

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 520

FISCAL
NOTE

BY SENATORS SWOPE AND CLINE

[Introduced January 16, 2020; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §5B-2J-1 and §5B-2J-2; and to amend said code by adding thereto a new
 3 article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5,
 4 §11-13BB-6, §11-13BB-7, §11-13BB-8, and §11-13BB-9, all relating to creating the
 5 Natural Gas Liquids Economic Development Act of 2020; providing a short title; making
 6 legislative findings and declarations; defining terms; authorizing the Tax Commissioner to
 7 promulgate rules; providing a tax credit for production, transportation, storage, use, and
 8 consumption of natural gas liquids, including related facilities; providing for carry forward
 9 of unused credits; providing for recapture of credits; providing for report to Legislature on
 10 tax credits applied; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2J. NATURAL GAS LIQUIDS ECONOMIC DEVELOPMENT ACT.

§5B-2J-1. Short Title.

1 This article shall be known and cited as the “Natural Gas Liquids Economic Development
 2 Act.”

§5B-2J-2. Legislative findings; declaration of public policy

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies and drilling practices
 3 have created the opportunity for the efficient development of natural gas, including natural gas
 4 liquids such as ethane, propane, butane, isobutane and pentanes, contained in underground
 5 shales and other geological formations.

6 (2) With the development of natural gas liquids from shales and other geological
 7 formations comes the opportunity for economic development in related areas of the economy
 8 including, but not limited to, manufacturing, transmission and storage of natural gas liquids and

9 related products, the use of such products in manufacturing, the consumption of such products,
10 and the transportation of manufactured products.

11 (3) Producers of natural gas liquids, transporters and storers of natural gas liquids, and
12 manufacturers of products using natural gas liquids face a significant number of regulatory
13 requirements, some of which may be redundant, inconsistent, or overlapping. Agencies should
14 work together, where practical, to avoid duplication, promote better coordination and reduce these
15 requirements, thus reducing costs, simplifying and harmonizing rules, and streamlining regulatory
16 oversight.

17 (4) In developing regulatory actions and identifying appropriate approaches, agencies
18 should attempt to promote coordination, simplification, and harmonization.

19 (5) Agencies should also seek to identify, as appropriate, means to achieve regulatory
20 goals that are designed to promote innovation.

21 (6) Agencies should review their existing significant legislative, interpretive and procedural
22 rules to determine whether any such rules should be modified, streamlined, expanded or repealed
23 so as to make the agency's regulatory program more effective and less burdensome in achieving
24 the regulatory objectives.

25 (7) The West Virginia Economic Development Authority established in §31-15-1 et seq. of
26 this code and the West Virginia Infrastructure and Jobs Development Council created in §31-15A-
27 1 et seq. of this code, should, where appropriate, provide assistance that grows or sustains the
28 natural gas liquids segment of the economy.

29 (b) The Legislature declares that facilitating the development of business activity directly
30 and indirectly related to development, transportation, storage and use of the natural gas liquids
31 serves the public interest of the citizens of this state by promoting economic development and
32 improving economic opportunities for the citizens of this state.

CHAPTER 11. TAXATION.

**ARTICLE 13BB. THE WEST VIRGINIA NATURAL GAS LIQUIDS PROPERTY TAX
ADJUSTMENT ACT.**

§11-13BB-1. Short title.

1 This article shall be known and cited as the “West Virginia Natural Gas Liquids Property
2 Tax Adjustment Act.”

§11-13BB-2. Definitions.

1 (a) General. – When used in this article, or in the administration of this article, terms
2 defined in subsection (b) of this section have the meanings ascribed to them by this section unless
3 a different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. –

5 “Affiliate” means and includes:

6 (A) An individual, corporation, partnership, affiliate, association or trust or any combination
7 or group thereof controlled by the taxpayer;

8 (B) An individual, corporation, partnership, affiliate, association or trust or any combination
9 or group thereof that is in control of the taxpayer;

10 (C) An individual, corporation, partnership, affiliate, association or trust or any combination
11 or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust
12 or any combination or group thereof that is in control of the taxpayer; or

13 (D) A member of the same controlled group as the taxpayer.

14 “Commissioner” or “Tax Commissioner” means the Tax Commissioner of the State of
15 West Virginia or the Tax Commissioner's delegate.

16 “Control”, with respect to a corporation, means ownership, directly or indirectly, of stock
17 possessing 50 percent or more of the total combined voting power of all classes of the stock of
18 the corporation which entitles its owner to vote. “Control,” with respect to a trust, means
19 ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or

20 income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a
21 partnership or association or of a beneficial interest in a trust shall be determined in accordance
22 with the rules for constructive ownership of stock provided in Section 267(c) of the United States
23 Internal Revenue Code: *Provided*, That paragraph (3), Section 267(c) of the United States Internal
24 Revenue Code does not apply.

25 “Corporation” means any corporation, joint-stock company or association and any
26 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
27 certificate of interest or ownership or similar written instrument.

28 “Delegate” means, when used in reference to the Tax Commissioner, any officer or
29 employee of the Tax Division of the Department of Revenue duly authorized by the commissioner
30 directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned
31 or described in this article.

32 “Eligible taxpayer” means any natural gas liquids producer, natural gas liquids storer,
33 natural gas liquids user or natural gas liquids transporter that is subject to one or more of the
34 taxes imposed under §11-13A-1 *et seq.*, §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. “Eligible
35 taxpayer” also means and includes those members of an affiliated group of taxpayers engaged in
36 a unitary business, in which one or more members of the affiliated group is a person subject to
37 the tax imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, or both articles. Affiliates
38 not engaged in the unitary business do not qualify as eligible taxpayers.

39 “Natural gas liquids” or “NGLs” means hydrocarbons removed from a hydrocarbon stream
40 consisting primarily of natural gas (methane) by condensation, cryogenic cooling or other method
41 and maintained in a liquid state for storage, transportation, use in manufacturing or consumption,
42 including, but not limited to, ethane, propane, butane, isobutane and pentanes, and derivatives
43 thereof including, but not limited to, ethylene and propylene, but do not include natural gas which
44 may include some NGLs as part of the gas stream.

45 “Natural gas liquids inventory and equipment” means, and is limited to, natural gas liquids

46 equipment used in the production, transport or storage of NGLs, goods in process and finished
47 goods of a natural gas liquids producer, natural gas liquids transporter or natural gas liquids storer.

48 “Natural gas liquids producer” means a person who produces natural gas from
49 underground geologic formations, from which NGLs are removed for later storage, transportation,
50 use in manufacturing, or consumption.

51 “Natural gas liquids transporter” means a person who owns or operates pipeline facilities
52 used for the transportation and delivery of NGLs for storage, use in manufacturing or
53 consumption, but does not include pipelines used for the transportation of natural gas that may
54 include some NGLs as part of the gas stream.

55 “Natural gas liquids storer” means a person who owns or operates one or more
56 underground facilities designed and developed for the receipt, storage and subsequent delivery
57 of NGLs for use in manufacturing or consumption.

58 “Natural gas liquids user” means a person who directly uses NGLs in manufacturing, or
59 who directly consumes NGLs in the ordinary course of the person’s business.

60 “Natural person” or “individual” means a human being.

61 “Partnership” and “partner” means and includes a syndicate, group, pool, joint venture or
62 other unincorporated organization through or by means of which any business, financial operation
63 or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship.
64 The term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

65 “Person” means and includes any natural person, corporation, limited liability company or
66 partnership.

67 “Taxpayer” means any person subject to one or more of the taxes imposed under §11-
68 13A-1 et seq., §11-21-1 et seq. or §11-24-1 et seq. of this code.

69 “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax
70 purposes.

71 “Unitary business” means a unitary business as defined in §11-24-3a of this code.

§11-13BB-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit against the taxes imposed under
2 §11-13A-1 et seq., §11-21-1 et seq. or §11-24-1 et seq. of this code, as determined under this
3 article.

§11-13BB-4. Amount of credit allowed.

1 (a) Credit allowed. – Eligible taxpayers are allowed a credit against the tax imposed under
2 §11-13A-1 et seq., §11-21-1 et seq. or §11-24-1 et seq. of this code, the application of which and
3 the amount of which shall be determined as provided in this article.

4 (b) Amount of credit. – The amount of credit allowed to the eligible taxpayer is the amount
5 of West Virginia ad valorem property tax paid on the value of inventory and equipment of the
6 eligible taxpayer during the corporate net income tax year, business franchise tax year and/or
7 calendar year, as applicable.

§11-13BB-5. Application of annual credit allowance.

1 (a) Application of credit against personal income tax or corporate net income tax. – The
2 amount of the credit shall first be taken against the tax liabilities of the eligible taxpayer for the
3 current taxable year imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code.

4 (b) Application of credit against severance tax. – Any credit remaining after application of
5 the credit against the tax liabilities of the eligible taxpayer for the current taxable year imposed by
6 §11-21-1 et seq. or §11-24-1 et seq. of this code shall next be taken against the tax liabilities of
7 the eligible taxpayer for the current taxable year imposed by §11-13A-1 et seq. of this code.

8 (c) Carry forward credit allowed. – Any credit remaining after application of the credit
9 against the tax liabilities specified in subsections (a) and (b) of this section for the current taxable
10 year does not carry back to any prior taxable year, but is carried forward to a subsequent taxable
11 year for up to three taxable years. The credit allowed under this article shall be applied after
12 application of all other applicable tax credits allowed for the taxable year against the taxes
13 imposed by §11-21-1 et seq. of this code and after application of all other applicable tax credits

14 allowed for the taxable year against the taxes imposed by §11-24-1 et seq. of this code and after
15 application of all other applicable tax credits allowed for the taxable year against taxes imposed
16 by §11-13A-1 et seq. of this code.

17 (d) Annual schedule. – For purposes of asserting the credit against tax, the taxpayer must
18 prepare and file an annual schedule showing the amount of tax paid for the taxable year and the
19 amount of credit allowed under this article. The annual schedule shall set forth the information
20 and be in the form prescribed by the Tax Commissioner.

§11-13BB-6. Availability of credit to successors.

1 (a) Transfer or sale of assets. –

2 (1) Where there has been a transfer or sale of the business assets of an eligible taxpayer
3 to a successor which subsequent to the transfer constitutes an eligible taxpayer as defined in this
4 article, which continues to operate the manufacturing business in this state, and which remains
5 subject to the taxes prescribed under §11-13A-1 et seq., §11-21-1 et seq. or §11-24-1 et seq. of
6 this code, the successor eligible taxpayer is entitled to the credit allowed under this article:
7 Provided, That the successor taxpayer otherwise remains in compliance with the requirements of
8 this article for entitlement to the credit.

9 (2) For any taxable year during which a transfer, or sale of the business assets of an
10 eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs
11 pursuant to which credit is allowed under this article, the credit allowed under this article shall be
12 apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based
13 on the number of days during the taxable year that each taxpayer based and the number of days
14 during the taxable year that each taxpayer owned the business assets transferred.

15 (b) Stock purchases. – Where a corporation which is an eligible taxpayer entitled to the
16 credit allowed under this article is purchased through a stock purchase by a new owner and
17 remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to
18 the credit allowed under this article will not be affected by the ownership change: Provided, That

19 the corporation otherwise remains in compliance with the requirements of this article for
20 entitlement to the credit.

21 (c) Mergers. –

22 (1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit
23 allowed under this article is merged with another corporation or entity, the surviving corporation
24 or entity is entitled to the credit to which the predecessor eligible taxpayer was originally entitled:
25 Provided, That the surviving corporation or entity otherwise complies with the provisions of this
26 article.

27 (2) The amount of credit available in any taxable year during which a merger occurs shall
28 be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer
29 based on the number of days during the taxable year that each owned the transferred business
30 assets.

31 (d) No provision of this section or of this article may be construed to allow sales or other
32 transfers of the tax credit allowed under this article. The credit allowed under this article can be
33 transferred only in circumstances where there is a valid successorship as described under this
34 section.

§11-13BB-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any person or entity has taken the credit
2 against tax allowed under this article and was not entitled to take the credit, then the credit
3 improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax
4 year for which the credit was improperly taken. Any additional taxes due under this chapter shall
5 be remitted with the amended return or returns filed with the Tax Commissioner, along with
6 interest, as provided in §11-10-17 of this code and such other penalties and additions to tax as
7 may be applicable pursuant to the provisions of §11-10-1 et seq. of this code.

8 (b) Notwithstanding the provisions of §11-10-1 et seq. of this code to the contrary,
9 penalties and additions to tax imposed under that article may be waived at the discretion of the

10 Tax Commissioner: *Provided*, That interest is not subject to waiver.

11 (c) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, the
12 statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five
13 years from the date of filing of any tax return on which this credit was taken or five years from the
14 date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under
15 this article, whichever is later.

§11-13BB-8. Report on credit.

1 (a) The Tax Commissioner shall provide to the Joint Committee on Government and
2 Finance by July 1, 2022, and on July 1, of each year thereafter, a report detailing the amount of
3 credit claimed pursuant to this article. The report is to include the amount of credit claimed against
4 the business franchise tax and the amount of credit claimed against the corporate net income tax
5 and the amount of credit claimed against the severance tax on oil and gas.

6 (b) Taxpayers claiming the credit shall provide the information as the Tax Commissioner
7 may require to prepare the report: *Provided*, That the information is subject to the confidentiality
8 and disclosure provisions of §11-10-5d and §11-10-5s of this code.

§11-13BB-9. Effective date.

1 This article shall be effective for corporate net income tax years and business franchise
2 tax years beginning on or after July 1, 2020.

NOTE: The purpose of this bill is to encourage development, transportation and use of natural gas liquids for the benefit of natural gas projects in the state by providing certain tax credits related to the production, transportation, storage, use and consumption of natural gas liquids.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.