

H. B. 2119

(By Delegates Howell, Moffatt, Hamrick, Householder, J. Nelson,
Statler, Walters, Arvon, Blair, Kessinger and Zatezalo)

[Introduced January 20, 2015; referred to the
Committee on Energy then the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, §22-32-2, §22-32-3 and §22-32-4, 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 the 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 §22-32-1, §22-32-2, §22-32-3 and §22-32-4, all to read as follows:

**ARTICLE 32. ENVIRONMENTAL REGULATION OF COAL MINED AND USED
WITHIN THE STATE.**

§22-32-1. Short title.

This article may be cited as the “Intrastate Coal and Use Act.”

§22-32-2. Authority.

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

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

8 (2) The Ninth Amendment to the United States Constitution guarantees to the people rights
9 not granted in the Constitution and reserves to the people of West Virginia certain rights as they were
10 understood at the time that West Virginia was admitted to statehood in 1863. The guaranty of those
11 rights is a matter of contract between the state and people of West Virginia and the United States as
12 of the time that the compact with the United States was agreed upon and adopted by West Virginia
13 and the United States in 1863.

14 (3) Section 2, Article I of the West Virginia Constitution, states: “The government of the
15 United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited
16 to the states, are reserved to the states or to the people thereof.” Specifically enumerated among
17 those “powers so reserved to the states is the exclusive regulation of their own internal government
18 and police; and it is the high and solemn duty of the several departments of government, created by
19 this Constitution, to guard and protect the people of this state from all encroachments upon the rights
20 so reserved.”

21 (4) The regulation of intrastate commerce, including the natural environment as affected by
22 intrastate business, is vested in the states under the Ninth and Tenth Amendments to the United

1 States Constitution and is specifically retained by the State of West Virginia according to Section
2 2, Article I of the West Virginia Constitution.

3 **§22-32-3. Definitions.**

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

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

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

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

11 **§22-32-4. Requirements.**

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

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

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

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

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

12 (f) This article applies only to the issuance of a permit of operation to a coal mine or facility
13 producing chemically altered coal products, the issuance of which permit is required by the Clean
14 Water Act or by another equivalent state or federal statute or regulation. Nothing in this section may
15 be construed to limit 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, it has been completely underscored.