

1 **H. B. 2535**

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3 (By Delegates Nelson, J., Walters, Andes, Smith, R.,
4 Skaff, Phillips, R., Marcum, Stowers, Eldridge, Tomblin and Lynch)

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[Introduced February 19, 2013; referred to the

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Committee on Energy, Industry and Labor, Economic

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Development and Small Business then the Judiciary.]

**FISCAL
NOTE**

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by

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adding thereto a new article, designated §22-30-1, §22-30-2,

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§22-30-3 and §22-30-4; and to amend said code by adding

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thereto a new article, designated §22-31-1, §22-31-2, §22-31-3

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and §22-31-4, all relating to creating the "Intrastate Coal

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and Use Act" and the "Intrastate Oil and Natural Gas and Use

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Act"; establishing that the environmental regulation of coal

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and certain coal products mined and used within the state are

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exclusively regulated by the West Virginia Department of

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Environmental Protection; establishing that the environmental

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regulation of oil and natural gas produced and used within the

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state is exclusively regulated by the West Virginia Department

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of Environmental Protection; stating the legislative

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authority; and defining terms.

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

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That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §22-30-1, §22-30-2,
2 §22-30-3 and §22-30-4; and to amend said code by adding thereto a
3 new article, designated §22-31-1, §22-31-2, §22-31-3 and §22-31-4,
4 all to read as follows:

5 **ARTICLE 30. ENVIRONMENTAL REGULATION OF COAL MINED AND USED WITHIN**
6 **THE STATE.**

7 **§22-30-1. Short title.**

8 This article may be cited as the "Intrastate Coal and Use
9 Act."

10 **§22-30-2. Authority.**

11 The Legislature declares that the authority for this article
12 is as follows:

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

23 (2) The Ninth Amendment to the United States Constitution

1 guarantees to the people rights not granted in the Constitution and
2 reserves to the people of West Virginia certain rights as they were
3 understood at the time that West Virginia was admitted to statehood
4 in 1863. The guaranty of those rights is a matter of contract
5 between the state and people of West Virginia and the United States
6 as of the time that the compact with the United States was agreed
7 upon and adopted by West Virginia and the United States in 1863.

8 (3) Section two, Article I of the West Virginia Constitution,
9 states: "The government of the United States is a government of
10 enumerated powers, and all powers not delegated to it, nor
11 inhibited to the states, are reserved to the states or to the
12 people thereof." Specifically enumerated among those "powers so
13 reserved to the states is the exclusive regulation of their own
14 internal government and police; and it is the high and solemn duty
15 of the several departments of government, created by this
16 Constitution, to guard and protect the people of this state from
17 all encroachments upon the rights so reserved."

18 (4) The regulation of intrastate commerce, including the
19 natural environment as affected by intrastate business, is vested
20 in the states under the Ninth and Tenth Amendments to the United
21 States Constitution and is specifically retained by the State of
22 West Virginia according to Section 2, Article I of the West
23 Virginia Constitution.

24 **§22-30-3. Definitions.**

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

2 (1) "Borders of West Virginia" means the boundaries of the
3 State of West Virginia described in Section 1, Article II of the
4 West Virginia Constitution.

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

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

10 **§22-30-4. Requirements.**

11 (a) In light of the above findings, environmental regulation
12 in West Virginia for all purposes of regulating business activity
13 performed in West Virginia, when the products of such business
14 activities are held, maintained, or retained within the borders of
15 West Virginia, is the principal responsibility of the West Virginia
16 Department of Environmental Protection.

17 (b) Any West Virginia coal mine producing coal which is used
18 commercially or privately in West Virginia and which is consumed or
19 otherwise remains within the borders of West Virginia and any West
20 Virginia facility producing chemically altered coal products used
21 commercially or privately in West Virginia which remain within the
22 borders of West Virginia shall be issued a permit to operate by the
23 West Virginia Department of Environmental Protection once the West
24 Virginia Department of Environmental Protection has certified that

1 the mine or facility is compliant with all applicable state and
2 federal laws or state and federal regulation.

3 (c) A sample from each vein of coal in a mine and a sample of
4 coal from each West Virginia source used at a facility producing a
5 chemically altered coal product shall be placed on record with the
6 West Virginia Department of Environmental Protection to verify the
7 West Virginia origin of the coal produced and used.

8 (d) The Legislature declares that the United States
9 Environmental Protection Agency, acting under the color of
10 authority of Congress to regulate interstate commerce, lacks the
11 authority to deny permits of operation to such coal mines and
12 facilities as the products of these mines and facilities have not
13 traveled in interstate commerce.

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

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

24 **ARTICLE 31. ENVIRONMENTAL REGULATION OF OIL AND NATURAL GAS**

1 **PRODUCED AND USED WITHIN THE STATE.**

2 **§22-31-1. Short title.**

3 This article may be cited as the "Intrastate Oil and Natural
4 Gas and Use Act."

5 **§22-31-2. Authority.**

6 The Legislature declares that the authority for this article
7 is as follows:

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

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

1 upon and adopted by West Virginia and the United States in 1863.

2 (3) Section two, Article I of the West Virginia Constitution,
3 states: "The government of the United States is a government of
4 enumerated powers, and all powers not delegated to it, nor
5 inhibited to the states, are reserved to the states or to the
6 people thereof." Specifically enumerated among those "powers so
7 reserved to the states is the exclusive regulation of their own
8 internal government and police; and it is the high and solemn duty
9 of the several departments of government, created by this
10 Constitution, to guard and protect the people of this state from
11 all encroachments upon the rights so reserved."

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

18 **§22-31-3. Definitions.**

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

20 (1) "Borders of West Virginia" means the boundaries of the
21 State of West Virginia described in Section 1, Article II of the
22 West Virginia Constitution.

23 (2) The term "gas well" means those operations and facilities
24 producing natural gas from the substrata of real property.

1 (3) The term "oil well" means those operations and facilities
2 producing oil from the substrata of real property.

3 **§22-31-4. Requirements.**

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

10 (b) Any West Virginia oil or gas well producing oil or natural
11 gas which is used commercially or privately in West Virginia and
12 which is consumed or otherwise remains within the borders of West
13 Virginia shall be issued a permit to operate by the West Virginia
14 Department of Environmental Protection once the West Virginia
15 Department of Environmental Protection has certified that the oil
16 or gas well and any associated facilities are compliant with all
17 applicable state and federal laws or state and federal regulation.

18 (c) The Legislature declares that the United States
19 Environmental Protection Agency, acting under the color of
20 authority of Congress to regulate interstate commerce, lacks the
21 authority to deny permits of operation to these oil and gas wells
22 and facilities as the products of these wells and facilities have
23 not traveled in interstate commerce.

24 (d) This article applies to oil and natural gas produced in

1 West Virginia.

2 (e) This article applies only to the issuance of a permit of
3 operation to an oil or gas well, the issuance of which permit is
4 required by the Clean Water Act or by another equivalent state or
5 federal statute or regulation. Nothing in this section shall be
6 construed to limit the effect of any other state or federal statute
7 or regulation.

NOTE: The purpose of this bill is to create the Intrastate Coal and Use Act establishing that the environmental regulation of coal. The bill also creates the Intrastate Oil and Natural Gas and Use Act establishing that the environmental regulation of oil and natural gas produced and used within the state is exclusively regulated by the West Virginia Department of Environmental Protection. The bill establishes that the environmental regulation of coal, certain coal products, oil and gas mined or produced 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.

These articles are new; therefore, they have been completely underscored.