WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 463

(By Senators Helmick and Fanning)

PASSED ______ April 13, 2001 ______
In Effect ______ from ______ Passage
AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen-a of said chapter by adding thereto a new section, designated section three-e, all relating to taxes imposed on subsequent coal products; outlining the tax imposed on producing synthetic fuel from coal; dedicating a certain amount of this tax to the counties where produced; outlining the imposition of a privilege tax on extracting and processing material from a refuse, gob pile or other sources of waste coal to produce coal; exempting electrical co-generation plants; and dedicating this tax to certain county commissions for use in economic development and infrastructure improvements.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

(a) Rate and measure of tax. — Upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, the amount of the tax shall be equal to fifty cents per ton of synthetic fuel manufactured or produced for sale, profit or commercial use. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the tax commissioner as provided in article three, chapter twenty-nine-a of this code.

(b) Definitions. — For purposes of this section:
(1) "Fuel" means material that produces usable heat upon combustion.

(2) "Fuel manufactured or produced from coal" means liquid, gaseous or solid fuels produced from coal, including, but not limited to, such fuels when used as feedstocks.

(3) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on the effective date of this section, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on the effective date of this section. "Synthetic fuel" does not include coke or coke gas.

(4) "Ton" means two thousand pounds.

(c) Credits not allowed against tax. – When determining the amount of tax due under this section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. – The tax commissioner may, in the commissioner's discretion, promulgate an emergency rule, as provided in article three, chapter twenty-nine-a of this code, that clarifies, explains or implements the provisions of this section.

(e) Dedication of proceeds. – The net amount of tax collected for exercise of the privilege taxed under this section shall be deposited into the "Mining and Reclamation Operations Fund" created in the state treasury by section thirty-two, article three, chapter twenty-two of
this code: 

Provided, That the net amount of tax collected in excess of four million dollars, not to exceed two million dollars, shall be dedicated to the counties in which the synthetic fuel plants are domiciled and are producing as of the first day of April, two thousand one: Provided, however, That the county shall use ninety percent of the funds for use in infrastructure improvement and ten percent of the funds for economic development: Provided further, That the net amount of tax collected in excess of six million dollars, not to exceed two million dollars, shall be equally divided among the remaining counties having no synthetic fuel plants domiciled and producing within their borders as of the first day of April, two thousand one: And provided further, That the county shall first use such moneys for regional jail and correctional authority and county jail expenses with any remainder being subject to county discretion: And provided further, That the net amount of tax collected in excess of eight million dollars shall be dedicated to the general revenue fund: And provided further, That funding provided by taxes pursuant to this section and section three-e, article thirteen-a of this chapter shall be administered by the office of community development.

(f) Effective date. – This section shall take effect upon enactment and the measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.

(g) Expiration date. – The tax imposed in this section shall expire and become void and of no effect for synthetic fuels produced after the thirtieth day of June, two thousand seven.

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.
(a) The Legislature hereby finds and declares the following:

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

(2) That the by-product created from processing coal is commonly deposited in what are known as refuse or gob piles.

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

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

Based on the foregoing findings, the Legislature concludes that an incentive to extracting and recovering material contained in refuse, gob piles and other sources of waste coal located in this state, and subsequently, processing, washing and preparing this material to produce coal should be implemented to encourage the production of this coal from refuse or gob piles located in this state.

(b) Imposition of tax. — In lieu of: (i) The annual privilege tax imposed on the severance of coal pursuant to section three, article thirteen-a of this chapter; and (ii) the minimum severance tax imposed by section three, article twelve-b of this chapter for the privilege of engaging or continuing within this state in the business of extracting and recovering material from a refuse, gob pile or other sources of waste coal and, subsequently, processing,
washing and preparing this extracted or recovered material to produce coal for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising that privilege an annual privilege tax.

(c) *Rate and measure of tax.* – The tax imposed in subsection (b) of this section shall be two and one-half percent of the gross value of the coal so produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) *Tax in addition to other taxes.* – The tax imposed by this section applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state and, subsequently, processing, washing and preparing this extracted and recovered material to produce coal for sale, profit or commercial use and shall be in addition to all other taxes imposed by law:

*Provided,* That the tax imposed by this section is in lieu of the tax imposed pursuant to section three, article thir-teen-a of this chapter and the tax imposed by section three, article twelve-b of this chapter: *Provided, however,* That funding provided by taxes pursuant to this section and section two-f, article thirteen of this chapter shall be administered by the office of community development.

(e) *Exemption.* – That the tax imposed in subsection (b) shall not apply to any electrical power co-generation plant burning material from its wholly owned refuse or gob pile.

(f) *Dedication of taxes collected.* – The taxes collected under the provisions of this section are hereby dedicated to the county commissions of the counties in which the refuse, gob piles or other sources of waste coal are located for use in economic development and infrastructure improvements: *Provided,* That the county shall use ninety percent of the funds for use in infrastructure improvement and ten percent of the funds for economic development.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .................................... this the .................................... Day of .............., 2001.

Governor