

HB 2267

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STATE HOUSE OF DELEGATES

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Com. Sub. for
HOUSE BILL No. 2267

(By Delegate Mr. Speaker, My Chambers,
+ Delegates Ashley, Stator, Kiss,
Browning, Wallace + Ryan)



Passed March 11, 1995

In Effect From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2267

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATES ASHLEY,
STATON, KISS, BROWNING, WALLACE AND RYAN)

[Passed March 11, 1995; in effect from passage.]

AN ACT to amend and reenact sections two, two-d, two-e, two-m and two-n, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-o, all relating to the business of gas storage; providing effective date; notice of retirement from service; changing the business and occupation tax on the business of generating or producing electricity on and after the first day of June, one thousand nine hundred ninety-five, by replacing the kilowatt hour generating tax with a capacity utilization tax; providing transition rules for taxpayers subject to gross receipts tax during the year one thousand nine hundred ninety-four; providing definitions of terms; establishing rate of tax imposed upon taxable generating capacity of each generating unit; establishing rate of tax for each generating unit which has installed a flue gas desulfurization system; providing certain exceptions for large users; providing for the taxation of electricity not generated or produced in this state but sold in this state; providing rules relating to retirement of units, transfer of units,

placing units in inactive reserve, new units and peaking units; requiring rules pertaining to proration and allocation issues; confirming related provisions in business and occupation tax and industrial expansion and revitalization credit and business and occupation tax credit against business franchise tax; and providing effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.

1 (a) *Periods before July 1, 1987.* — For taxable years
2 or months thereof ending prior to the first day of July,
3 one thousand nine hundred eighty-seven, there is hereby
4 levied and shall be collected annual privilege taxes against
5 the persons, on account of the business and other activities,
6 and in the amounts to be determined by the application of
7 rates against values or gross income as set forth in sections
8 two-a to two-m, both inclusive, of this article and the appli-
9 cation of the surtax rate against gross income as set forth
10 in section two-k: *Provided*, That on the first day of July,
11 one thousand nine hundred eighty-five, the taxes imposed
12 by this section, at the rates set forth in sections two-b
13 through two-m, both inclusive, of this article, and in effect
14 on the first day of January, one thousand nine hundred
15 eighty-five, exclusive of any surtaxes, shall be reduced by
16 five percent for taxable months beginning on and after
17 said first day of July: *Provided, however*, That on and
18 after the first day of July, one thousand nine hundred
19 eighty-five, the rate of tax under section two-b of this
20 article shall not be less than eight tenths of one percent:
21 *Provided further*, That there shall be no such reduction of
22 the rates set forth in section two-a or two-l of this article.

23 (b) *Periods after June 30, 1987.* — For taxable years
24 or months beginning after the thirtieth day of June, one
25 thousand nine hundred eighty-seven, there is hereby lev-
26 ied and shall be collected annual privilege taxes against
27 the persons, on account of the business and other activities,
28 and in the amount to be determined by the application of
29 rates against values or gross income as set forth in sections
30 two-d and two-m of this article: *Provided*, That on and
31 after the first day of July, one thousand nine hundred
32 eighty-seven, the rates applicable to the privileges exer-
33 cised in sections two-d and two-m of this article shall be
34 restored and returned to those which were in effect as to
35 such privileges on the first day of January, one thousand
36 nine hundred eighty-five: *Provided, however*, That for
37 taxable months or taxable years beginning after the
38 twenty-eighth day of February, one thousand nine hun-
39 dred eighty-nine, there is hereby levied and shall be col-
40 lected annual privilege taxes against the persons, on ac-
41 count of the business and other activities, and in the
42 amount to be determined by the application of rates
43 against the measure of the tax as set forth in sections
44 two-d, two-e, two-m and two-n of this article: *Provided*
45 *further*, That for taxable months or taxable years begin-
46 ning after the thirty-first day of May, one thousand nine
47 hundred ninety-five, there is hereby levied and shall be
48 collected annual privilege taxes against the persons, on
49 account of the business and other activities, and in the
50 amount to be determined by the application of rates
51 against the measure of the tax as set forth in sections
52 two-d, two-e, two-m, two-n and two-o of this article.

53 (c) If any person liable for any tax under section
54 two-m shall ship or transport his products or any part
55 thereof out of the state without making sale of such prod-
56 ucts, the value of the products in the condition or form in
57 which they exist immediately before transportation out of
58 the state shall be the basis for the assessment of the tax
59 imposed in such section, except in those instances in which
60 another measure of the tax is expressly provided. The tax
61 commissioner shall prescribe equitable and uniform rules

62 for ascertaining such value.

63 (d) In determining value, however, as regards sales
64 from one to another of affiliated companies or persons, or
65 under other circumstances where the relation between the
66 buyer and seller is such that the gross proceeds from the
67 sale are not indicative of the true value of the subject mat-
68 ter of the sale, the tax commissioner shall prescribe uni-
69 form and equitable rules for determining the value upon
70 which such privilege tax shall be levied, corresponding as
71 nearly as possible to the gross proceeds from the sale of
72 similar products of like quality or character where no
73 common interest exists between the buyer and seller but
74 the circumstances and conditions are otherwise similar.

§11-13-2d. Public service or utility business.

1 (a) Upon any person engaging or continuing within
2 this state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, the tax imposed by section
6 two of this article shall be equal to the gross income of the
7 business derived from such activity or activities multiplied
8 by the respective rates as follows:

9 (1) Street and interurban and electric railways, one and
10 four-tenths percent;

11 (2) Water companies, four and four-tenths percent,
12 except as to income received by municipally owned water
13 plants;

14 (3) Electric light and power companies, four percent
15 on sales and demand charges for domestic purposes and
16 commercial lighting and four percent on sales and de-
17 mand charges for all other purposes, and except as to
18 income received by municipally owned plants producing
19 or purchasing electricity and distributing same: *Provid-*
20 *ed*, That electric light and power companies which engage
21 in the supplying of public service but which do not gener-
22 ate or produce in this state the electric power they supply

23 shall be taxed on the gross income derived from sales of
24 power which they do not generate in this state at the rate
25 of three percent on sales and demand charges for domes-
26 tic purposes and commercial lighting and three percent on
27 sales and demand charges for all other purposes, except as
28 to income received by municipally owned plants: *Provid-*
29 *ed, however,* That the sale of electric power under this
30 section shall be taxed at the rate of two percent on that
31 portion of the gross proceeds derived from the sale of
32 electric power to a plant location of a customer engaged in
33 a manufacturing activity, if the contract demand at such
34 plant location exceeds two hundred thousand kilowatts per
35 hour per year, or if the usage of such plant location ex-
36 ceeds two hundred thousand kilowatts per hour in a year:
37 *Provided further,* That the sale of electric power under this
38 section shall be exempt from the tax imposed by this sec-
39 tion and section two of this article if it is separately me-
40 tered and consumed in an electrolytic process for the
41 manufacture of chlorine in this state, or is separately me-
42 tered and consumed in the manufacture of ferroalloy in
43 this state, and the rate reduction herein provided to the
44 taxpayer shall be passed on to the manufacturer of the
45 chlorine or ferroalloy. As used in this section, the term
46 "ferroalloy" means any of various alloys of iron and one
47 or more other elements used as a raw material in the pro-
48 duction of steel: *And provided further,* That the term does
49 not include the final production of steel;

50 (4) Natural gas companies, four and twenty-nine hun-
51 dredths percent on the gross income: *Provided,* That the
52 sale of natural gas under this section shall be exempt from
53 the tax imposed by this section and section two of this
54 article to the extent that the natural gas is separately me-
55 tered and is gas from which the purchaser derives hydro-
56 gen and carbon monoxide for use in the manufacture of
57 chemicals in this state, and the full economic benefit of the
58 exception herein provided to the taxpayer shall be passed
59 on to such purchaser of the natural gas: *Provided, howev-*
60 *er,* That there shall be no exemption for the sale of any
61 natural gas from which the purchaser derives carbon mon-

62 oxide or hydrogen for the purpose of resale;

63 (5) Toll bridge companies, four and twenty-nine hun-
64 dredths percent; and

65 (6) Upon all other public service or utility business,
66 two and eighty-six hundredths percent.

67 (b) The measure of this tax shall not include gross
68 income derived from commerce between this state and
69 other states of the United States or between this state and
70 foreign countries. The measure of the tax under this sec-
71 tion shall include only gross income received from the
72 supplying of public service. The gross income of the
73 taxpayer from any other activity shall be included in the
74 measure of the tax imposed upon such other activity by
75 the appropriate section or sections of this article.

76 (c) Beginning the first day of March, one thousand
77 nine hundred eighty-nine, electric light and power compa-
78 nies shall determine their liability for payment of tax un-
79 der this section and sections two-m and two-n of this arti-
80 cle. If for taxable months beginning on or after the first
81 day of March, one thousand nine hundred eighty-nine,
82 liability for tax under section two-n of this article is equal
83 to or greater than the sum of the power company's liability
84 for payment of tax under subdivision (3), subsection (a)
85 of this section and section two-m of this article, then the
86 company shall pay the tax due under section two-n of this
87 article and not the tax due under subdivision (3), subsec-
88 tion (a) of this section and section two-m of this article. If
89 tax liability under section two-n is less, then tax shall be
90 paid under subdivision (3), subsection (a) of this section
91 and section two-m of this article and the tax due under
92 section two-n shall not be paid. The provisions of subdivi-
93 sion (3), subsection (a) of this section shall expire and
94 become null and void for taxable years beginning on or
95 after the first day of January, one thousand nine hundred
96 ninety-eight.

97 (d) Notwithstanding the provisions of subsection (c)
98 of this section, beginning the first day of June, one thou-

99 sand nine hundred ninety-five, electric light and power
100 companies that actually paid tax based on the provisions
101 of subdivision (3), subsection (a) of this section or section
102 two-m of this article for every taxable month in
103 one-thousand nine hundred ninety-four shall determine
104 their liability for payment of tax under this article in ac-
105 cordance with subdivision (1) of this subsection. All other
106 electric light and power companies shall determine their
107 liability for payment of tax under this article exclusively
108 under section two-o of this article.

109 (1) If for taxable months beginning on or after the
110 first day of June, one thousand nine hundred ninety-five,
111 liability for tax under section two-o of this article is equal
112 to or greater than the sum of the power company's liability
113 for payment of tax under subdivision (3), subsection (a)
114 of this section and section two-m of this article, then the
115 company shall pay the tax due under section two-o of this
116 article and not the tax due under subdivision (3) subsec-
117 tion (a) of this section and section two-m of this article. If
118 tax liability under section two-o is less, then the tax shall
119 be paid under subdivision (3), subsection (a) of this sec-
120 tion and section two-m of this article and the tax due un-
121 der section two-o shall not be paid.

122 (2) The provisions of subdivision (3), subsection (a)
123 of this section shall expire and become null and void for
124 taxable years beginning on or after the first day of Janu-
125 ary, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

1 (a) *Rate of tax.* — Upon every person engaging or
2 continuing within this state in any gas storage business
3 utilizing one or more gas storage reservoirs located within
4 this state, the tax imposed by section two of this article
5 shall be equal to five cents multiplied by the sum of either
6 (1) the net number of dekatherms of gas injected into
7 such a gas storage reservoir during a tax month or (2) the
8 net number of dekatherms of gas withdrawn from such a
9 gas storage reservoir during a tax month, whichever is

10 applicable for that month, whether or not such gas is
11 owned by, or is injected or withdrawn for, the storage
12 operator or any other person. Fractional parts of
13 dekatherms shall be included in the measure of tax as
14 provided in regulations promulgated by the tax commis-
15 sioner: *Provided*, That effective the first day of July, one
16 thousand nine hundred ninety-five, the net number of
17 dekatherms of gas injected or the net number of
18 dekatherms withdrawn shall not exceed the storage utiliza-
19 tion index as defined in this subsection. For purposes of
20 this section, the term "storage utilization index" means the
21 utilization of storage reservoir, through the operation of
22 existing and functional facilities available for storage use
23 during the five year base period ending the thirty-first day
24 of December, one thousand nine hundred ninety-four, and
25 the storage utilization index shall be the five year average
26 of taxable dekatherms as determined for each taxable
27 period of the stated base period.

28 (b) *Effective date.* — The measure of tax under this
29 section shall include gas injected into, or withdrawn from,
30 a gas storage reservoir after the twenty-eighth day of Feb-
31 ruary, one thousand nine hundred eighty-nine.

32 (c) *Administration; installment payments.* — The tax
33 due under this section shall be administered, collected and
34 enforced as provided in this article and articles nine and
35 ten of this chapter. The tax due under this section shall be
36 remitted in periodic installments as provided in section
37 four of this article, except that such periodic installment
38 payments shall be remitted on or before the twentieth day
39 of the month following the month or quarter in which the
40 tax accrues.

41 (d) *Notice of retirement from service.*—A taxpayer
42 subject to the tax due under this section shall provide
43 written notice to the joint committee on government and
44 finance and the department of tax and revenue eighteen
45 months prior to the retirement from service of a storage
46 reservoir.

§11-13-2m. Business of generating or producing electric power exception; rates.

1 (a) Upon every person engaging or continuing within
2 this state in the business of generating or producing elec-
3 tric power for sale, profit or commercial use, either direct-
4 ly or through the activity of others, in whole or in part,
5 when the sale thereof is not subject to tax under section
6 two-d of this article, the amount of the tax to be equal to
7 the value of the electric power, as shown by the gross pro-
8 ceeds derived from the sale thereof by the generator or
9 producer of the same multiplied by a rate of four percent,
10 except that the rate shall be two percent on that portion of
11 the gross proceeds derived from the sale of electric power
12 to a plant location of a customer engaged in a manufac-
13 turing activity, if the contract demand at such plant loca-
14 tion exceeds two hundred thousand kilowatts per hour per
15 year, or if the usage at such plant location exceeds two
16 hundred thousand kilowatts per hour in a year.

17 (b) The measure of this tax shall be the value of all
18 electric power generated or produced in this state for sale,
19 profit or commercial use, regardless of the place of sale or
20 the fact that transmission may be to points outside this
21 state: *Provided*, That the gross income received by mu-
22 nicipally owned plants generating or producing electricity
23 shall not be subject to tax under this article.

24 (c) Beginning the first day of March, one thousand
25 nine hundred eighty-nine, every person taxable under this
26 section shall determine their liability for payment of tax
27 under this section and under subdivision (3), subsection
28 (a), section two-d of this article and section two-n of this
29 article. If for taxable months beginning on or after the
30 first day of March, one thousand nine hundred
31 eighty-nine such person's liability for payment of tax
32 under this section and subdivision (3), subsection (a),
33 section two-d of this article is less than the amount of such
34 person's liability for payment of tax under section two-n
35 of this article, then such person shall pay the tax due un-
36 der section two-n and not the sum of the amount of tax

37 due under this section and under subdivision (3), subsec-
38 tion (a), section two-d of this article. If the tax due under
39 section two-n of this article is less, then the amount of tax
40 due under this section and subdivision (3), subsection (a),
41 section two-d of this article shall be paid. The provisions
42 of this section shall expire and become null and void for
43 taxable years beginning on or after the first day of Janu-
44 ary, one thousand nine hundred ninety-eight.

45 (d) Beginning the first day of June, one thousand
46 nine hundred ninety-five, electric light and power compa-
47 nies that actually paid tax based on the provisions of sub-
48 division (3), subsection (a), section two-d of this article or
49 this section for every taxable month in one-thousand nine
50 hundred ninety-four shall determine their liability for
51 payment of tax under this article in accordance with sub-
52 division (1) of this subsection. All other electric light and
53 power companies shall determine their liability for pay-
54 ment of tax under this article exclusively under section
55 two-o of this article.

56 (1) If for taxable months beginning on or after the
57 first day of June, one thousand nine hundred ninety-five,
58 liability for tax under section two-o of this article is equal
59 to or greater than the sum of the power company's liability
60 for payment of tax under subdivision (3), subsection (a),
61 section two-d of this article and this section, then the com-
62 pany shall pay the tax due under section two-o of this
63 article and not the tax due under subdivision (3), subsec-
64 tion (a), section two-d of this article and this section. If
65 tax liability under section two-o is less, then the tax shall
66 be paid under subdivision (3), subsection (a), section
67 two-d of this article and this section and the tax due under
68 section two-o shall not be paid.

69 (2) The provisions of this section shall expire and
70 become null and void for taxable years beginning on or
71 after the first day of January, one thousand nine hundred
72 ninety-eight. Notwithstanding this subsection or any other
73 provision of this chapter to the contrary, an electric light
74 and power company that generates and produces power in

75 this state shall continue to be deemed to be an "industrial
 76 taxpayer" for purposes of subdivision (8), subsection (b),
 77 section two, article thirteen-d of this chapter, and gross
 78 income of an electric light and power company from the
 79 generation and production of power in this state and sales
 80 and demand charges for electric power sold in this state
 81 shall continue to be deemed "gross income of the business
 82 subject to tax under article thirteen of this chapter" for
 83 purposes of subsection (b), section seventeen, article
 84 twenty-three of this chapter all to the extent of and in
 85 accordance with the law in effect immediately preceding
 86 the effective date of this section as amended in one thou-
 87 sand nine hundred ninety-five.

**§11-13-2n. Business of generating or producing or selling
 electric power; exemptions; rates.**

1 (a) *Rate of tax.* — Upon every person engaging or
 2 continuing within this state in the business of generating
 3 or producing electricity for sale, profit or commercial use,
 4 either directly or indirectly through the activity of others,
 5 in whole or in part, or in the business of selling electricity
 6 to consumers, or in both businesses, the tax imposed by
 7 section two of this article shall be equal to:

8 (1) Twenty-six hundredths of one cent times the kilo-
 9 watt hours of net generation available for sale that was
 10 generated or produced in this state by the taxpayer during
 11 the taxable year, except that this rate shall be five hun-
 12 dredths of one cent times the kilowatt hours of net genera-
 13 tion available for sale that was generated or produced in
 14 this state by the taxpayer and sold to a plant location of a
 15 customer engaged in manufacturing activity if the contract
 16 demand at such plant location exceeds two hundred thou-
 17 sand kilowatts per hour per year or if the usage at such
 18 plant location exceeds two hundred thousand kilowatts per
 19 hour in a year: *Provided*, That in order to encourage the
 20 development of industry to improve the environment of
 21 this state, the tax imposed by this section on any person
 22 generating or producing electric power and an alternative
 23 form of energy at a facility located within this state sub-

24 stantially from gob or other mine refuse shall be equal to
25 five hundredths of one cent times the kilowatt hours of net
26 generation or production available for sale. The measure
27 of tax under this paragraph shall be equal to the total
28 kilowatt hours of net generation available for sale that was
29 generated or produced in this state by the taxpayer during
30 the taxable year, regardless of the place of sale or use, or
31 the fact that transmission may be made to points outside
32 this state.

33 (2) Nineteen hundredths of one cent times the kilowatt
34 hours of electricity sold to consumers in this state that
35 were not generated or produced in this state by the tax-
36 payer, except that the rate shall be five hundredths of one
37 cent times the kilowatt hours of electricity not generated
38 or produced in this state by the taxpayer which is sold to a
39 plant location in this state of a customer engaged in manu-
40 facturing activity if the contract demand at such plant
41 location exceeds two hundred thousand kilowatts per hour
42 per year or if the usage at such plant location exceeds two
43 hundred thousand kilowatts per hour in a year. The mea-
44 sure of tax under this paragraph shall be equal to the total
45 kilowatt hours of electricity sold to consumers in this state
46 during the taxable year, that were not generated or pro-
47 duced in this state by the taxpayer, to be determined by
48 subtracting from the total kilowatt hours of electricity sold
49 to consumers in the state the net kilowatt hours of electric-
50 ity generated or produced in the state by the taxpayer
51 during the taxable year.

52 The West Virginia public service commission shall,
53 upon application of a public utility, allow an immediate
54 pass-through to the utility's customers in this state in the
55 form of a rate surcharge the increase enacted by the Leg-
56 islatre during its third extraordinary session, one thou-
57 sand nine hundred ninety, in the tax imposed by this
58 article upon electricity generated or produced in this state
59 and sold to consumers in this state and upon electricity not
60 generated or produced in this state that is sold to consum-
61 ers in this state.

62 (b) *Exemptions.* — The provisions of this section
63 shall not apply to:

64 (1) Kilowatt hours of electricity generated and sold, or
65 purchased and resold, by a municipally owned plant.

66 (2) Kilowatt hours of electric power that are separately
67 metered and consumed in an electrolytic process for the
68 manufacture of chlorine.

69 (3) Kilowatt hours of electric power that are separately
70 metered and consumed in the manufacture of ferroalloy.
71 As used in this paragraph, the term "ferroalloy" means any
72 of the various alloys of iron and one or more other ele-
73 ments used as a raw material in the production of steel but
74 shall not include electric power used in the production of
75 steel.

76 (4) The full economic benefits provided to the taxpay-
77 er by subdivisions (2) and (3) of this subsection shall be
78 passed on to the manufacturer of the chlorine or
79 ferroalloy.

80 (c) *Credit.* — Any person taxable under subdivision
81 (2), subsection (a) of this section shall be allowed a credit
82 against the amount of tax due under that paragraph for
83 any electric power generation taxes paid by the taxpayer
84 with respect to such electric power to the state in which
85 such power was generated or produced. The amount of
86 credit allowed shall not exceed the tax liability arising
87 under subdivision (2), subsection (a) of this section with
88 respect to the sale of such power.

89 (d) *Transition rule.* — Beginning the first day of
90 March, one thousand nine hundred eighty-nine, electric
91 light and power companies shall determine their liability
92 for payment of tax under this section and sections two-d
93 and two-m of this article. If for taxable months beginning
94 on or after the first day of March, one thousand nine hun-
95 dred eighty-nine, liability for tax under section two-n of
96 this article is equal to or greater than the sum of the power
97 company's liability for payment of tax under subdivision

98 (3), subsection (a), section two-d and section two-m of this
99 article, then the company shall pay the tax due under
100 section two-n of this article and not the tax due under
101 subdivision (3), subsection (a) of section two-d and section
102 two-m of this article. If tax liability under section two-n is
103 less, then tax shall be paid under paragraph (3), subsection
104 (a), section two-d and section two-m of this article and the
105 tax due under section two-n shall not be paid. The provi-
106 sions of this subsection (d) shall expire and become null
107 and void for taxable years beginning on or after the first
108 day of January, one thousand nine hundred ninety-eight.

109 (e) *Effective date.* — The amendments to this section
110 made in the year one thousand nine hundred ninety shall
111 take effect on the first day of October, one thousand nine
112 hundred ninety: *Provided*, That as to calendar months
113 ending before such date, the tax rates specified in this
114 section, as then in effect shall be fully and completely
115 preserved.

116 (f) Beginning the first day of June, one thousand nine
117 hundred ninety-five and thereafter, electric light and pow-
118 er companies shall not determine their tax liability under
119 this section.

**§11-13-20. Business of generating or producing or selling
electricity on and after the first day of June,
one thousand nine hundred ninety-five; defini-
tions; rate of tax; exemptions; effective date.**

1 (a) *Definitions.* — As used in this section:

2 (1) "Average four-year generation" is computed by
3 dividing by four the sum of a generating unit's net genera-
4 tion, expressed in kilowatt hours, for calendar years one
5 thousand nine hundred ninety-one, one thousand nine
6 hundred ninety-two, one thousand nine hundred
7 ninety-three, and one thousand nine hundred ninety-four.
8 For any generating unit which was newly installed and
9 placed into commercial operation after the first day of
10 January, one thousand nine hundred ninety-one and prior
11 to the effective date of this section, "average four-year

12 generation" is computed by dividing such unit's net gener-
13 ation for the period beginning with the month in which
14 the unit was placed into commercial operation and ending
15 with the month preceding the effective date of this section
16 by the number of months in such period and multiplying
17 the resulting amount by twelve with the result being a
18 representative twelve-month average of the unit's net gener-
19 ation while in an operational status.

20 (2) "Capacity factor" means a fraction, the numerator
21 of which is average four-year generation and the denomi-
22 nator of which is the maximum possible annual genera-
23 tion.

24 (3) "Generating unit" means a mechanical apparatus or
25 structure which through the operation of its component
26 parts is capable of generating or producing electricity and
27 is regularly used for this purpose.

28 (4) "Inactive reserve" means the removal of a generat-
29 ing unit from commercial service for a period of not less
30 than twelve consecutive months as a result of lack of need
31 for generation from the generating unit or as a result of
32 the requirements of state or federal law or the removal of a
33 generating unit from commercial service for any period as
34 a result of any physical exigency which is beyond the
35 reasonable control of the taxpayer.

36 (5) "Maximum possible annual generation" means the
37 product, expressed in kilowatt hours, of official capability
38 times eight thousand seven hundred sixty hours.

39 (6) "Official capability" means the nameplate capacity
40 rating of a generating unit expressed in kilowatts.

41 (7) "Peaking unit" means a generating unit designed
42 for the limited purpose of meeting peak demands for
43 electricity or filling emergency electricity requirements.

44 (8) "Retired from service" means the removal of a
45 generating unit from commercial service for a period of at
46 least twelve consecutive months with the intent that the unit

47 will not thereafter be returned to active service.

48 (9) "Taxable generating capacity" means the product,
49 expressed in kilowatts, of the capacity factor times the
50 official capability of a generating unit, subject to the mod-
51 ifications set forth in subdivisions (2) and (3), subsection
52 (c) of this section.

53 (10) "Net generation" for a period means the kilowatt
54 hours of net generation available for sale generated or
55 produced by the generating unit in this state during such
56 period less the following:

57 (A) Twenty-one twenty-sixths of the kilowatt hours of
58 electricity generated at the generating unit and sold during
59 such period to a plant location of a customer engaged in
60 manufacturing activity if the contract demand at such
61 plant location exceeds two hundred thousand kilowatts per
62 hour in a year or where the usage at such plant location
63 exceeds two hundred thousand kilowatts per hour in a
64 year;

65 (B) Twenty-one twenty-sixths of the kilowatt hours of
66 electricity produced or generated at the generating unit
67 during such period by any person producing electric
68 power and an alternative form of energy at a facility locat-
69 ed in this state substantially from gob or other mine re-
70 fuse;

71 (C) The total kilowatt hours of electricity generated at
72 the generating unit exempted from tax during such period
73 by subsection (b), section two-n of this article.

74 (b) *Rate of tax.* — Upon every person engaging or
75 continuing within this state in the business of generating
76 or producing electricity for sale, profit or commercial use,
77 either directly or indirectly through the activity of others,
78 in whole or in part, or in the business of selling electricity
79 to consumers, or in both businesses, the tax imposed by
80 section two of this article shall be equal to:

81 (1) For taxpayers who generate or produce electricity

82 for sale, profit or commercial use, the product of
83 twenty-two dollars and seventy-eight cents multiplied by
84 the taxable generating capacity of each generating unit in
85 this state owned or leased by the taxpayer, subject to the
86 modifications set forth in subsection (c) of this section:
87 *Provided*, That with respect to each generating unit in this
88 state which has installed a flue gas desulfurization system,
89 the tax imposed by section two of this article shall, on and
90 after the thirty-first day of January, one thousand nine
91 hundred ninety-six, be equal to the product of twenty
92 dollars and seventy cents multiplied by the taxable gener-
93 ating capacity of the units, subject to the modifications set
94 forth in subsection (c) of this section: *Provided, however*,
95 That with respect to kilowatt hours sold to or used by a
96 plant location engaged in manufacturing activity in which
97 the contract demand at such plant location exceeds two
98 hundred thousand kilowatts per hour per year or if the
99 usage at such plant location exceeds two hundred thou-
100 sand kilowatts per hour in a year, in no event shall the tax
101 imposed by this article with respect to the sale or use of
102 such electricity exceed five hundredths of one cent times
103 the kilowatt hours sold to or used by a plant engaged in
104 such a manufacturing activity; and,

105 (2) For taxpayers who sell electricity to consumers in
106 this state that is not generated or produced in this state by
107 the taxpayer, nineteen hundredths of one cent times the
108 kilowatt hours of electricity sold to consumers in this state
109 that were not generated or produced in this state by the
110 taxpayer, except that the rate shall be five hundredths of
111 one cent times the kilowatt hours of electricity not gener-
112 ated or produced in this state by the taxpayer which is sold
113 to a plant location in this state of a customer engaged in
114 manufacturing activity if the contract demand at such
115 plant location exceeds two hundred thousand kilowatts per
116 hour per year or if the usage at such plant location ex-
117 ceeds two hundred thousand kilowatts per hour in a year.
118 The measure of tax under this subdivision (2) shall be
119 equal to the total kilowatt hours of electricity sold to con-
120 sumers in the state during the taxable year, that were not

121 generated or produced in this state by the taxpayer, to be
122 determined by subtracting from the total kilowatt hours of
123 electricity sold to consumers in the state the net kilowatt
124 hours of electricity generated or produced in the state by
125 the taxpayer during the taxable year. The provisions of
126 this subdivision (2) shall not apply to those kilowatt hours
127 exempt under subsection (b), section two-n of this article.
128 Any person taxable under this subdivision (2) shall be
129 allowed a credit against the amount of tax due under this
130 subdivision (2) for any electric power generation taxes or
131 a tax similar to the tax imposed by subdivision (1) of this
132 subsection (b) paid by the taxpayer with respect to such
133 electric power to the state in which such power was gener-
134 ated or produced. The amount of credit allowed shall not
135 exceed the tax liability arising under this subdivision (2)
136 with respect to the sale of such power.

137 (c) The following provisions are applicable to taxpay-
138 ers subject to tax under subdivision (1), subsection (b) of
139 this section:

140 (1) *Retired units; inactive reserve.* — If a generating
141 unit is retired from service or placed in inactive reserve, a
142 taxpayer shall not be liable for tax computed with respect
143 to the taxable generating capacity of the unit for the peri-
144 od that the unit is inactive or retired. The taxpayer shall
145 provide written notice to the joint committee on govern-
146 ment and finance, as well as to any other entity as may be
147 otherwise provided by law, eighteen months prior to retir-
148 ing any generating unit from service in this state.

149 (2) *New generating units.* — If a new generating unit,
150 other than a peaking unit, is placed in initial service on or
151 after the effective date of this section, the generating unit's
152 taxable generating capacity shall equal forty percent of
153 the official capability of the unit.

154 (3) *Peaking units.* — If a peaking unit is placed in
155 initial service on or after the effective date of this section,
156 the generating unit's taxable generating capacity shall
157 equal five percent of the official capability of the unit.

158 (4) *Transfers of interests in generating units.* — If a
159 taxpayer acquires an interest in a generating unit, the tax-
160 payer shall include the computation of taxable generating
161 capacity of said unit in the determination of the taxpayer's
162 tax liability as of the date of the acquisition. Conversely,
163 if a taxpayer transfers an interest in a generating unit, the
164 taxpayer shall not for periods thereafter be liable for tax
165 computed with respect to the taxable generating capacity
166 of such transferred unit.

167 (5) *Proration, allocation.* — The tax commissioner
168 shall promulgate rules in conformity with the provisions
169 of article three, chapter twenty-nine-a of this code to pro-
170 vide for the administration of this section and to equitably
171 prorate taxes for a taxable year in which a generating unit
172 is first placed in service, retired or placed in inactive re-
173 serve, or in which a taxpayer acquires or transfers an inter-
174 est in a generating unit, to equitably allocate and reallocate
175 adjustments to net generation, and to equitably allocate
176 taxes among multiple taxpayers with interests in a single
177 generating unit, it being the intent of the Legislature to
178 prohibit multiple taxation of the same taxable generating
179 capacity.

180 So as to provide for an orderly transition with respect
181 to the rate making effect of this section, those electric light
182 and power companies which, as of the effective date of this
183 section, are permitted by the West Virginia public service
184 commission to utilize deferred accounting for purposes of
185 recovery from ratepayers of any portion of business and
186 occupation tax expense under this article shall be permit-
187 ted, until such time that action pursuant to a rate applica-
188 tion or order of the commission provides for appropriate
189 alternative rate making treatment for such expense, to
190 recover the tax expense imposed by this section by means
191 of deferred accounting to the extent that the tax expense
192 imposed by this section exceeds the level of business and
193 occupation tax under this article currently allowed in rates.

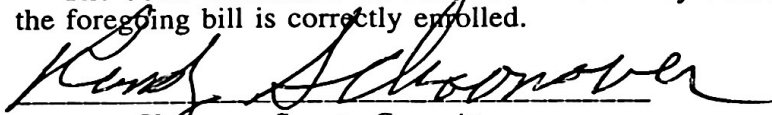
194 (6) *Electricity generated by manufacturer or affiliate*
195 *for use in manufacturing activity.*— When electricity used

196 in a manufacturing activity is generated in this state by the
197 person who owns the manufacturing facility in which the
198 electricity is used and the electricity generating unit or
199 units producing the electricity so used are owned by such
200 manufacturer, or by a member of the manufacturer's con-
201 trolled group, as defined in section 267 of the Internal
202 Revenue Code of 1986, as amended, the generation of the
203 electricity shall not be taxable under this article: *Provid-*
204 *ed*, That any electricity generated or produced at the
205 generating unit or units which is sold or used for purposes
206 other than in the manufacturing activity shall be taxed
207 under this section and the amount of tax payable shall be
208 adjusted to be equal to an amount which is proportional to
209 the electricity sold for purposes other than the manufac-
210 turing activity. The department of tax and revenue shall
211 promulgate rules in accordance with article three, chapter
212 twenty-nine-a of the code: *Provided*, That the rules shall
213 be promulgated as emergency rules.

214 (d) Beginning the first day of June, one thousand
215 nine hundred ninety-five, electric light and power compa-
216 nies that actually paid tax based on the provisions of sub-
217 division (3), subsection (a), section two-d of this article or
218 section two-m of this article for every taxable month in
219 one-thousand nine hundred ninety-four shall determine
220 their liability for payment of tax under this article in ac-
221 cordance with subdivisions (1) and (2) of this subsection.
222 All other electric light and power companies shall deter-
223 mine their liability for payment of tax under this article
224 exclusively under this section beginning the first day of
225 June, one thousand nine hundred ninety-five and thereaf-
226 ter.

227 (1) If for taxable months beginning on or after the
228 first day of June, one thousand nine hundred ninety-five,
229 liability for tax under section two-o of this article is equal
230 to or greater than the sum of the power company's liability
231 for payment of tax under subdivision (3), subsection (a),
232 section two-d of this article and this section, then the com-
233 pany shall pay the tax due under section two-o of this

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



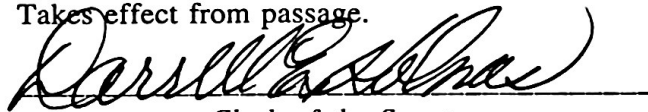
Chairman Senate Committee



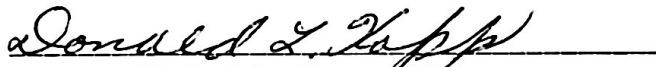
Chairman House Committee

Originating in the House.


Takes effect from passage.



Clerk of the Senate



Clerk of the House of Delegates

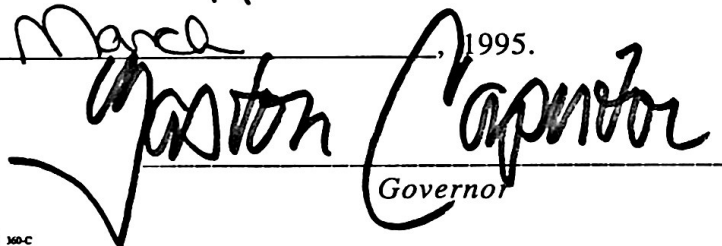


President of the Senate



Speaker of the House of Delegates

The within is approved this the 24th
day of March, 1995.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/95

Time 3:53 PM