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Senate Bill No. 248

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

**Interim
Bill**

[Introduced January 25, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §11-13BB-1,
§11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5 and §11-13BB-6;
and to amend and reenact §22-11-8 of said code, all relating
to coal slurry disposal; establishing a corporate net income
tax credit for developing alternative technologies for
disposal of coal slurry; and prohibiting new permits and
modifications and renewals of existing permits for underground
injection of coal slurry.

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 §11-13BB-1,
§11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5 and §11-13BB-6;
and that §22-11-8 of said code be amended and reenacted, all to
read as follows:

1 **CHAPTER 11. TAXATION.**

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

4 **§11-13BB-1. Short title.**

5 This article shall be known as the "Alternative Coal Slurry
6 Disposal Act."

7 **§11-13BB-2. Legislative finding and purpose.**

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

21 **§11-13BB-3. Definitions.**

22 (a) Any term used in this article shall have the same
23 meaning as when used in a comparable context in article
24 twenty-four of this chapter, unless a different meaning is

1 clearly required by the context of its use or by definition in
2 this article.

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

10 **§11-13BB-4. Amount and application of credit.**

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

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

22 **§11-13BB-5. Tax Commissioner to promulgate forms and**
23 **legislative rule.**

24 The State Tax Commissioner shall propose legislative rules

1 for legislative approval pursuant to article three, chapter
2 twenty-nine-a of this code regarding the applicability and method
3 of claiming of the credit.

4 **§11-13BB-6. Effective date.**

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

7 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

9 **§22-11-8. Prohibitions; permits required.**

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

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

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

24 (2) Make, cause or permit to be made any outlet, or

1 substantially enlarge or add to the load of any existing outlet,
2 for the discharge of sewage, industrial wastes or other wastes,
3 or the effluent therefrom, into the waters of this state;

4 (3) Acquire, construct, install, modify or operate a
5 disposal system or part thereof for the direct or indirect
6 discharge or deposit of treated or untreated sewage, industrial
7 wastes or other wastes, or the effluent therefrom, into the
8 waters of this state, or any extension to or addition to the
9 disposal system;

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

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

17 (6) Construct, install, modify, open, reopen, operate or
18 abandon any mine, quarry or preparation plant, or dispose of any
19 refuse or industrial wastes or other wastes from the mine or
20 quarry or preparation plant: *Provided*, That the department's
21 permit is only required wherever the aforementioned activities
22 cause, may cause or might reasonably be expected to cause a
23 discharge into or pollution of waters of the state, except that a
24 permit is required for any preparation plant: *Provided*, however,

1 That unless waived in writing by the secretary, every application
2 for a permit to open, reopen or operate any mine, quarry or
3 preparation plant or to dispose of any refuse or industrial
4 wastes or other wastes from the mine or quarry or preparation
5 plant shall contain a plan for abandonment of the facility or
6 operation, which plan shall comply in all respects to the
7 requirements of this article. The plan of abandonment is subject
8 to modification or amendment upon application by the permit
9 holder to the secretary and approval of the modification or
10 amendment by the secretary; or

11 (7) Operate any disposal well for the injection or
12 reinjection underground of any industrial wastes, including, but
13 not limited to, liquids or gases, or convert any well into such
14 a disposal well or plug or abandon any such disposal well.

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

19 (d) Notwithstanding any provision of this code to the
20 contrary, effective with the enactment of this subsection by the
21 Legislature during the regular session of 2011, the issuance of
22 new permits, permit modifications, or permit renewals for the
23 underground injection of coal slurry is prohibited.

NOTE: The purpose of this bill is to prohibit new permits or modifications and renewals of existing permits for the underground injection of coal slurry; 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.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Judiciary Committee.