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SB 588

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

**Senate Bill No. 588**

(By SENATORS FANNING, BAILEY, MCKENZIE AND KESSLER)

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[Passed March 8, 2007; in effect from passage.]

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AN ACT to amend and reenact §11-13-2f of the Code of West Virginia, 1931, as amended, relating to the taxation of synthetic fuel; removing the expiration date of the tax on manufacturing or production of synthetic fuel from coal which is scheduled to expire on the thirtieth day of June, two thousand seven; and amending the definition of synthetic fuel-producing county.

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

That §11-13-2f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

**§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.**

1     (a) *Rate and measure of tax.* — There is hereby  
2 imposed an annual tax, in accordance with section two  
3 of this article, upon every person engaging or  
4 continuing within this state in the business of  
5 manufacturing or producing synthetic fuel from coal for  
6 sale, profit or commercial use, either directly or through  
7 the activity of others, in whole or in part, and the  
8 amount of the tax shall be equal to fifty cents per ton of  
9 synthetic fuel manufactured or produced for sale, profit  
10 or commercial use during the taxable year. When a  
11 fraction of a ton is included in the measure of tax, the  
12 rate of tax as to that fraction of a ton shall be  
13 proportional. The measure of tax is the total number of  
14 tons of synthetic fuel product manufactured or  
15 produced in this state during the taxable year for sale,  
16 profit or commercial use regardless of the place of sale  
17 or the fact that deliveries may be made to points outside  
18 this state. Liability for payment of this tax shall accrue  
19 when the synthetic fuel product is sold by the  
20 manufacturer or producer, determined by when the  
21 producer or manufacturer recognizes gross receipts for  
22 federal income tax purposes. When there is no sale of  
23 the synthetic fuel product, liability for tax shall accrue

24 when the synthetic fuel product is shipped from the  
25 manufacturing facility for commercial use, whether by  
26 the taxpayer or by a related party, except as otherwise  
27 provided in legislative rules promulgated by the Tax  
28 Commissioner as provided in article three, chapter  
29 twenty-nine-a of this code.

30 (b) *Definitions.* — For purposes of this section:

31 (1) “Fiscal year” means the fiscal year of this state.

32 (2) “Fuel” means material that produces usable heat  
33 or power upon combustion.

34 (3) “Fuel manufactured or produced from coal” means  
35 liquid, gaseous or solid fuels produced from coal,  
36 including, but not limited to, such fuels when used as  
37 feedstocks.

38 (4) “Office of chief inspector” means the state Auditor  
39 as ex officio chief inspector and supervisor of local  
40 government offices in accordance with section eleven,  
41 article nine, chapter six of this code.

42 (5) “Provisional share” means the portion of the  
43 Synthetic Fuel-Producing Counties Grant Fund that is  
44 available for possible distribution to each synthetic  
45 fuel-producing county. The amount of each county’s  
46 provisional share is derived by dividing the share  
47 computation base by the number of synthetic fuel-  
48 producing counties in this state during the fiscal year.  
49 The share computation base is the sum of: (A) Net  
50 revenues deposited in the synthetic fuel-producing  
51 counties grant fund for the fiscal year; and (B) any  
52 amounts repooled for the fiscal year into the synthetic

53 fuel-producing counties grant fund under this section;  
54 less (C) the amount dedicated and allotted to the  
55 director of the Development Office under this section  
56 for administration of the synthetic fuel-producing  
57 counties grant program. A county shall be counted as a  
58 synthetic fuel-producing county only if a synthetic  
59 fuel-manufacturing plant actively produced synthetic  
60 fuel in the county during the fiscal year.

61 (6) "Synthetic fuel manufactured or produced from  
62 coal" or "synthetic fuel" means and includes, but is not  
63 limited to, any fuel that is made or formed into a  
64 briquette, fragment, sheet, flake or other solid form by  
65 combining a binder or binding substance with coal dust,  
66 coal fines, crushed coal, pulverized coal, stoker fines,  
67 waste coal, coal or material derived from slurry ponds,  
68 coal or material derived from gob piles or any  
69 combination of the aforementioned materials without  
70 regard to whether any federal tax credit is, or would  
71 have been, available for or with relation to the  
72 production of such fuel. The term "synthetic fuel  
73 manufactured or produced from coal" or "synthetic  
74 fuel" also means, but is not limited to, fuel  
75 manufactured or produced from coal for which credit is  
76 allowable for federal income tax purposes under section  
77 twenty-nine of the United States Internal Revenue  
78 Code, as in effect on the first day of January, two  
79 thousand one, or for which credit would have been  
80 allowable if the synthetic fuel was produced from a  
81 facility, or expansion of a facility, that meets the  
82 requirement of section twenty-nine of the Internal  
83 Revenue Code or would have met the requirements on  
84 the first day of January, two thousand one,  
85 notwithstanding that such facility or expansion of a  
86 facility may have been placed in service either prior to

87 or subsequent to the first day of January, two thousand  
88 one. "Synthetic fuel" does not include coke or coke gas.

89 (7) "Synthetic fuel-producing county" means a county  
90 of this state in which a synthetic fuel-manufacturing  
91 plant is physically located that actively produces  
92 synthetic fuel during the fiscal year. For purposes of  
93 determining whether a county is a synthetic fuel-  
94 producing county, the location of the synthetic fuel-  
95 manufacturing company headquarters, the state of  
96 incorporation or organization of the company or the  
97 location of any managerial office or facility or other  
98 office or facility of the company, other than the  
99 synthetic fuel-manufacturing plant, and the physical  
100 location where the coal or other material used in  
101 synthetic fuel manufacturing is extracted from the earth  
102 shall not be determinative of the designation of a county  
103 as a synthetic fuel-producing county.

104 (8) "Synthetic fuel-nonproducing county" means any  
105 county of this state other than a synthetic fuel-  
106 producing county.

107 (9) "Ton" means two thousand pounds.

108 (10) "Director of the Development Office" or  
109 "director" means the director of the West Virginia  
110 Development Office created and continued under article  
111 two, chapter five-b of this code.

112 (c) *Credits not allowed against tax.* — When  
113 determining the amount of tax due under this section,  
114 no credit shall be allowed under section three-c or  
115 three-d of this article or under any other article of this  
116 chapter or any other chapter of this code unless it is

117 expressly provided that the credit applies to the  
118 business and occupation tax on the privilege of  
119 manufacturing or producing synthetic fuel.

120 (d) *Emergency rule authorized.* — The Tax  
121 Commissioner may, in the commissioner's discretion,  
122 promulgate an emergency rule as provided in article  
123 three, chapter twenty-nine-a of this code that clarifies,  
124 explains or implements the provisions of this section.

125 (e) *Dedication and distribution of proceeds, creation*  
126 *of funds.* —

127 (1) The first four million dollars of the net amount of  
128 tax collected during each fiscal year for exercise of the  
129 privilege taxed under this section shall be deposited  
130 into the Mining and Reclamation Operations Fund  
131 created in the State Treasury by section thirty-two,  
132 article three, chapter twenty-two of this code.

133 (2) There is hereby created a fund in the State  
134 Treasury entitled the Synthetic Fuel-Producing  
135 Counties Grant Fund which shall be a revolving fund  
136 that shall carry over each fiscal year. The net amount of  
137 tax collected for exercise of the privilege taxed under  
138 this section in excess of the first four million dollars  
139 during each fiscal year, not to exceed two million sixty  
140 thousand dollars, shall be deposited in the Synthetic  
141 Fuel-Producing Counties Grant Fund. Moneys in the  
142 Synthetic Fuel-Producing Counties Grant Fund in  
143 excess of moneys allocated to the director of the  
144 Development Office shall be dedicated to and  
145 distributed among the synthetic fuel-producing counties  
146 under the Synthetic Fuel-Producing Counties Grant  
147 Program as provided in this section. The county

148 commission of a synthetic fuel-producing county shall  
149 use ninety percent of the funds distributed to the county  
150 out of the Synthetic Fuel-Producing Counties Grant  
151 Fund for infrastructure improvement and ten percent of  
152 the funds distributed to the county out of the Synthetic  
153 Fuel-Producing Counties Grant Fund for economic  
154 development.

155 (3) There is hereby created in the State Treasury a  
156 fund entitled the synthetic fuel-nonproducing counties  
157 fund which shall be a revolving fund that shall carry  
158 over each fiscal year. The net amount of tax collected  
159 for exercise of the privilege taxed under this section in  
160 excess of the first six million sixty thousand dollars  
161 during each fiscal year, not to exceed two million  
162 dollars, shall be deposited in the synthetic fuel-  
163 nonproducing counties fund and equally divided and  
164 distributed among the synthetic fuel-nonproducing  
165 counties. The county commission of a synthetic fuel-  
166 nonproducing county shall first use such moneys for  
167 Regional Jail and Correctional Facility Authority and  
168 county jail expenses, and shall use any remainder for  
169 such lawful public purposes as the county commission  
170 may prescribe.

171 (4) The net amount of the tax collected in excess of  
172 eight million sixty thousand dollars during each fiscal  
173 year shall be dedicated to the General Revenue Fund.

174 (5) The office of chief inspector shall annually  
175 determine that a county's expenditures of moneys  
176 distributed under this section is in compliance with the  
177 requirements of this section.

178 (6) For purposes of this subsection, "net amount of tax

179 collected” means the gross amount of tax collected  
180 under this section less allowed refunds and credits.

181 (f) *Administration of the Synthetic Fuel-Producing*  
182 *Counties Grant Program.* —

183 (1) The Director of the Development Office is hereby  
184 authorized and empowered to administer the  
185 distribution of moneys in the Synthetic Fuel-Producing  
186 Counties Grant Fund.

187 (A) On or before the plan submission due date  
188 prescribed by the Director of the Development Office,  
189 the county commission of each synthetic fuel-producing  
190 county may annually, or with such frequency as may be  
191 prescribed by the Director of the Development Office,  
192 submit a plan to the Director of the Development Office  
193 for use of the county’s provisional share of the synthetic  
194 fuel-producing counties grant fund.

195 (B) A grant of moneys out of the Synthetic Fuel-  
196 Producing Counties Grant Fund shall only be  
197 distributed to a synthetic fuel-producing county or  
198 encumbered for the use of a synthetic fuel-producing  
199 county after approval by the Director of the  
200 Development Office of the plan for use of the county’s  
201 provisional share of the fund, submitted to the Director  
202 of the Development Office by the county commission.  
203 The Director of the Development Office shall approve  
204 the synthetic fuel-producing county’s plan for use if the  
205 plan for use reasonably conforms to the requirements of  
206 this section and the rules promulgated with relation  
207 thereto.

208 (C) If the county’s plan is approved, the Director of

209 the Development Office may authorize a grant of money  
210 out of the Synthetic Fuel-Producing Counties Grant  
211 Fund to the county to be used by the county as specified  
212 in the approved plan for use.

213 (D) The Director of the Development Office may  
214 authorize distribution of any amount encumbered for  
215 the use of the county and carried over from a prior  
216 period in accordance with applicable plans for use  
217 previously approved.

218 (E) The Director of the Development Office may  
219 authorize encumbrances for any synthetic fuel-  
220 producing county of moneys in the Synthetic Fuel-  
221 Producing Counties Grant Fund, up to the amount of  
222 the county's provisional share for the fiscal year, for one  
223 or more qualified uses specified in the county's plan for  
224 use if the county's approved plan for use of the moneys  
225 sets forth a qualified use for the county's provisional  
226 share over a period of several fiscal years or a qualified  
227 use of the moneys calling for accumulation and  
228 distribution to the county in one or more subsequent  
229 fiscal years. Encumbered funds may carry over to  
230 succeeding fiscal years and may be used to accumulate  
231 reserves over a period of time for use by the county.

232 (F) In no case may an amount distributed to a  
233 synthetic fuel-producing county exceed the amount of  
234 a county's provisional share for the fiscal year plus the  
235 amount of moneys encumbered in the fund for the use  
236 of the particular county and carried over from a prior  
237 period.

238 (2) The Director of the Development Office may  
239 approve distributions of a county's provisional share of

240 the Synthetic Fuel-Producing Counties Grant Fund for  
241 use as the county's share for state or federal matching  
242 funds programs so long as, in the aggregate, ninety  
243 percent of the funds distributed to the county out of the  
244 Synthetic Fuel-Producing Counties Grant Fund are  
245 used for infrastructure improvement and ten percent of  
246 the funds distributed to the county out of the Synthetic  
247 Fuel-Producing Counties Grant Fund are used for  
248 economic development: *Provided*, That no county may  
249 use any amount distributed out of the Synthetic Fuel-  
250 Producing Counties Grant Fund as money to be  
251 matched under the funds matching program authorized  
252 by subsection (b), section three, article two, chapter  
253 five-b of this code.

254 (3) *Repooling*. —

255 (A) Any synthetic fuel-producing county that has  
256 failed to have its plan, or amended and resubmitted  
257 plan or plans, approved by the Director of the  
258 Development Office for a period of eighteen months  
259 immediately subsequent to the initial plan submission  
260 date shall lose its entitlement to the provisional share of  
261 revenues deposited in the fund and attributable to the  
262 fiscal year to which that plan relates and the  
263 provisional share that would have been attributable to  
264 that county for that fiscal year shall be pooled with all  
265 other receipts in the Synthetic Fuel-Producing Counties  
266 Grant Fund attributable to revenues for the fiscal year  
267 during which the eighteen-month period ends and shall  
268 then be reallocated equally to all synthetic fuel-  
269 producing counties as part of the provisional share of  
270 each, as if the repooled moneys were tax revenues  
271 deposited into the fund during the fiscal year in which  
272 the eighteen-month period ended. For purposes of this

273 subsection, the “initial plan submission date” means the  
274 earlier of: (i) The required submission date, as  
275 prescribed by the Director of the Development Office,  
276 for the initial plan for use of the county’s provisional  
277 share of the Synthetic Fuel-Producing Counties Grant  
278 Fund for the fiscal year, with such extensions of time to  
279 file as may be authorized under rules promulgated by  
280 the Director of the Development Office; or (ii) the actual  
281 date of submission of the initial plan for the fiscal year.  
282 For purposes of this subsection, the term “initial plan”  
283 means the first plan for use that was submitted, or that  
284 should have been submitted, by a county for the fiscal  
285 year, before the submission of any amended, revised or  
286 resubmitted plan by the county for that fiscal year.

287 (B) Any synthetic fuel-producing county which fails to  
288 timely submit a plan for use of its provisional share of  
289 the Synthetic Fuel-Producing Counties Grant Fund,  
290 with such extensions of time to file as may be  
291 authorized under rules promulgated by the Director of  
292 the Development Office, shall lose its entitlement to its  
293 provisional share of revenues deposited in the fund and  
294 attributable to that fiscal year and the provisional share  
295 that would have been attributable to that county for  
296 that year shall be pooled with all other receipts in the  
297 Synthetic Fuel-Producing Counties Grant Fund  
298 attributable to revenues for the fiscal year and shall be  
299 reallocated equally among the remaining synthetic fuel-  
300 producing counties other than the county or counties  
301 that have failed to timely file the plan for use and shall  
302 be made available for distribution to those remaining  
303 counties, as part of their provisional share for the fiscal  
304 year.

305 (C) Funds encumbered pursuant to approval of the

306 Director of the Development Office under this  
307 subsection shall not be subject to repooling: *Provided*,  
308 That if the Director of the Development Office  
309 determines that moneys previously distributed to a  
310 county out of the Synthetic Fuel-Producing Counties  
311 Grant Fund have not been used as required under the  
312 approved plan for the county or determines that  
313 previously distributed moneys derived from  
314 encumbered funds have not been used for the qualified  
315 purpose for which the encumbrance was originally  
316 approved or if there appears to be a reasonable  
317 probability that encumbered funds will not be used for  
318 that qualified purpose, the Director of the Development  
319 Office may revoke the encumbrance of any funds of that  
320 synthetic fuel-producing county remaining in the fund  
321 and repool the funds so encumbered for reallocation to  
322 all synthetic fuel-producing counties. The Director of  
323 the Development Office may, in the director's  
324 discretion, give the county an opportunity to cure the  
325 nonqualified use of moneys derived from the synthetic  
326 fuel-producing counties grant fund or to submit an  
327 alternative plan for use of the encumbered funds which  
328 may be approved by the director if that plan complies  
329 with the requirements of this section.

330 (g) *Promulgation of rules by the director of the*  
331 *Development Office authorized.* — The Director of the  
332 Development Office, in his or her discretion, may  
333 promulgate an emergency rule as provided in article  
334 three, chapter twenty-nine-a of this code that clarifies,  
335 explains or implements the Synthetic Fuel-Producing  
336 Counties Grant Program, distribution of moneys out of  
337 or encumbrance of moneys in the Synthetic Fuel-  
338 Producing Counties Grant Fund. The Director of the  
339 Development Office is hereby granted continuing

340 authority to promulgate in accordance with article  
341 three, chapter twenty-nine-a of this code such  
342 interpretive, legislative or procedural rules, or any  
343 combination thereof, for administration of the Synthetic  
344 Fuel-Producing Counties Grant Program as the Director  
345 of the Development Office may find necessary and  
346 appropriate. The director of the Development Office  
347 may prescribe criteria for qualification under the  
348 infrastructure improvement use requirement and the  
349 economic development requirement of this section.

350 (h) There is hereby dedicated and allocated to the  
351 West Virginia Development Office sixty thousand  
352 dollars annually for administration of the Synthetic  
353 Fuel-Producing Counties Grant Program under this  
354 section. Sixty thousand dollars shall be paid out of the  
355 Synthetic Fuel-Producing Counties Grant Fund to the  
356 director of the Development Office each fiscal year for  
357 administration of the Synthetic Fuel-Producing  
358 Counties Grant Program.

359 (i) *Effective date.* —

360 (1) This section as enacted in the year two thousand  
361 took effect upon enactment. The measure of tax shall  
362 include all synthetic fuel sold or shipped after the first  
363 day of January, two thousand one, regardless of when  
364 the synthetic fuel was manufactured or produced in this  
365 state.

366 (2) Amendments to this section enacted during the  
367 fifth extraordinary session of the Legislature in the year  
368 two thousand one shall have retroactive effect to the  
369 first day of January, two thousand one, and the measure  
370 of tax shall include all synthetic fuel sold or shipped

371 after the first day of January, two thousand one,  
372 regardless of when the synthetic fuel was manufactured  
373 or produced in this state.

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

*Ch White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Russell G. Thomas*  
.....  
Clerk of the Senate

*James M. Sear*  
.....  
Clerk of the House of Delegates

*Carl R. Tompkins*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *4<sup>th</sup>* Day of *April* ....., 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 1:55 pm