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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2012



ENROLLED

House Bill No. 101

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed March 16, 2012

To Take Effect From Passage

HB101

E N R O L L E D

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H. B. 101

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 16, 2012; to take effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-3a, §11-13CC-4 and §11-13CC-5; and to amend and reenact §24-2-1j of said code, all relating to creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act; making legislative findings and declaring purpose; establishing tax credits for suppliers of coal to certain electric utilities who are subject to the coal severance tax subject to certain limitations and requirements; specifying when the tax credits may be claimed; authorizing the carry forward of tax credits subject to certain limitations and restrictions; specifying how the tax credits are calculated and allocated; providing for applicability of tax credit against required minimum severance tax payments on coal; specifying how the payments triggered by the tax credits are to be calculated and made; authorizing the notification and disclosure of certain information related to the implementation and administration of tax credits and required payments; establishing certain effective dates and expiration dates; granting the Public Service Commission certain authority concerning special rates and prescribing certain limitations and requirements related thereto; and requiring information on special rates in the Public Service Commission's annual report.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-3a, §11-13CC-4 and §11-13CC-5; and that §24-2-1j of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13CC. ENERGY INTENSIVE INDUSTRIAL CONSUMERS REVITALIZATION TAX CREDIT.

§11-13CC-1. Short title.

1 This article may be cited as the “Energy Intensive
2 Industrial Consumers Revitalization Tax Credit Act.”

§11-13CC-2. Legislative findings and purpose.

1 The Legislature finds that:

2 (a) West Virginia enjoys a competitive economic
3 advantage among the states attributable to relatively low-cost
4 electric power due in considerable measure to an abundance
5 of coal resources, production from which powers electric
6 generation in the state.

7 (b) As a consequence, a number of energy intensive
8 industrial consumers of electric power have located in the
9 state and have provided jobs for its citizens and an increased
10 tax base that contributes to the support of schools, other
11 institutions, and programs that benefit all West Virginians.

12 (c) As the result of competitive disadvantages emanating
13 from outside the state and the current state of the national
14 economy, some energy intensive industrial consumers of
15 electric power have had to cease doing business in the state
16 or are experiencing or may experience strains that could
17 threaten their viability and continued operation.

18 (d) Conversely, coal production in the state is relatively
19 stable and is benefitting from demand from coal purchasers
20 inside the state, outside the state, and outside the country,
21 which demand has increasingly benefitted the state in terms
22 of its coal severance tax revenues.

23 (e) It is in the public interest for the state to assist eligible
24 energy intensive industrial consumers of electric power
25 determined to be in need of special rate assistance pursuant
26 to subsection (g), section one-j, article two, chapter
27 twenty-four of this code, in order to encourage them to
28 locate, to remain in operation, or to resume operation, in
29 West Virginia on a long-term basis, by employing a portion
30 of the coal severance tax revenues to reduce such industrial
31 consumers' electric power costs without imposing an undue
32 burden on electric utilities or their other customers.

33 (f) In furtherance of its findings, the Legislature's
34 purpose in this article is to create a credit, as provided in
35 section three of this article, against the coal severance tax
36 imposed and levied under the provisions of subsections (a)
37 and (b), section three, article thirteen-a of this chapter, of
38 which the primary ultimate economic beneficiary shall be
39 eligible energy intensive industrial consumers of electric
40 power determined to be in need of special rate assistance
41 pursuant to subsection (g), section one-j, article two, chapter
42 twenty-four of this code.

§11-13CC-3. Amounts of credits; limitations.

1 (a) Every taxpayer which is a supplier of coal to a West
2 Virginia electric utility providing a special rate to one or
3 more eligible energy intensive industrial consumers of
4 electric power pursuant to subsection (g), section one-j,
5 article two, chapter twenty-four of this code and which is
6 subject to paying the tax on the privilege of severing coal
7 levied and imposed by subsections (a) and (b), section three,
8 article thirteen-a of this chapter, prior to the application of
9 any other credits against the tax, shall be entitled to a credit
10 against that tax in an amount determined by the Public
11 Service Commission pursuant to subsection (g), section one-j,
12 article two, chapter twenty-four of this code, subject to the
13 following limitations:

14 (1) The tax credits authorized by this article shall only be
15 available when the eligible energy intensive industrial
16 consumer of electric power receives a special rate from a
17 West Virginia electric utility pursuant to subsection (g),
18 section one-j, article two, chapter twenty-four of this code;

19 (2) The total aggregate credits available to all taxpayers
20 under this section shall not exceed \$20 million in any
21 calendar year; and

22 (3) The total credits available to any taxpayer in a given
23 calendar year shall not exceed ninety-three percent of that
24 taxpayer's tax liability imposed and levied under subsections
25 (a) and (b), section three, article thirteen-a of this chapter, so
26 as to preserve undiminished the seven percent of total coal
27 severance tax revenues that is apportioned among counties
28 and municipalities pursuant to section six, article thirteen-a
29 of this chapter.

30 (b) If the full amount of the \$20 million in credits
31 authorized by this article is not allocated and claimed in any
32 calendar year, during all periods when a special rate is in
33 effect for any one or more eligible energy intensive industrial
34 consumers, the unused credits may be carried forward to
35 future years: *Provided*, That the maximum aggregate amount
36 of unused credits that may be carried forward to future years
37 shall not exceed \$15 million at any time. In no event may the
38 amount of credits allocated and claimed in any single year,
39 including unused credits that have been carried forward,
40 exceed \$35 million.

41 (c) If in any year the taxpayers that are suppliers of coal
42 to a West Virginia electric utility providing a special rate to
43 one or more eligible energy intensive industrial consumers of
44 electric power entitled to receive credits pursuant to this
45 section cannot or do not claim credits in an amount equal to
46 the amount of tax credits designated by the commission, then
47 the affected public utility may allocate the unclaimed tax
48 credits, with such allocated amounts subject to the approval
49 of the Public Service Commission, to and the tax credits may
50 be claimed by any taxpayer that is subject to paying the tax
51 on the privilege of severing coal levied and imposed by
52 subsections (a) and (b), section three, article thirteen-a of this
53 chapter: *Provided*, That taxpayers receiving the reallocation
54 shall comply with the requirements and procedures set forth
55 in this article.

56 (d) All unused credits authorized under this article expire
57 and cease to be usable for tax years beginning on or after
58 December 31, 2021.

59 (e) The credits authorized in this article shall not become
60 available for any purpose prior to the Public Service
61 Commission's first approval of a special rate for an eligible
62 energy intensive industrial consumer. The credits provided

63 in this article may be claimed by taxpayers against periodic
64 installment payments of severance tax paid under the
65 provisions of section nine, article thirteen-a of this chapter.

§11-13CC-3a. Applicability to minimum severance tax credit.

1 Every taxpayer which applies the tax credit allowed
2 under section three of this article for a tax year shall also be
3 entitled to apply the tax credit against the minimum coal
4 severance tax imposed by article twelve-b of this chapter for
5 the same tax year in an amount up to the amount of the tax
6 credit applied for the tax year under the provisions of section
7 three of this article.

§11-13CC-4. Required payments to public utilities.

1 (a) Each person claiming any tax credit pursuant to
2 section three of this article shall, as a condition of receiving
3 that tax credit, make payment equal to ninety-seven percent
4 of the amount of that credit to the public utility providing
5 electric power to the special rate customer whose special rate
6 required the funding generated by that tax credit, as
7 determined by the Public Service Commission pursuant to
8 subsection (g), section one-j, article two, chapter twenty-four
9 of this code. Any payment made to the public utility
10 providing electric power to the special rate customer shall be
11 treated in the same manner as the payment of taxes under
12 section three, article thirteen-a of the chapter, and shall not be
13 treated as an adjustment to the price of coal sold to the public
14 utility.

15 (b) Each taxpayer that elects to participate in this tax
16 credit and required payment program shall notify the State
17 Tax Department of its election to participate at the time and
18 in such form of notification as prescribed by the State Tax
19 Department. Notwithstanding the provisions of section

20 five-d, article ten of this chapter or any other provision of this
21 code, the State Tax Department shall provide updated
22 notification to the Public Service Commission of the identity
23 of taxpayers from which it has received notification of
24 voluntary participation, and other information necessary for
25 the efficient and accurate administration of this article.
26 Notwithstanding any provision of this code to the contrary,
27 the Public Service Commission shall disclose to the State Tax
28 Department information necessary for the efficient and
29 accurate administration of this article. This information may
30 be provided to the electric utilities by the Public Service
31 Commission for purpose of calculating, pursuant to
32 subsection (g), section one-j, article two, chapter twenty-four
33 of this code, the allocated share of tax credits that are
34 available to each taxpayer, and payments that are required to
35 be made to the public utility in order to qualify for the tax
36 credit. Information disclosure to electric utilities by the
37 Public Service Commission is limited to that information
38 necessary for the calculations. Payment to the public utility
39 shall be made no later than the time at which the tax against
40 which the credit is taken would have been due and payable to
41 the state under the provisions of section nine, article
42 thirteen-a of this chapter.

43 (c) The three percent differential between a taxpayer's tax
44 credit and its required payment to the public utility is
45 intended as an inducement to the taxpayer to participate in
46 the tax credit and required payment mechanism provided in
47 this article and may be retained by the taxpayer as
48 compensation for the costs of participation.

§11-13CC-5. Expiration.

1 The provisions of this article shall be effective for tax
2 years beginning on or after January 1, 2012. No new tax
3 credits may be created for any tax year beginning on or after

4 December 31, 2021. All unused tax credits expire and cease
5 to be useable in tax years beginning on or after December 31,
6 2021.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.**

**§24-2-1j. Special rates for energy intensive industrial
consumers of electric power.**

1 (a) The Legislature hereby finds that:

2 (1) West Virginia enjoys relatively low cost electric
3 power rates for residential customers, business and industry
4 and these relatively low rates constitute a competitive
5 economic advantage for West Virginia;

6 (2) West Virginia has many energy intensive industrial
7 consumers of electric power, and has the ability to retain its
8 existing energy intensive industrial consumers of electric
9 power and attract additional energy intensive industrial
10 consumers of electric power in the future, through the
11 adoption of policies and the establishment of rates that
12 enhance and preserve the attractiveness of West Virginia as
13 a place for energy intensive industrial consumers to do
14 business;

15 (3) Energy intensive industrial consumers of electric
16 power create jobs, provide a substantial tax base and enhance
17 the productive capacity, competitiveness and economic
18 opportunities of West Virginia and all of its citizens;

19 (4) Energy intensive industrial consumers of electric
20 power help keep power rates low for all consumers of electric

21 power, including residential customers, by providing a large
22 consumption base over which the cost of producing electric
23 power may be spread from time to time;

24 (5) It is in the best interests of West Virginia, the citizens
25 of West Virginia, electric public utilities in West Virginia,
26 and all consumers of electric power in West Virginia,
27 including residential customers, to encourage the continued
28 development, construction, operation, maintenance and
29 expansion in West Virginia of industrial plants and facilities
30 which are energy intensive consumers of electric power,
31 thereby increasing the creation, preservation and retention of
32 jobs, expanding the tax base, helping keep power rates low
33 for all consumers of electric power, and enhancing the
34 productive capacity, competitiveness and economic
35 opportunities of all citizens of West Virginia;

36 (6) To encourage the continued development,
37 construction, operation, maintenance and expansion in West
38 Virginia of industrial plants and facilities which are energy
39 intensive consumers of electric power, the commission may
40 establish special rates under this section that in its judgment
41 are necessary or appropriate for the continued, new or
42 expanded operation of energy intensive industrial consumers
43 and that can reasonably be expected to support the long-term
44 operation of energy intensive industrial consumers, and that
45 do not impose an unreasonable burden upon electric public
46 utilities or their other customers; and

47 (7) To assist the commission in the exercise of its
48 authority to establish special rates under this section, the
49 Legislature creates in article thirteen-cc, chapter eleven of
50 this code a tax credit mechanism to provide a source of
51 funding to support special rates of which the commission may
52 avail itself in exercising said authority in certain
53 circumstances.

54 (b) As used in this section:

55 (1) "Energy intensive industrial consumer" means an
56 industrial facility, plant or enterprise that has a contract demand
57 of at least fifty thousand kilowatts of electric power at its West
58 Virginia facilities under normal operating conditions.

59 (2) "Special rate" means a rate set for an energy intensive
60 industrial consumer pursuant to this section.

61 (c) In addition to any authority of the commission to
62 allow special rates or contracts under any other provision of
63 the code or rule, and in addition to all other factors which the
64 commission may consider in setting rates for consumers of
65 electric power, including, but not limited to, the
66 commission's responsibilities under subsection (b), section
67 one, article one of this chapter, and notwithstanding any other
68 provisions of this code to the contrary, in setting a special
69 rate the commission may take into consideration fluctuations
70 in market prices for the goods or products produced by the
71 energy intensive industrial consumer of electric power, or
72 other variables or factors which may be relevant to or affect
73 the continuing vitality of the energy intensive industrial
74 consumer of electric power in dynamic markets. In setting a
75 special rate by reference to fluctuations in market prices for
76 the goods and products produced by an energy intensive
77 industrial consumer of electric power, the commission may
78 establish variable rates including, but not limited to, ceilings
79 and floors on the special rate, banking or crediting
80 mechanisms, caps, limits or other similar types of safeguards
81 that are intended by the commission, in its reasonable
82 judgment, to provide appropriate flexibility and predictability
83 in the special rate over time, to permit the energy intensive
84 industrial customer the ability to make the capital investments
85 and other commitments necessary to support the continued
86 operation of the facility.

87 (d) An energy intensive industrial consumer wishing to
88 apply for a special rate shall first enter into negotiations with
89 the utility that provides it with electric power, regarding the
90 terms and conditions of a mutually agreeable special rate. If
91 the negotiations result in an agreement between the energy
92 intensive industrial consumer and the utility, the energy
93 intensive industrial consumer and the utility shall make a
94 joint filing with the commission seeking approval of the
95 proposed special rate. If the negotiations are unsuccessful,
96 the energy intensive industrial consumer may file a petition
97 with the commission to consider establishing a special rate.
98 The commission shall have the authority to establish a special
99 rate upon the filing of either a joint filing or a petition
100 pursuant to this section.

101 (e) In order to qualify for a special rate, an energy
102 intensive industrial consumer shall:

103 (1) Have a contract demand of at least fifty thousand
104 kilowatts of electric power at its West Virginia facilities
105 under normal operating conditions;

106 (2) Create or retain at least twenty-five full-time jobs in
107 West Virginia;

108 (3) Have invested not less than \$500,000 in fixed assets,
109 including machinery and equipment, in West Virginia;

110 (4) Provide reasonable evidence that due to market
111 conditions in the industry in which the energy intensive
112 industrial consumer operates, or other factors bearing on
113 investment in and operation of the industrial facility or
114 facilities, without the special rate the operation or continued
115 operation of the industrial facility or facilities is threatened or
116 not economically viable under reasonable assumptions and

117 projections regarding the market and the operation of the
118 industrial facility or facilities;

119 (5) Provide reasonable evidence that, with the special
120 rate, the energy intensive industrial consumer intends to
121 operate the industrial facility or facilities in West Virginia for
122 an extended period of time, and that the operation or
123 continued operation of the industrial facility or facilities for
124 an extended period of time appears economically viable,
125 under reasonable assumptions and projections regarding the
126 market in which the energy intensive industrial consumer
127 operates and regarding the operation of the industrial facility
128 or facilities; and

129 (6) Provide information and data setting forth how the
130 energy intensive industrial consumer meets the qualifications
131 of this section, and how the special rate advances the policy
132 goals set forth in subsection (a) of this section.

133 (f) The commission shall determine whether any excess
134 revenue or revenue shortfall created by a special rate
135 authorized pursuant to this section should be allocated among
136 any other customers of the utility. In making that
137 determination, the commission shall consider all relevant
138 factors, including whether such allocation is just, reasonable,
139 and fairly balances the interests of other customers, the
140 utility, and the customer receiving the special rate.

141 (g) If the commission determines that: (1) A special rate
142 is necessary for the creation, preservation or retention of jobs
143 by the energy intensive industrial consumer; (2) in
144 connection with the initial special rate that is authorized by
145 the commission for an energy intensive industrial consumer,
146 the energy intensive industrial consumer will increase the
147 number of persons it employs, including both persons who
148 have been previously employed by the energy intensive

149 industrial consumer and persons not previously employed by
150 the energy intensive industrial consumer, by at least one
151 hundred fifty persons as a result of the special rate; (3) the
152 energy intensive industrial consumer will employ no fewer
153 than three hundred persons, which number may include, but
154 is not limited to, the persons newly hired or rehired pursuant
155 to the preceding clause in this subsection; (4) the energy
156 intensive industrial consumer has a contract demand of at
157 least two hundred fifty thousand kilowatts of electric power
158 at its West Virginia facilities under normal operating
159 conditions; and (5) a special rate for an energy intensive
160 industrial consumer of electric power would create a revenue
161 shortfall, the commission shall, prior to determining whether
162 it is reasonable to allocate all or a portion of the revenue
163 shortfall amount among a public utility's other customers,
164 first consider the availability of tax credits and payments
165 required to be made to public utilities pursuant to article
166 thirteen-cc, chapter eleven of this code to reduce or eliminate
167 a revenue shortfall. The commission shall identify in each
168 proceeding in which it establishes a special rate for an
169 eligible energy intensive industrial consumer the amount of
170 any unallocated revenue shortfall in need of funding pursuant
171 to article thirteen-cc, chapter eleven of this code to defray it
172 and shall project the amount of the gross tax credits needed
173 for that purpose after taking into consideration the net
174 amounts of credits that are required to be paid to utilities
175 pursuant to subsection (a), section four, article thirteen-cc,
176 chapter eleven of this code and the limits specified in section
177 three, article thirteen-cc, chapter eleven of this code. Tax
178 credits authorized under this section may be designated by
179 the commission only in respect of periods of time during
180 which the eligible energy intensive industrial consumer
181 employs at least three hundred persons. The commission's
182 determination as to the amount of tax credits on which it
183 relies in establishing a given special rate, shall constitute an
184 authorization for each supplier of West Virginia coal to the

185 utility offering that special rate to claim its allocated share of
186 the total amount of tax credits. The allocated share shall be
187 calculated by the affected public utility, subject to the
188 approval of the commission.

189 (h) The commission shall include in the annual report to
190 the Legislature which it makes pursuant to subsection (d),
191 section one, article one of this chapter a report on the tax
192 credits being employed pursuant to article thirteen-cc, chapter
193 eleven of this code to help fund special rates created under
194 this section.

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

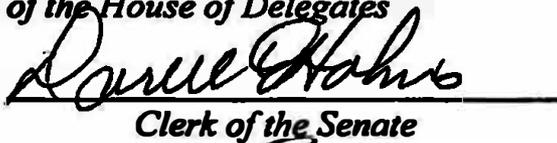

Chairman, House Committee


Chairman, Senate Committee

Originating in the House.

To take effect from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 2nd
day of April, 2012.


Governor

PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 1:35 pm