate, promote and conduct, or cause to be
41 conducted, research designed to further new and more
42 extensive uses and consumption of natural and other
43 resources and their byproducts; and for such purposes,
44 to enter into contracts and agreements with research
45 laboratories maintained by educational or endowed
46 institutions in this state;

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

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

63 (11) The center shall provide the governor's office of
64 community and industrial development, commissioner
65 of tourism and parks and the Legislature with an
66 analysis of the quality of economic data pertaining to
67 West Virginia. The center shall recommend ways to
68 obtain additional information necessary to better
69 understand the state's economy and to devise better
70 economic development strategies. The center is directed
71 to establish priorities and coordinate its economic
72 research functions with the governor and the Legisla-
73 ture. To accomplish this purpose the advisory board
74 created for the institute of public affairs in section one,
75 article twenty-six-b, chapter eighteen of this code, shall
76 serve as the advisory board to the center. The director
77 of the center shall serve as the chairman of the advisory
78 board. The center shall publish results of its research,
79 maintain a comprehensive library with supporting
80 computer data bases and shall, upon request, provide a

81 review of the economy and major policy issues to the
82 joint committee on government and finance;

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

94 (13) Where deficiencies are found in existing data
95 sources, the center shall publish conclusions regarding
96 the benefits to be derived from gathering additional or
97 better information and shall make operational recom-
98 mendations on the best possible methods for obtaining
99 the desired information;

100 (14) The director of the center or members of its staff
101 shall meet on a regular basis with the director of the
102 governor's office of community and industrial develop-
103 ment, the commissioner of tourism and parks, other
104 officials of the department and members of the Legis-
105 lature to provide the results of its research and to
106 provide policy advice and analysis;

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

114 (16) The governor's office of community and industrial
115 development shall assist, promote, encourage, develop
116 and advance economic prosperity and employment
117 throughout this state by fostering the expansion of
118 exports of manufactured goods and services to foreign
119 purchasers and the investment of capital by foreign
120 countries in this state;

121 (17) The governor's office of community and industrial
122 development shall cooperate and act in conjunction with
123 other organizations, public and private, the objects of
124 which are the promotion and advancement of export
125 trade and foreign investment activities in the state of
126 West Virginia;

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

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

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

144 (B) Developing and recommending short, interme-
145 diate and long-term economic goals and plans, together
146 with options;

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

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

152 (E) Fostering and supporting scientific and technologi-
153 cal research in this state in cooperation with the federal
154 government, the various offices and divisions of the
155 department of commerce and other state and local
156 governmental agencies, educational institutions, non-
157 profit institutions and organizations, business enter-
158 prises and others concerned with scientific and techno-
159 logical research development;

160 (F) Developing a program to attract investment in
161 research and development in high technology industries;

162 (G) Conducting a series of studies to determine the
163 feasibility of constructing natural gas transmission
164 lines, electric power generating facilities and coal
165 processing plants to be owned, either in whole or in part,
166 or to be operated, either in whole or in part, by the state
167 of West Virginia; and

168 (H) Maintaining a library of research materials,
169 including computer data bases, to accomplish the goals
170 of the division.

CHAPTER 11. TAXATION.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZA- TION AND FOR RESEARCH AND DEVELOP- MENT 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.

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

17 (b) *Credit amount for qualified investment purchased*
18 *and placed in service or use in a new industrial facility*

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

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

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

53 (3) If during any taxable year of the ten year tax
54 credit allowance period, the average number of em-
55 ployees of the taxpayer, for the then current taxable
56 year, employed in positions created because of and
57 directly attributable to the qualified investment prop-
58 erty is less than ten, the credit allowance for that
59 taxable year is forfeited.

60 (4) Tax year time limitations for application of credit;
61 credit forfeiture.

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

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

69 (C) Any amount of this credit remaining after
70 application of this credit against tax as specified in
71 paragraph (B) of this subdivision (1) shall then be
72 applied against the tax liabilities in the manner
73 specified in subdivision (2) of this subsection (b) for the
74 tax year immediately succeeding the tax year during
75 which the qualified investment was first placed in
76 service or use in this state and for each succeeding tax
77 year thereafter up through the ninth tax year subse-
78 quent to the first tax year in which the qualified
79 investment property was first placed in service or use.

80 (D) Any amount of this credit remaining after
81 application of this credit against tax as specified in
82 paragraph (B) and then paragraph (C) of this subdivi-
83 sion shall be forfeited and shall not carry forward to any
84 subsequent tax year.

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

87 (2) Tax liability percentage offset limitations.

88 (A) This credit for qualified investment in a new
89 industrial facility for producing coal-based liquids used
90 to produce synthetic motor fuel or synthetic special fuel
91 shall first be applied to reduce the annual West Virginia
92 business franchise tax liability imposed under article
93 twenty-three of this chapter for the tax year by an
94 amount such that this credit, in combined application
95 with all other applicable credits allowable under articles
96 thirteen-c, thirteen-d and thirteen-e, of this chapter and
97 under chapter five-e of this code and all other tax credits
98 provided in this code, shall not reduce the annual

99 business franchise tax liability for such tax year below
100 fifty percent of the amount of the annual tax liability
101 which would otherwise be imposed for such tax year in
102 the absence of this credit and all credits against such
103 tax, except the credits set forth in section seventeen,
104 article twenty-three of this chapter.

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

128 (C) After application of this credit against business
129 franchise tax under paragraph (A) of this subdivision
130 (2), and then against corporation net income tax under
131 paragraph (B) of this subdivision (2), the remaining
132 credit for qualified investment in a new industrial
133 facility for producing coal-based liquids used to produce
134 synthetic motor fuel or synthetic special fuel (if any)
135 shall then be applied to further reduce the annual West
136 Virginia business franchise tax liability imposed under
137 article twenty-three of this chapter for the tax year by
138 an amount such that this credit shall not reduce the
139 annual business franchise tax liability for such tax year

140 below ten percent of the amount of the annual tax
141 liability which would otherwise be imposed for such tax
142 year in the absence of this credit and all other credits
143 against such tax, except the credits set forth in section
144 seventeen, article twenty-three of this chapter.

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

164 (c) *Application for credit required.* —

165 (1) Application required. — No credit shall be allowed
166 or applied under this section for any investment in any
167 new industrial facility for producing coal-based liquids
168 used to produce synthetic motor fuel or synthetic special
169 fuel until the person asserting a claim for the allowance
170 of credit under this article makes written application to
171 the tax commissioner for allowance of credit as provided
172 in this section and receives written certification of its
173 claim from the tax commissioner. An application for
174 credit shall be filed, in such form as the tax commis-
175 sioner shall prescribe, prior to the date when qualified
176 investment property is first placed in service or use, and
177 all information required by such form shall be provided.
178 No credit shall be taken by a taxpayer applicant or
179 prospective applicant pursuant to this section until
180 certification has been issued by the tax commissioner.

181 (2) Failure to file. — The failure to timely apply for
182 certification under this subsection (c) shall result in
183 forfeiture of the credit otherwise allowable under this
184 section.

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

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

191 (2) “Synthetic special fuel” means special fuel contain-
192 ing at least ten percent coal-based liquids blended to
193 meet specifications.

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

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



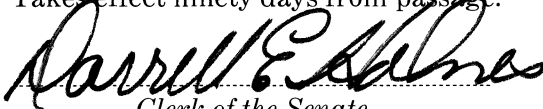
Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

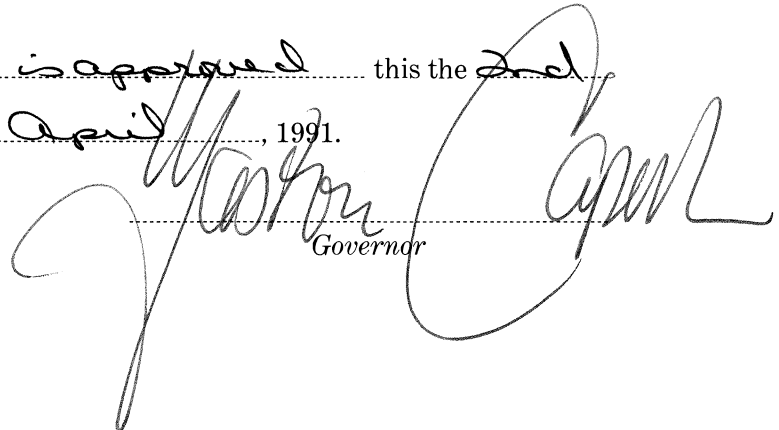


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/91

Time

9:50 am