

1
2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 248**

5 (By Senators Kessler (Acting President), Snyder, Browning, Yost,
6 Foster, Plymale, McCabe and Klempa)

7 _____
8 [Originating in the Committee on Judiciary;
9 reported February 24, 2011.]
10 _____

11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §11-13BB-1,
14 §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5 and §11-13BB-6;
15 and to amend and reenact §22-11-8 of said code, all relating
16 to coal slurry disposal; establishing a corporate net income
17 tax credit for developing alternative technologies for
18 disposal of coal slurry; prohibiting new permits for
19 underground injection of coal slurry; requiring certain study
20 be conducted before new coal slurry injection permits may be
21 issued; and requiring study to begin and be completed within
22 a certain time.

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

24 That the Code of West Virginia, 1931, as amended, be amended
25 by adding thereto a new article, designated §11-13BB-1, §11-13BB-2,
26 §11-13BB-3, §11-13BB-4, §11-13BB-5 and §11-13BB-6; and that

1 §22-11-8 of said code be amended and reenacted, all to read as
2 follows:

3 **CHAPTER 11. TAXATION.**

4 **ARTICLE 13BB. CORPORATE NET INCOME TAX CREDIT FOR COAL CLEANING**
5 **AND PREPARATION FACILITIES.**

6 **§11-13BB-1. Short title.**

7 This article shall be known as the "Alternative Coal Slurry
8 Disposal Act".

9 **§11-13BB-2. Legislative finding and purpose.**

10 The Legislature finds that production of coal is very
11 important to the economy of this state, and that a sound economy is
12 in the public interest and promotes the general welfare of the
13 people of this state. However, there are concerns regarding the
14 potential for harmful effects to the public health and the
15 environment resulting from the [generation and] current methods of
16 disposal of coal slurry, which is a by-product of the coal cleaning
17 process. In order to encourage capital investment in alternative
18 technologies which eliminate the generation of coal slurry or
19 eliminate existing coal slurry disposal sites in this state, there
20 is hereby established a corporate net income tax credit for
21 investments in coal mining operations which implement these
22 technologies.

23 **§11-13BB-3. Definitions.**

24 (a) Any term used in this article shall have the same meaning
25 as when used in a comparable context in article twenty-four of this

1 chapter, unless a different meaning is clearly required by the
2 context of its use or by definition in this article.

3 (b) For purposes of this article, "coal mining operation"
4 means any operation which is granted or should obtain a permit to
5 engage in any activity covered by article three, chapter twenty-two
6 of this code and any rule promulgated under that article and
7 includes any operation which engages in surface mining operations
8 as defined by article three, chapter twenty-two of this code.

9 **§11-13BB-4. Amount and application of credit.**

10 (a) There shall be allowed to eligible taxpayers a credit
11 against the corporate net income tax imposed by article twenty-four
12 of this chapter, for investment in alternative technologies which
13 eliminate or reduce the generation of coal slurry or which
14 eliminate existing coal slurry disposal sites. The amount of this
15 credit shall be determined as hereinafter provided in this section.

16 (b) The amount invested under subsection (a) of this section
17 shall be applied to reduce up to fifty percent of the taxes imposed
18 by article twenty-four of this chapter for the tax year.

19 **§11-13BB-5. Tax Commissioner to promulgate forms and legislative**
20 **rule.**

21 The State Tax Commissioner shall propose legislative rules for
22 legislative approval pursuant to article three, chapter
23 twenty-nine-a of this code regarding the applicability and method
24 of claiming of the credit.

25 **§11-13BB-6. Effective date.**

1 The credit shall be allowed for taxable years beginning on or
2 after July 1, 2011.

3 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

4 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

5 **§22-11-8. Prohibitions; permits required.**

6 (a) The secretary may, after public notice and opportunity for
7 public hearing, issue a permit for the discharge or disposition of
8 any pollutant or combination of pollutants into waters of this
9 state upon condition that the discharge or disposition meets or
10 will meet all applicable state and federal water quality standards
11 and effluent limitations and all other requirements of this article
12 and article three, chapter twenty-two-b of this code.

13 (b) It is unlawful for any person, unless the person holds a
14 permit therefor from the department, which is in full force and
15 effect, to:

16 (1) Allow sewage, industrial wastes or other wastes, or the
17 effluent therefrom, produced by or emanating from any point source,
18 to flow into the waters of this state;

19 (2) Make, cause or permit to be made any outlet, or
20 substantially enlarge or add to the load of any existing outlet,
21 for the discharge of sewage, industrial wastes or other wastes, or
22 the effluent therefrom, into the waters of this state;

23 (3) Acquire, construct, install, modify or operate a disposal
24 system or part thereof for the direct or indirect discharge or
25 deposit of treated or untreated sewage, industrial wastes or other

1 wastes, or the effluent therefrom, into the waters of this state,
2 or any extension to or addition to the disposal system;

3 (4) Increase in volume or concentration any sewage, industrial
4 wastes or other wastes in excess of the discharges or disposition
5 specified or permitted under any existing permit;

6 (5) Extend, modify or add to any point source, the operation
7 of which would cause an increase in the volume or concentration of
8 any sewage, industrial wastes or other wastes discharging or
9 flowing into the waters of the state;

10 (6) Construct, install, modify, open, reopen, operate or
11 abandon any mine, quarry or preparation plant, or dispose of any
12 refuse or industrial wastes or other wastes from the mine or quarry
13 or preparation plant: *Provided*, That the department's permit is
14 only required wherever the aforementioned activities cause, may
15 cause or might reasonably be expected to cause a discharge into or
16 pollution of waters of the state, except that a permit is required
17 for any preparation plant: *Provided, however*, That unless waived
18 in writing by the secretary, every application for a permit to
19 open, reopen or operate any mine, quarry or preparation plant or to
20 dispose of any refuse or industrial wastes or other wastes from the
21 mine or quarry or preparation plant shall contain a plan for
22 abandonment of the facility or operation, which plan shall comply
23 in all respects to the requirements of this article. The plan of
24 abandonment is subject to modification or amendment upon
25 application by the permit holder to the secretary and approval of
26 the modification or amendment by the secretary; or

1 (7) Operate any disposal well for the injection or reinjection
2 underground of any industrial wastes, including, but not limited
3 to, liquids or gases, or convert any well into such a disposal well
4 or plug or abandon any such disposal well.

5 (c) Where a person has a number of outlets emerging into the
6 waters of this state in close proximity to one another, the outlets
7 may be treated as a unit for the purposes of this section, and only
8 one permit issued for all the outlets.

9 (d) Notwithstanding any provision of this code to the
10 contrary, effective with the enactment of this subsection by the
11 Legislature during the regular session of 2011, the issuance of new
12 permits for underground injection of coal slurry is prohibited.
13 This prohibition shall remain in place until the Department of
14 Environmental Protection and Department of Health and Human
15 Resources mutually agree that the disposal of coal slurry by
16 underground injection is not harmful to public health. This
17 agreement must be supported by a joint study that includes the
18 Prenter area in Boone County which the departments must begin no
19 later than six months from the effective date of this subsection
20 and be completed no later than one year from the effective date of
21 this subsection.

(NOTE: The purpose of this bill is to prohibit new permits for the underground injection of coal slurry until DEP and DHHR agree that this method of disposal is not harmful to public health; and create a tax incentive program for development of alternative technologies for management and disposal of coal slurry.

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

§11-13BB-1 through §11-13BB-6 are new; therefore, strike-throughs and underscoring have been omitted.)