

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 410**

4 (By Senators McCabe, Browning, Unger, Foster, Kessler (Acting  
5 President), Klempa and Miller)

6 \_\_\_\_\_  
7 [Originating in the Committee on Finance;  
8 reported February 28, 2011.]  
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11  
12 A BILL to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4,  
13 §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of the Code of West  
14 Virginia, 1931, as amended; and to amend said code by adding  
15 thereto a new section, designated §11-6D-9, all relating to  
16 extending the alternative-fuel motor vehicle tax credits;  
17 making additional legislative findings; providing for tax  
18 credits for qualified alternative-fuel vehicles and refueling  
19 infrastructure; establishing the amount of credit available;  
20 establishing the period of time the credit is available;  
21 eliminating the requirement for the credit to be taken over a  
22 three-year period; eliminating some definitions and defining  
23 other terms; requiring the Tax Commissioner to promulgate new  
24 rules; and allowing for the carryover and recapture of the tax  
25 credit.

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

27 That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5,

1 §11-6D-6, §11-6D-7 and §11-6D-8 of the Code of West Virginia, 1931,  
2 as amended, be amended and reenacted; and that said code be amended  
3 by adding thereto a new section, designated §11-6D-9, all to read  
4 as follows:

5 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.**

6 **§11-6D-1. Legislative findings and purpose.**

7 Consistent with the public policy as stated in section one,  
8 article two-d, chapter twenty-four of this code, the Legislature  
9 hereby finds that the use of alternative fuels is in the public  
10 interest and promotes the general welfare of the people of this  
11 state insofar as it addresses serious concerns for our environment  
12 and our state's and nation's dependence on foreign oil as a source  
13 of energy. The Legislature further finds that this state has an  
14 abundant supply of alternative fuels and an extensive supply  
15 network and that, by encouraging the use of alternatively-fueled  
16 motor vehicles, the state will be reducing its dependence on  
17 foreign oil and attempting to improve its air quality. The  
18 Legislature further finds that the wholesale cost of fuel for  
19 certain alternatively-fueled motor vehicles is significantly lower  
20 than the cost of fueling traditional motor vehicles with oil-based  
21 fuels.

22 However, because the cost of motor vehicles which utilize  
23 alternative-fuel technologies remains high in relation to motor  
24 vehicles that employ more traditional technologies, citizens of  
25 this state who might otherwise choose an alternatively-fueled motor  
26 vehicle are forced by economic necessity to continue using motor  
27 vehicles that are fueled by more conventional means. Additionally,  
28 the availability of commercial and residential infrastructure to

1 support alternatively-fueled vehicles available to the public is  
2 inadequate to encourage the use of alternatively fueled motor  
3 vehicles. Therefore, in order to encourage the use of  
4 alternatively-fueled motor vehicles and possibly reduce unnecessary  
5 pollution of our environment and reduce our dependence on foreign  
6 sources of energy, there is hereby created an alternative-fuel  
7 motor vehicles tax credit and an alternative-fuel infrastructure  
8 tax credit.

9 **§11-6D-2. Definitions.**

10 As used in this article, the following terms have the meanings  
11 ascribed to them in this section:

12 (a) "Alternative fuel" includes:

13 (1) Compressed natural gas;

14 (2) Liquefied natural gas;

15 (3) Liquefied petroleum gas;

16 ~~(4) Methanol;~~

17 ~~(5) Ethanol;~~

18 ~~(6) Fuel mixtures that contain eighty five percent or more by~~  
19 ~~volume, when combined with gasoline or other fuels, of the~~  
20 ~~following:~~

21 ~~(A) Methanol;~~

22 ~~(B) Ethanol; or~~

23 ~~(C) Other alcohols;~~

24 (4) Natural gas hydrocarbons and derivatives;

25 (5) Hydrogen;

26 ~~(7) (6) Coal-derived liquid fuels; and~~

27 ~~(8) (7) Electricity, including electricity from solar energy.~~

28 (b) "Alternative-fuel motor vehicle" means a motor vehicle

1 that as a new or retrofitted or converted fuel vehicle:

2 (1) Operates solely on one alternative fuel;

3 (2) Is capable of operating on one or more alternative fuels,  
4 singly or in combination; or

5 (3) Is capable of operating on an alternative fuel and is also  
6 capable of operating on gasoline or diesel fuel.

7 (c) "Bi-fueled" means the ability of an alternative-fuel motor  
8 vehicle to operate on an alternative fuel and another form of fuel.

9 (d) "Plug-in hybrid electric vehicle" means:

10 (1) An original equipment manufacturer plug-in hybrid electric  
11 vehicle that can operate solely on electric power and that is  
12 capable of recharging its battery from an on-board generation  
13 source and an off-board electricity source; and

14 (2) A plug-in hybrid electric vehicle conversion that provides  
15 an increase in city fuel economy of seventy-five percent or more as  
16 compared to a comparable nonhybrid version vehicle for a minimum of  
17 twenty miles and that is capable of recharging its battery from an  
18 on-board generation source and an off-board electricity source. A  
19 vehicle is comparable if it is the same model year and the same  
20 vehicle class as established by the United States Environmental  
21 Protection Agency and is comparable in weight, size, and use. Fuel  
22 economy comparisons shall be made using city fuel economy standards  
23 in a manner that is substantially similar to the manner in which  
24 city fuel economy is measured in accordance with procedures set  
25 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

26 (e) "Qualified alternative fuel vehicle refueling  
27 infrastructure" means property owned by the applicant for the tax  
28 credit and used for storing alternative fuels and for dispensing

1 such alternative fuels into fuel tanks of motor vehicles, including  
2 but not limited to, compression equipment, storage tanks and  
3 dispensing units for alternative fuel at the point where the fuel  
4 is delivered: *Provided*, That the property is installed and located  
5 in this state and is not located on a private residence or private  
6 home.

7 (f) "Qualified alternative fuel vehicle home refueling  
8 infrastructure" means property owned by the applicant for the tax  
9 credit located on a private residence or private home and used for  
10 storing alternative fuels and for dispensing such alternative fuels  
11 into fuel tanks of motor vehicles, including but not limited to,  
12 compression equipment, storage tanks and dispensing units for  
13 alternative fuel at the point where the fuel is delivered or for  
14 providing electricity to plug-in hybrid electric vehicles or  
15 electric vehicles: *Provided*, That the property is installed and  
16 located in this state.

17 (g) "Taxpayer" means any natural person, corporation, limited  
18 liability company or partnership subject to the tax imposed under  
19 article twenty-one, article twenty-three or article twenty-four of  
20 this chapter or any combination thereof.

21 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**  
22 **qualified alternative-fuel vehicle refueling**  
23 **infrastructure; application against personal income**  
24 **tax, business franchise tax or corporate net income**  
25 **tax; effective date.**

26 The tax ~~credit~~ credits for the purchase of alternative-fuel  
27 motor vehicles or conversion to alternative-fuel motor vehicles,  
28 qualified alternative fuel vehicle refueling infrastructure and

1 qualified alternative fuel vehicle home refueling infrastructure  
2 provided in this article may be applied against the tax liability  
3 of a taxpayer imposed by the provisions of either article twenty-  
4 one, article twenty-three or article twenty-four of this chapter  
5 but in no case may more than one credit be granted for the same  
6 alternative-fuel motor vehicle as defined in subdivision (b),  
7 section two of this article. This credit shall be available for  
8 those tax years beginning after ~~June 30, 1997~~ January 1, 2011.

9 **§11-6D-4. Eligibility for credit.**

10 A taxpayer is eligible to claim the credit against tax  
11 provided in this article if he or she:

12 (a) Converts a motor vehicle that is presently registered in  
13 West Virginia to operate exclusively on an alternative fuel as  
14 defined in subdivision (a), section two of this article; or

15 ~~(1) Exclusively on an alternative fuel as defined in~~  
16 ~~subdivision (a), section two of this article; or~~

17 ~~(2) In a dual fuel mode, as defined in paragraph (6),~~  
18 ~~subdivision (a), section two of this article; as a bi-fueled~~  
19 ~~alternative-fuel motor vehicle; or~~

20 (b) Purchases from an original equipment manufacturer or an  
21 after-market conversion facility or any other automobile retailer,  
22 a new dedicated or ~~dually fueled~~ bi-fueled alternative-fuel motor  
23 vehicle for which the taxpayer then obtains a valid West Virginia  
24 registration; or

25 (c) Constructs or purchases and installs qualified alternative  
26 fuel vehicle refueling infrastructure or qualified alternative fuel  
27 vehicle home refueling infrastructure that is capable of dispensing  
28 alternative fuel for alternative-fuel motor vehicles.

1        ~~(e)~~ (d) The credit provided in this article is not available  
2 to and may not be claimed by any taxpayer under any obligation  
3 pursuant to any federal or state law, policy or regulation to  
4 convert to the use of alternative fuels for any motor vehicle.

5 **§11-6D-5. Amount of credit for alternative-fuel motor vehicles.**

6        (a) For taxable years beginning on and after January 1, 2011,  
7 the amount of the credit allowed under this article for an  
8 alternative-fuel motor vehicle that weighs less than twenty-six  
9 thousand pounds is thirty-five percent of the purchase price of the  
10 alternative-fuel motor vehicle up to a maximum amount of \$7,500 or  
11 fifty percent of the actual cost of converting from a traditionally  
12 fueled motor vehicle to an alternative fuel motor vehicle up to a  
13 maximum amount of \$7,500.

14        (b) For taxable years beginning on and after January 1, 2011,  
15 the amount of the credit allowed under this article for an  
16 alternative-fuel motor vehicle that weighs more than twenty-six  
17 thousand pounds is thirty-five percent of the purchase price of the  
18 alternative-fuel motor vehicle up to a maximum amount of \$25,000 or  
19 fifty percent of the actual cost of converting from a traditionally  
20 fueled motor vehicle to an alternative fuel motor vehicle up to a  
21 maximum amount of \$25,000.

22 **§11-6D-6. Amount of credit for qualified alternative-fuel vehicle**  
23 **refueling infrastructure and qualified alternative-**  
24 **fuel vehicle home refueling infrastructure.**

25        (a) For taxable years beginning on and after January 1, 2011,  
26 but prior to January 1, 2014, the amount of the credit allowed  
27 under this article for qualified alternative fuel vehicle refueling

1 infrastructure is equal to an amount of fifty percent of the total  
2 costs directly associated with the construction or purchase and  
3 installation of the alternative fuel vehicle refueling  
4 infrastructure up to a maximum of \$250,000: *Provided*, That if the  
5 qualified alternative fuel vehicle refueling infrastructure is  
6 generally accessible for public use, the amount of the credit  
7 allowed will be multiplied by 1.25 and the maximum amount allowable  
8 will be \$312,500. The amount of credit allowed may not exceed the  
9 cost of construction of the alternative fuel vehicle refueling  
10 infrastructure.

11 (b) For taxable years beginning on and after January 1, 2014,  
12 but prior to January 1, 2016, the amount of the credit allowed  
13 under this article for qualified alternative fuel vehicle refueling  
14 infrastructure is equal to an amount of fifty percent of the total  
15 costs directly associated with the construction or purchase and  
16 installation of the alternative fuel vehicle refueling  
17 infrastructure up to a maximum of \$200,000: *Provided*, That if the  
18 qualified alternative fuel vehicle refueling infrastructure is  
19 generally accessible for public use, the amount of the credit  
20 allowed will be multiplied by 1.25 and the maximum amount allowable  
21 will be \$250,000. The amount of credit allowed may not exceed the  
22 cost of construction of the alternative fuel vehicle refueling  
23 infrastructure.

24 (c) For taxable years beginning on and after January 1, 2016,  
25 but prior to January 1, 2022, the amount of the credit allowed  
26 under this article for qualified alternative fuel vehicle refueling  
27 infrastructure is equal to an amount of fifty percent of the total  
28 costs directly associated with the construction or purchase and



1 installation of the alternative fuel vehicle refueling  
2 infrastructure up to a maximum of \$150,000: *Provided*, That if the  
3 qualified alternative fuel vehicle refueling infrastructure is  
4 generally accessible for public use, the amount of the credit  
5 allowed will be multiplied by 1.25 and the maximum amount allowable  
6 will be \$187,500. The amount of credit allowed may not exceed the  
7 cost of construction of the alternative fuel vehicle refueling  
8 infrastructure.

9 (d) For taxable years beginning on and after January 1, 2011,  
10 the amount of the credit allowed under this article for qualified  
11 alternative fuel vehicle home refueling infrastructure is equal to  
12 an amount of fifty percent of the total costs directly associated  
13 with the construction or purchase and installation of the  
14 alternative fuel vehicle home refueling infrastructure up to a  
15 maximum of \$10,000.

16 (e) The cost of construction of the alternative fuel vehicle  
17 refueling infrastructure or alternative fuel vehicle home refueling  
18 infrastructure eligible for a tax credit under this section does  
19 not include costs associated with exploration, development or  
20 production activities necessary for severing natural resources from  
21 the soil or ground.

22 (f) When the taxpayer is a pass-through entity treated like a  
23 partnership for federal and state income tax purposes, the credit  
24 allowed under this article for the year shall flow through to the  
25 equity owners of the pass-through entity in the same manner that  
26 distributive share flows through to the equity owners and in  
27 accordance with any legislative rule the Tax Commissioner may  
28 propose for legislative approval in accordance with article three,

1 chapter twenty-nine-a of this code to administer this section.

2 (g) No credit allowed by this article may be applied against  
3 employer withholding taxes imposed by article twenty-one of this  
4 chapter.

5 **§11-6D-7. Duration of availability of credit.**

6 No person is eligible to receive a tax credit under this  
7 article for: (i) An alternative-fuel motor vehicle purchased after  
8 December 31, 2021; (ii) a vehicle converted to an alternative-fuel  
9 motor vehicle after December 31, 2021; or (iii) the construction or  
10 purchase and installation of qualified alternative fuel vehicle  
11 refueling infrastructure or qualified alternative fuel vehicle home  
12 refueling infrastructure occurring after December 31, 2021.

13 **§11-6D-8. Commissioner to design forms and schedules; promulgation**  
14 **of rules.**

15 (a) The Tax Commissioner shall design and provide to the  
16 public simplified forms and schedules to implement and effectuate  
17 the provisions of this article.

18 (b) The Tax Commissioner ~~is authorized to promulgate~~ shall  
19 promulgate new rules for the administration of this article  
20 consistent with its provisions and in accordance with article  
21 three, chapter twenty-nine-a of this code after the effective date  
22 of the amendments to this article. Such rules shall include rules  
23 relating to the necessary documentation required to be filed in  
24 order to take the tax credits allowed in this article.

25 (c) Within one year ~~following~~ prior to the expiration of the  
26 credit established in this article, the State Tax Commissioner  
27 shall provide a written report to the Legislature setting forth the  
28 utilization of the credit, the benefit of the credit and the

1 overall cost of the credit.

2 **§11-6D-9. Carryover credit allowed; recapture of credit.**

3 (a) If the tax credit allowed under this article in any  
4 taxable year exceeds the taxpayer's tax liability as determined in  
5 accordance with article twenty-one, article twenty-three or article  
6 twenty-four of this chapter for that taxable year, the excess may  
7 be applied for succeeding taxable years until the full amount of  
8 the excess tax credit is used.

9 (b) No carry back to a prior taxable year is allowed for the  
10 amount of any unused credit in any taxable year.

11 (c) A tax credit is subject to recapture, elimination or  
12 reduction if it is determined by the State Tax Commissioner that a  
13 taxpayer was not entitled to the credit, in whole or in part, in  
14 the tax year in which it was claimed by the taxpayer. The amount  
15 of credit that flows through to equity owners of a passthrough  
16 entity may be recaptured or recovered from either the taxpayer or  
17 the equity owners in the discretion of the Tax Commissioner.

(NOTE: The purpose of this bill is to extend the  
alternative-fuel motor vehicle tax credits. The bill makes  
additional legislative findings. The bill provides for new tax  
credits for qualified alternative fuel vehicles and refueling  
infrastructure. The bill establishes the amount of credit and the  
period of time the credit is available. The bill also eliminates  
the requirement the credit to be taken over a three year period;. The bill further eliminates some definitions of terms and defines other terms. The bill requires the Tax Commissioner to promulgate new rules. Additionally, the bill allows for the carryover and recapture of the tax credit.

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

§11-6D-5, §11-6D-6 and §11-6D-7 have been completely

rewritten; therefore, strike-throughs and underscoring have been omitted.

§11-6D-9 is new; therefore, strike-throughs and underscoring have been omitted.)