

1 **H. B. 2597**

2
3 (By Delegates Stowers, Eldridge, Phillips, R., Tomblin,
4 Phillips, L., Marcum, White, Perry, Ferro,
5 Craig and Skaff)
6

7 [Introduced February 21, 2013; referred to the
8 Committee on Energy, Industry and Labor, Economic
9 Development and Small Business then the Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated, §22-1B-1, §22-1B-2,
12 §22-1B-3 and §22-1B-4, all relating to creating the Intrastate
13 Coal and Use Act; establishing that the environmental
14 regulation of coal and certain coal products mined and used
15 within the state are exclusively regulated by the West
16 Virginia Department of Environmental Protection; stating the
17 legislative authority; requiring record keeping; and defining
18 terms.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §22-1B-1, §22-1B-2,
22 §22-1B-3 and §22-1B-4, all to read as follows:

23 **ARTICLE 1B. INTRASTATE COAL AND USE ACT.**

24 **§22-1B-1. Short title.**

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

1 Act".

2 **§22-1B-2. Legislative declarations of authority.**

3 (a) The Legislature declares that the authority for this
4 article is as follows:

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

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

23 (3) Article I, Section 2, of the West Virginia Constitution,
24 states that "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 Article I, Section 2, of the West
14 Virginia Constitution.

15 (b) The Legislature further declares that the United States
16 Environmental Protection Agency, acting under the color of
17 authority of Congress to regulate interstate commerce, lacks the
18 authority to deny permits of operation to such coal mines and
19 facilities as the products of these mines and facilities have not
20 traveled in interstate commerce. The recent actions of the United
21 States Environmental Protection Agency, specifically affecting
22 Logan County, by denying or shutting down mining permits long after
23 the basic permits had been approved presents the threat of the
24 United States Environmental Protection Agency shutting down all

1 coal mining in West Virginia, costing the jobs of thousands of
2 miners and driving the state into bankruptcy. Changing the rules
3 after the permitting process has long been in effect is improper,
4 illegal and amounts to the executive branch of the United States
5 legislating new law, without authority, proper procedure and with
6 no protection to the West Virginia coal industry or its employees.

7 **§22-1B-3. Definitions.**

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

9 (a) "Borders of West Virginia" means the boundaries of the
10 State of West Virginia described in Article II, Section 1, of the
11 1872 West Virginia Constitution.

12 (b) The term "coal mine" means those operations removing coal
13 from a coal seam or seams, whether aboveground or underground.

14 (c) "Chemically altered coal product" means any product
15 derived principally from coal, including, but not limited to, coke
16 or liquid fuels derived from coal by any process.

17 **§22-1B-4. Responsibility of West Virginia Department of**
18 **Environmental Protection.**

19 (a) In light of the above findings, environmental regulation
20 in West Virginia for all purposes of regulating business activity
21 performed in West Virginia, when the products of the business
22 activities are held, maintained or retained within the borders of
23 West Virginia, is the principal responsibility of the West Virginia
24 Department of Environmental Protection.

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

11 (c) A sample from each vein of coal in a mine and a sample of
12 coal from each West Virginia source used at a facility producing a
13 chemically altered coal product shall be placed on record with the
14 West Virginia Department of Environmental Protection to verify the
15 West Virginia origin of the coal produced and used.

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

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

1 the effect of any other state or federal statute or regulation.

NOTE: The purpose of this bill is to declare the position of West Virginia as opposed to that of the United States Environmental Protection Agency with regard to regulation of coal production; and to emphasize that under the Ninth and Tenth Amendments to the United States Constitution and Article I, Section 2, of the West Virginia Constitution, the regulation of coal production in West Virginia is subject to the authority of the West Virginia Department of Environmental Protection.

This article is new; therefore, it has been completely underscored.