

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5399

**FISCAL
NOTE**

By Delegate Riley

[Introduced February 10, 2026; referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §11-24-45, relating to providing a tax credit against the state corporation net
3 income tax for expenditures and activities related to the establishment and operation of
4 biochar manufacturing facilities; defining terms; providing for rulemaking; establishing the
5 amount of the tax credit; providing for limitations of the tax credit; establishing the duration
6 of the tax credit; and providing for verification requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-45. Tax credit for biochar-based carbon oxide sequestration.

1 (a) Legislative findings. The Legislature finds and declares that:

2 (1) West Virginia is one of the most heavily forested states in the nation, with approximately
3 78 percent of its land area comprised of forest, creating a reliable supply of raw materials suitable
4 for value-added manufacturing processes, including biochar production;

5 (2) Federal law currently provides income tax credits under 26 U.S.C. § 45Q for certain
6 manufacturing processes and industrial activities, which includes the production and commercial
7 use of biochar, subject to certification by the Internal Revenue Service;

8 (3) Aligning state tax policy with existing federal incentives will improve West Virginia's
9 ability to compete with other states for private capital investment, advanced manufacturing
10 facilities, and long-term job creation;

11 (4) Biochar production facilities represent a manufacturing opportunity that can be located
12 in rural and coal-impacted communities by repurposing existing industrial sites, transportation
13 infrastructure, and a skilled workforce with experience in energy, materials handling, and industrial
14 operations;

15 (5) In-state biochar production provides secondary benefits, including improved land
16 management, mine land reclamation, and water quality protection, while supporting working lands
17 and industrial reuse;

(6) Development of new manufacturing supply chains centered on forestry residues, sawmills, trucking, and logging operations will strengthen existing industries and support small businesses throughout the state; and

(7) It is in the public interest to establish a targeted, performance-based tax credit that rewards verified, federally certified production and investment at new biochar manufacturing facilities that commence operations in this state after July 1, 2025.

(b) Definitions. As used in this section:

"Carbon oxide sequestration" means the permanent removal and storage of carbon dioxide or other carbon oxides in a manner that is eligible for and allowed a federal income tax credit under 26 U.S.C. § 45Q, as amended, of the Internal Revenue Code, as certified by the Internal Revenue Service.

"Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or his or her delegate.

"Department" or "Tax Department" means the West Virginia State Tax Department.

"Eligible taxpayer" means any entity subject to the tax imposed by this article that owns or operates a qualified biochar facility located within West Virginia and that is allowed a federal income tax credit for carbon oxide sequestration related to biochar production under 26 U.S.C. § 45Q of the Internal Revenue Code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"Qualified facility" means a facility located in West Virginia that produces biochar and commences commercial operations after July 1, 2025.

(c) Allowance of credit. Effective for taxable years beginning July 1, 2026, an eligible taxpayer shall be allowed a credit against the tax imposed by this article for each taxable year in which the taxpayer is allowed a federal carbon oxide sequestration credit under 26 U.S.C. § 45Q of the Internal Revenue Code.

(d) Amount of credit. An eligible taxpayer may claim a corporate net income tax credit

equal to ten percent (10%) of the amount of any federal income tax credit allowed to the taxpayer for carbon oxide sequestration under 26 U.S.C. § 45Q of the Internal Revenue Code achieved through biochar production at a qualified facility located in West Virginia.

(e) Limitations. The credit allowed under this section may not reduce the taxpayer's corporation net income tax liability for the taxable year by more than fifty percent of the amount of tax due before application of this credit: *Provided*, That any unused portion of the credit which may not be taken in the taxable year to which the credit applies shall qualify for carryback or carryforward treatment subject to the identical general provisions of 26 U.S.C. § 39 of the Internal Revenue Code, as amended, but may not be carried back to a taxable year beginning before July 1, 2026: *Provided further*, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year.

(f) Duration. The credit allowed under this section may be claimed by the eligible taxpayer for a period of up to 12 years following the date the qualified facility is placed in service, as determined by the period for which the taxpayer is allowed the applicable federal carbon oxide sequestration credit under 26 U.S.C. § 45Q of the Internal Revenue Code.

(g) Verification and documentation. The Tax Commissioner shall rely on the certification and allowance of the federal income tax credit under 26 U.S.C. § 45Q by the Internal Revenue Service and may not independently determine eligibility for the federal credit. To claim the credit allowed under this section, the taxpayer shall submit such documentation as the Tax Commissioner may require, including, but not limited to:

(1) A copy of the federal income tax return or other documentation acceptable to the State Tax Department demonstrating that the taxpayer has been allowed a federal income tax credit for carbon oxide sequestration under 26 U.S.C. § 45Q of the Internal Revenue Code related to the biochar production for which the state credit is claimed;

(2) Independent verification of biochar carbon content, permanence, and sequestration consistent with nationally recognized standards accepted by the Internal Revenue Service for

purposes of the federal carbon oxide sequestration credit; and

(3) Documentation demonstrating that biochar production and sequestration activities occurred within West Virginia.

(h)(1) Conduit entities; corporation net income tax. If an eligible taxpayer that owns or operates a qualified facility is an electing small business corporation, as defined in §1361 of the Internal Revenue Code of 1986, as amended, a partnership, or a limited liability company treated as a partnership for federal income tax purposes, the credit authorized by this section shall be allowed as a credit against the tax imposed by this article on the flow-through income of the shareholders of the electing small business corporation, the partners, owners, or members of the partnership or limited liability company, as the case may be, attributable to the activities of such electing small business corporation, partnership, or limited liability company giving rise to the credit.

(2) Electing small business corporations, partnerships, limited liability companies, and other unincorporated organizations shall allocate the credit allowed under this section among their shareholders, partners, owners, or members in the same manner as profits and losses are allocated for the taxable year.

(3) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(4) The credit allowed under this section shall be used in accordance with the limitations and carryback and carryforward provisions set forth in subsection (f) of this section.

(i) Rules. The Tax Commissioner may promulgate legislative and interpretive rules in accordance with §29A-3-1 et seq. as may be necessary to administer this section.

NOTE: The purpose of this bill is to encourage private investment in biochar manufacturing facilities located in this state by leveraging existing federal tax incentives through a limited, performance-based state income tax credit.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.