

Senate Bill No. 468

(By Senator Sypolt)

[Introduced February 9, 2011; referred to the Committee on
Energy, Industry and Mining; and then to the Committee on the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §22-29-1, §22-29-2,
§22-29-3 and §22-29-4, all relating to creating the Intrastate
Coal and Use Act; establishing that the environmental
regulation of coal and certain coal products mined and used
within the state are exclusively regulated by the West
Virginia Department of Environmental Protection; stating
legislative authority; and defining terms.

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 §22-29-1, §22-29-2,
§22-29-3 and §22-29-4, all to read as follows:

**ARTICLE 29. ENVIRONMENTAL REGULATION OF COAL MINED AND USED WITHIN
THE STATE.**

1 **§22-29-1. Short title.**

2 This article may be cited as the "Intrastate Coal and Use Act"

3 **§22-29-2. Authority.**

4 The Legislature declares that the authority for this article
5 is as follows:

6 (1) The Tenth Amendment to the United States Constitution
7 guarantees to the states and their people all powers not granted to
8 the federal government elsewhere in the Constitution and reserves
9 to the state and people of West Virginia certain powers as they
10 were understood at the time that West Virginia was admitted to
11 statehood in 1863. The guaranty of those powers is a matter of
12 contract between the state and people of West Virginia and the
13 United States as of the time that the compact with the United
14 States was agreed upon and adopted by West Virginia and the United
15 States in 1863.

16 (2) The Ninth Amendment to the United States Constitution
17 guarantees to the people rights not granted in the Constitution and
18 reserves to the people of West Virginia certain rights as they were
19 understood at the time that West Virginia was admitted to statehood
20 in 1863. The guaranty of those rights is a matter of contract
21 between the state and people of West Virginia and the United States
22 as of the time that the compact with the United States was agreed
23 upon and adopted by West Virginia and the United States in 1863.

24 (3) Section two, Article I of the West Virginia Constitution,
25 states: "The government of the United States is a government of

1 enumerated powers, and all powers not delegated to it, nor
2 inhibited to the states, are reserved to the states or to the
3 people thereof." Specifically enumerated among those "powers so
4 reserved to the states is the exclusive regulation of their own
5 internal government and police; and it is the high and solemn duty
6 of the several departments of government, created by this
7 Constitution, to guard and protect the people of this state from
8 all encroachments upon the rights so reserved."

9 (4) The regulation of intrastate commerce, including the
10 natural environment as affected by intrastate business, is vested
11 in the states under the Ninth and Tenth Amendments to the United
12 States Constitution and is specifically retained by the State of
13 West Virginia according to Section 2, Article I of the West
14 Virginia Constitution.

15 **§22-29-3. Definitions.**

16 As used in this article, the following definitions apply:

17 (1) "Borders of West Virginia" means the boundaries of the
18 State of West Virginia described in Section 1, Article II of the
19 West Virginia Constitution.

20 (2) The term "coal mine" means those operations removing coal
21 from a coal seam or seams, whether aboveground or underground.

22 (3) "Chemically altered coal product" means any product
23 derived principally from coal, including, but not limited to, coke
24 or liquid fuels derived from coal by any process.

25 **§22-29-4. Requirements.**

1 (a) In light of the above findings, environmental regulation
2 in West Virginia for all purposes of regulating business activity
3 performed in West Virginia, when the products of such business
4 activities are held, maintained, or retained within the borders of
5 West Virginia, is the principal responsibility of the West Virginia
6 Department of Environmental Protection.

7 (b) Any West Virginia coal mine producing coal which is used
8 commercially or privately in West Virginia and which is consumed or
9 otherwise remains within the borders of West Virginia and any West
10 Virginia facility producing chemically altered coal products used
11 commercially or privately in West Virginia which remain within the
12 borders of West Virginia shall be issued a permit to operate by the
13 West Virginia Department of Environmental Protection once the West
14 Virginia Department of Environmental Protection has certified that
15 the mine or facility is compliant with all applicable state and
16 federal laws or state and federal regulation.

17 (c) A sample from each vein of coal in a mine and a sample of
18 coal from each West Virginia source used at a facility producing a
19 chemically altered coal product shall be placed on record with the
20 West Virginia Department of Environmental Protection to verify the
21 West Virginia origin of the coal produced and used.

22 (d) The Legislature declares that the United States
23 Environmental Protection Agency, acting under the color of
24 authority of Congress to regulate interstate commerce, lacks the
25 authority to deny permits of operation to such coal mines and

1 facilities as the products of these mines and facilities have not
2 traveled in interstate commerce.

3 (e) This article applies to coal and to any chemically altered
4 coal product mined or produced in West Virginia from basic
5 materials which can be manufactured without the inclusion of any
6 significant components imported from another state.

7 (f) This article applies only to the issuance of a permit of
8 operation to a coal mine or facility producing chemically altered
9 coal products, the issuance of which permit is required by the
10 Clean Water Act or by another equivalent state or federal statute
11 or regulation. Nothing in this section shall be construed to limit
12 the effect of any other state or federal statute or regulation.

NOTE: The purpose of this bill is to create the Intrastate Coal and Use Act. The bill establishes that the environmental regulation of coal and certain coal products mined and used within the state are exclusively regulated by the West Virginia Department of Environmental Protection. The bill states the legislative authority and defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.