

Senate Bill No. 185

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

[Introduced February 15, 2013; referred to the Committee on
Transportation and Infrastructure; and then to the Committee on
Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4,
§11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West
Virginia, 1931, as amended, all relating to the tax credit for
alternative-fuel motor vehicles and qualified alternative-fuel
vehicle refueling infrastructure and qualified alternative-
fuel vehicle home refueling infrastructure; setting forth
legislative findings; defining terms; restricting credit to
purchases of and conversions to natural gas-fueled motor
vehicles and liquefied petroleum gas-fueled motor vehicles;
narrowing allowance of credit for alternative-fuel motor
vehicle purchases, alternative-fuel motor vehicle conversions
and alternative-fuel motor vehicle refueling infrastructure;
outlining eligibility for credit and cessation of eligibility

1 for credit for specified construction, purchases,
2 expenditures, investments, installations or conversions made
3 on or after cessation dates or tax years as specified;
4 requiring that not more than one tax credit be granted under
5 said article six-d, or any combination of articles set forth
6 in said chapter eleven for purchase of an alternative-fuel
7 motor vehicle or for costs relating to conversion of a motor
8 vehicle to an alternative-fuel motor vehicle, or for costs
9 associated with alternative-fuel vehicle refueling
10 infrastructure or for costs associated with alternative-fuel
11 home refueling infrastructure; providing amount of credit for
12 qualified alternative-fuel vehicle refueling infrastructure;
13 providing limitations on credit; providing for the termination
14 of tax credit for alternative-fuel motor vehicles purchased
15 after December 31, 2017; providing for the termination of tax
16 credit for motor vehicles converted to operate on alternative
17 fuel after December 31, 2017; providing for the termination of
18 tax credit for construction or purchase and installation of
19 alternative-fuel vehicle refueling infrastructure occurring
20 after December 31, 2017; providing for the termination of tax
21 credit for construction or purchase and installation of
22 qualified alternative-fuel vehicle home refueling
23 infrastructure occurring in tax years beginning after December

1 31, 2012; providing for the termination of tax credit for
2 purchases of motor vehicles that operate on fuels other than
3 compressed natural gas or liquefied natural gas, or liquefied
4 petroleum gas, occurring in tax years beginning after December
5 31, 2012; providing for the termination of tax credit for
6 conversions of motor vehicles to operate on fuels other than
7 compressed natural gas or liquefied natural gas or liquefied
8 petroleum gas occurring in tax years beginning after December
9 31, 2012; clarifying that provisions applicable to tax years
10 beginning after December 31, 2012, are retroactive; providing
11 limitations and restrictions of credit carryover; and
12 providing that credit is nontransferable.

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

14 That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5,
15 §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931,
16 as amended, be amended and reenacted, all to read as follows:

17 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.**

18 **§11-6D-1. Legislative findings and purpose.**

19 Consistent with the public policy as stated in section one,
20 article two-d, chapter twenty-four of this code, the Legislature
21 hereby finds that the use of natural gas based alternative fuels is
22 in the public interest and promotes the general welfare of the
23 people of this state insofar as it addresses serious concerns for

1 our environment and our state's and nation's dependence on foreign
2 oil as a source of energy. The Legislature further finds that ~~this~~
3 ~~state has an abundant supply of alternative fuels and an extensive~~
4 ~~supply network and that,~~ by encouraging the use of
5 ~~alternatively-fueled~~ natural gas fueled and liquefied petroleum gas
6 fueled motor vehicles, the state will be reducing its dependence on
7 foreign oil and attempting to improve its air quality. The
8 Legislature further finds that the wholesale cost of fuel for
9 certain ~~alternatively-fueled~~ natural gas fueled and liquefied
10 petroleum gas fueled motor vehicles is significantly lower than the
11 cost of ~~fueling~~ fuel for traditional motor vehicles. ~~with oil based~~
12 ~~fuels~~

13 However, because the cost of motor vehicles which utilize
14 ~~alternative fuel~~ natural gas fueled or liquefied petroleum gas
15 fueled technologies remains high in relation to motor vehicles that
16 employ more traditional technologies, citizens of this state who
17 might otherwise choose ~~an alternatively-fueled~~ a natural gas fueled
18 or liquefied petroleum gas fueled motor vehicle are forced by
19 economic necessity to continue using motor vehicles that are fueled
20 by more conventional means. Additionally, the availability of
21 commercial ~~and residential~~ infrastructure to support
22 ~~alternatively-fueled~~ natural gas fueled and liquefied petroleum gas
23 fueled vehicles available to the public is inadequate to encourage

1 the use of ~~alternatively-fueled~~ natural gas fueled and liquefied
2 petroleum gas fueled motor vehicles. It is the intent of the
3 Legislature that the alternative fuel motor vehicle tax credit
4 previously expired in 2006 be hereby reinstated with changes and
5 amendments as set forth herein. Therefore, in order to encourage
6 the use of ~~alternatively-fueled~~ natural gas fueled and liquefied
7 petroleum gas fueled motor vehicles and possibly reduce unnecessary
8 pollution of our environment and reduce our dependence on foreign
9 sources of energy, there is hereby created an alternative-fuel
10 motor vehicles tax credit and an alternative-fuel vehicle refueling
11 infrastructure tax credit.

12 **§11-6D-2. Definitions.**

13 As used in this article, the following terms have the meanings
14 ascribed to them in this section. Provisions of this section
15 designated as applicable to tax years beginning after December 31,
16 2012, are hereby specifically made retroactive.

17 (a) "Alternative fuel" ~~includes~~

18 (1) For taxable years beginning on and after January 1, 2011,
19 but prior to January 1, 2013, the term "alternative fuel" means and
20 includes:

21 ~~(1)~~ (A) Compressed natural gas;

22 ~~(2)~~ (B) ~~Liquified~~ Liquefied natural gas;

23 ~~(3)~~ (C) ~~Liquified~~ Liquefied petroleum gas;

- 1 ~~(4)~~ (D) Ethanol;
- 2 ~~(5)~~ (E) Fuel mixtures that contain eighty-five percent or more
- 3 by volume, when combined with gasoline or other fuels, of the
- 4 following:
- 5 ~~(A)~~ (i) Methanol;
- 6 ~~(B)~~ (ii) Ethanol; or
- 7 ~~(C)~~ (iii) Other alcohols;
- 8 ~~(6)~~ (F) Natural gas hydrocarbons and derivatives;
- 9 ~~(7)~~ (G) Hydrogen;
- 10 ~~(8)~~ (H) Coal-derived liquid fuels; and
- 11 ~~(9)~~ (I) Electricity, including electricity from solar energy.

12 (2) For taxable years beginning on and after January 1, 2013,

13 the term "alternative fuel" means and is limited to:

- 14 (A) Compressed natural gas;
- 15 (B) Liquefied natural gas; or
- 16 (C) Liquefied petroleum gas.

17 (b) "Alternative-fuel motor vehicle" or "qualified motor

18 vehicle" means a motor vehicle that as a new or retrofitted or

19 converted fuel vehicle:

- 20 (1) Operates solely on one alternative fuel;
- 21 (2) Is capable of operating on one or more alternative fuels,
- 22 singly or in combination; or
- 23 (3) Is capable of operating on an alternative fuel and is also

1 capable of operating on gasoline or diesel fuel.

2 (c) "Bi-fueled" motor vehicle means a motor vehicle fueled
3 from two or more tanks, each of which stores a separate type of
4 fuel, which has the ability of an alternative-fuel motor vehicle to
5 operate on an alternative fuel and another form of fuel. Bi-fueled
6 motor vehicles as here defined are alternative fuel motor vehicles.

7 (d) "Liquefied petroleum gas" means fuel commonly known and
8 designated as "liquefied petroleum gas" or "LP gas." The term
9 "liquefied petroleum gas" also means and includes:

10 (1) Propane;

11 (2) Butane; or

12 (3) A mix of gasses used as motor fuel which is predominantly
13 propane or butane, or predominantly a mixture of propane and
14 butane.

15 ~~(d)~~ (e) "Plug-in hybrid electric vehicle" means:

16 (1) A plug-in hybrid electric vehicle manufactured by an
17 established motor vehicle manufacturer of plug-in hybrid electric
18 vehicles that can operate solely on electric power and that is
19 capable of recharging its battery from an on-board generation
20 source and an off-board electricity source; and

21 (2) A plug-in hybrid electric vehicle conversion that provides
22 an increase in city fuel economy of seventy-five percent or more as
23 compared to a comparable nonhybrid version vehicle for a minimum of

1 twenty miles and that is capable of recharging its battery from an
2 on-board generation source and an off-board electricity source. A
3 vehicle is comparable if it is the same model year and the same
4 vehicle class as established by the United States Environmental
5 Protection Agency and is comparable in weight, size and use. Fuel
6 economy comparisons shall be made using city fuel economy standards
7 in a manner that is substantially similar to the manner in which
8 city fuel economy is measured in accordance with procedures set
9 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

10 ~~(e)~~ (f) "Qualified alternative fuel vehicle refueling
11 infrastructure" means property owned by the applicant for the tax
12 credit and used for storing alternative fuels and for dispensing
13 such alternative fuels into fuel tanks of motor vehicles,
14 including, but not limited to, natural gas supply lines,
15 compression equipment, storage tanks and dispensing units for
16 alternative fuel at the point where the fuel is delivered into a
17 motor vehicle for consumption: *Provided*, That the property is
18 installed and located in this state and is not located in or on a
19 private residence or private home.

20 ~~(f)~~ (g) "Qualified alternative fuel vehicle home refueling
21 infrastructure" means property owned by the applicant for the tax
22 credit located on a private residence or private home and used for
23 storing alternative fuels and for dispensing such alternative fuels

1 into fuel tanks of motor vehicles, including, but not limited to,
2 compression equipment, storage tanks and dispensing units for
3 alternative fuel at the point where the fuel is delivered or for
4 providing electricity to plug-in hybrid electric vehicles or
5 electric vehicles: *Provided*, That the property is installed and
6 located in this state.

7 ~~(g)~~ (h) "Taxpayer" means any natural person, corporation,
8 limited liability company or partnership subject to the tax imposed
9 under article twenty-one, article twenty-three or article
10 twenty-four of this chapter or any combination thereof.

11 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**
12 **qualified alternative fuel vehicle refueling**
13 **infrastructure; application against personal income**
14 **tax, business franchise tax or corporate net income**
15 **tax; effective date.**

16 The tax credits for the purchase of alternative-fuel motor
17 vehicles or conversion to alternative-fuel motor vehicles,
18 qualified alternative fuel vehicle refueling infrastructure and
19 qualified alternative fuel vehicle home refueling infrastructure
20 provided in this article may be applied against the tax liability
21 of a taxpayer imposed by the provisions of either article
22 twenty-one, article twenty-three or article twenty-four of this

1 chapter, but in no case may more than one tax credit be granted
2 under this article or any combination of articles set forth in this
3 chapter for the same purchase of an alternative-fuel motor vehicle
4 or for costs relating to conversion to an alternative-fuel motor
5 vehicle, or for costs associated with alternative fuel vehicle
6 refueling infrastructure or for costs associated with alternative
7 fuel home refueling infrastructure as defined in ~~subdivision (b),~~
8 ~~section two~~ of this article. This credit shall be available for
9 those tax years beginning on or after January 1, 2011, but shall
10 not be available for, or with relation to, any purchase,
11 expenditure, investment, installation, construction, or conversion
12 made in any tax year beginning after the termination dates
13 specified in this article, as applicable to specified purchases,
14 expenditures, investments, installations, construction, or
15 conversions.

16 **§11-6D-4. Eligibility for credit.**

17 A taxpayer is eligible to claim the credit against tax
18 provided in this article if ~~he or she~~ the taxpayer:

19 (a) Converts a motor vehicle that is presently registered in
20 West Virginia to operate exclusively on an alternative fuel as
21 defined in ~~subdivision (a), section two~~ of this article or to
22 operate as a bi-fueled alternative-fuel motor vehicle; or

23 (b) Purchases from an original equipment manufacturer or an

1 after-market conversion facility or any other automobile retailer,
2 a new dedicated alternative-fuel motor vehicle or bi-fueled
3 alternative-fuel motor vehicle for which the taxpayer then obtains
4 a valid West Virginia registration; or

5 (c) Constructs or purchases and installs qualified alternative
6 fuel vehicle refueling infrastructure ~~or qualified alternative fuel~~
7 ~~vehicle home refueling infrastructure~~ that is capable of dispensing
8 alternative fuel for alternative-fuel motor vehicles.

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

13 (2) The credit provided in this article is not available to
14 and may not be claimed by any taxpayer for construction or purchase
15 or installation of alternative fuel vehicle home refueling
16 infrastructure in any tax year beginning after December 31, 2012.
17 This provision is hereby specifically made retroactive.

18 (e) The credit provided in this article for purchase of an
19 alternative fuel motor vehicle or conversion of a motor vehicle to
20 an alternative fuel motor vehicle, is not available to and may not
21 be claimed by any taxpayer in, or for, any tax year in which the
22 taxpayer did not own the alternative fuel motor vehicle for which
23 the claim is filed on the last day of the taxpayer's tax year for

1 which the credit is claimed.

2 (f) Effective date.

3 (1) The amendments to this article enacted in the 2013 Regular
4 Legislative Session shall be effective upon passage.

5 (A) Those provisions set forth in amendments to this article
6 enacted in the 2013 Regular Legislative Session and specified as
7 operative upon a specified date shall be applied accordingly.

8 (B) Those provisions set forth in amendments to this article
9 enacted in the 2013 Regular Legislative Session and specified as
10 retroactive shall be applied accordingly.

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

12 (a) For taxable years beginning on and after January 1, 2011,
13 but prior to termination or cessation of this credit as specified
14 in this article, the amount of the credit allowed under this
15 article for an alternative-fuel motor vehicle that weighs less than
16 twenty-six thousand pounds is thirty-five percent of the purchase
17 price of the alternative-fuel motor vehicle up to a maximum amount
18 of \$7,500 or fifty percent of the actual cost of converting from a
19 traditionally fueled motor vehicle to an alternative fuel motor
20 vehicle up to a maximum amount of \$7,500.

21 (b) For taxable years beginning on and after January 1, 2011,
22 but prior to termination or cessation of this credit as specified
23 in this article, the amount of the credit allowed under this

1 article for an alternative-fuel motor vehicle that weighs more than
2 twenty-six thousand pounds is thirty-five percent of the purchase
3 price of the alternative-fuel motor vehicle up to a maximum amount
4 of \$25,000 or fifty percent of the actual cost of converting from
5 a traditionally fueled motor vehicle to an alternative fuel motor
6 vehicle up to a maximum amount of \$25,000.

7 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**
8 **refueling infrastructure and ~~qualified alternative~~**
9 **~~fuel vehicle home refueling infrastructure.~~**

10 (a) For taxable years beginning on and after January 1, 2011,
11 but prior to January 1, 2014, the amount of the credit allowed
12 under this article for qualified alternative fuel vehicle refueling
13 infrastructure is equal to ~~an amount of~~ fifty percent of the total
14 costs directly associated with the construction or purchase and
15 installation of the alternative fuel vehicle refueling
16 infrastructure up to a maximum of \$250,000: *Provided*, That if the
17 qualified alternative fuel vehicle refueling infrastructure is
18 generally accessible for public use, the amount of the credit
19 allowed will be multiplied by 1.25 and the maximum amount allowable
20 will be \$312,500. The amount of credit allowed may not exceed the
21 cost of construction of the alternative fuel vehicle refueling
22 infrastructure.

23 (b) For taxable years beginning on and after January 1, 2014,

1 but prior to ~~January 1, 2016~~ termination or cessation of this
2 credit as specified in this article, the amount of the credit
3 allowed under this article for qualified alternative fuel vehicle
4 refueling infrastructure is equal to ~~an amount of fifty~~ twenty
5 percent per facility of the total costs directly associated with
6 the construction or purchase and installation of the alternative
7 fuel vehicle refueling infrastructure up to a maximum of ~~\$200,000~~
8 \$400,000 per facility. ~~Provided, That if the qualified alternative~~
9 ~~fuel vehicle refueling infrastructure is generally accessible for~~
10 ~~public use, the amount of the credit allowed will be multiplied by~~
11 ~~1.25 and the maximum amount allowable will be \$250,000. The amount~~
12 ~~of credit allowed may not exceed the cost of construction of the~~
13 ~~alternative fuel vehicle refueling infrastructure~~

14 (c) ~~For taxable years beginning on and after January 1, 2016,~~
15 ~~but prior to January 1, 2022, the amount of the credit allowed~~
16 ~~under this article for qualified alternative fuel vehicle refueling~~
17 ~~infrastructure is equal to an amount of fifty percent of the total~~
18 ~~costs directly associated with the construction or purchase and~~
19 ~~installation of the alternative fuel vehicle refueling~~
20 ~~infrastructure up to a maximum of \$150,000: Provided, That if the~~
21 ~~qualified alternative fuel vehicle refueling infrastructure is~~
22 ~~generally accessible for public use, the amount of the credit~~
23 ~~allowed will be multiplied by 1.25 and the maximum amount allowable~~

1 ~~will be \$187,500. The amount of credit allowed may not exceed the~~
2 ~~cost of construction of the alternative fuel vehicle refueling~~
3 ~~infrastructure.~~

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

11 ~~(e) (c)~~ The cost of construction of the alternative fuel
12 vehicle refueling infrastructure or alternative fuel vehicle home
13 refueling infrastructure eligible for a tax credit under this
14 ~~section~~ article does not include costs associated with exploration,
15 development or production activities necessary for severing natural
16 resources from the soil or ground.

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

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

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

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

6 (a) No person is eligible to receive a tax credit under this
7 article for:

8 (1) An alternative-fuel motor vehicle purchased after December
9 31, ~~2021~~ 2017;

10 (2) A vehicle converted to an alternative-fuel motor vehicle
11 after December 31, ~~2021~~ 2017; ~~or~~

12 (3) The construction or purchase and installation of qualified
13 alternative fuel vehicle refueling infrastructure ~~or qualified~~
14 ~~alternative fuel vehicle home refueling infrastructure~~ occurring
15 after December 31, ~~2021~~ 2017;

16 (4) The construction or purchase and installation of qualified
17 alternative fuel vehicle home refueling infrastructure occurring in
18 tax years beginning after December 31, 2012;

19 (5) Purchases of motor vehicles that operate on fuels other
20 than compressed natural gas, liquefied natural gas or liquefied
21 petroleum gas, occurring in tax years beginning after December 31,
22 2012; or

23 (6) Conversions of motor vehicles to operate on fuels other

1 than compressed natural gas, liquefied natural gas or liquefied
2 petroleum gas, occurring in tax years beginning after December 31,
3 2012.

4 (b) The provisions of this section that are applicable to tax
5 years beginning after December 31, 2012, are hereby specifically
6 made retroactive.

7 **§11-6D-9. Carryover credit allowed; recapture of credit.**

8 (a) If the tax credit allowed under this article in ~~any~~ the
9 first taxable year in which the tax credit is allowable to offset
10 tax exceeds the taxpayer's tax liability as determined in
11 accordance with article twenty-one, article twenty-three ~~or~~ and
12 article twenty-four of this chapter for that taxable year, the
13 excess may be applied for not more than the two next succeeding
14 taxable years until the ~~full amount of the~~ excess tax credit is
15 used or the end of the second next succeeding taxable year,
16 whichever occurs first. Any excess credit remaining at the end of
17 the second next succeeding taxable year shall be forfeited.

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

20 (c) A tax credit is subject to recapture, elimination or
21 reduction if it is determined by the State Tax Commissioner that a
22 taxpayer was not entitled to the credit, in whole or in part, in
23 the tax year in which it was claimed by the taxpayer. The amount

1 of credit that flows through to equity owners of a ~~passthrough~~
2 pass-through entity may be recaptured or recovered from either the
3 taxpayer or the equity owners in the discretion of the Tax
4 Commissioner.

5 (d) The tax credit allowed under this article may not be sold,
6 transferred or assigned to any person or entity. The tax credit
7 allowed under this article does not attach to or follow the
8 qualified motor vehicle or qualified infrastructure upon sale,
9 resale, transfer, assignment or any other change of ownership of
10 such vehicle or infrastructure. Credit shall not be available to
11 any successor owner of any qualified motor vehicle or any qualified
12 infrastructure property for which the credit was available to the
13 original owner or predecessor owner.

NOTE: The purpose of this bill is to refine, revise and modernize the alternative fuel motor vehicle infrastructure credit and alternative fuel motor vehicle credit to more closely align the code with specific intended economic development goals and budgetary goals.

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