WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 131

By Senators Phillips and Rose

[Reported January 30, 2026, from the Committee on

Energy, Industry, and Mining]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, §11-13NN-7, §11-13NN-8, §11-13NN-9, §11-13NN-10, §11-13NN-11, and §11-13NN-12, relating to establishing a road or highway infrastructure improvement project or coal or natural gas production and processing facilities tax credit for taxpayers subject to the tax imposed by code; specifying a short title; specifying legislative findings and purpose for new credit; defining terms; specifying the amount of the credit, application of credit, and carry forward of unused credit; requiring filing of application for road or highway infrastructure improvement project credit as condition precedent to claiming credit; specifying procedure for application for certification, contents of application, and limitation on maximum amount of credits which can be approved; specifying computation of qualified investment in coal or natural gas production and processing facilities; allowing transfer of credits to successors; providing for forfeiture of unused tax credits and redetermination of credit allowed; providing penalties for failure to maintain records of qualified property; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. TAX CREDIT FOR ROAD AND HIGHWAY INFRASTRUCTURE IMPROVEMENTS AND COAL OR NATURAL GAS PRODUCTION AND PROCESSING FACILITIES.

§11-13NN-1. Short title.

This article is and may be cited as the "West Virginia Road and Highway Infrastructure Improvements and Coal or Natural Gas Production and Processing Facilities Tax Credit Act".

§11-13NN-2. Legislative findings; tax credit established.

(a) The Legislature finds that development and maintenance of infrastructure projects in this state, including a system of quality roads and highways, and capital investments by taxpayers subject to the tax imposed by §11-13A-1 *et seq.* of this code, is in the public interest, encourages greater capital investment by other businesses in the coal and natural gas producing areas of this state, increases economic opportunity in this state, and thereby improves the general welfare of the people of this state.

(b) To promote private investment in infrastructure improvements to roads and highways in this state and capital investment by coal and natural gas severance tax taxpayers, the Road and Highway Infrastructure Improvements and Coal and Natural Gas Production and Processing Facilities Tax Credit is created.

§11-13NN-3. Definitions.

As used in this article, the terms and phrases have the meanings ascribed to them as follows, unless a different meaning is clearly required by the context.

(1) "Control", for purposes of subdivision (3) of this section means ownership, directly or indirectly, of 50 percent or more of:

(A) The total combined voting power of all classes of a corporation's stock that is entitled to vote, when concerning a corporation; and

(B) The beneficial interest in the principal or income of the trust, when concerning a trust.

(C) Ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust, is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

(2) "Corporation" means any corporation, joint-stock company, association, or business conducted by a trustee wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(3) "Eligible taxpayer":

(A) Means any person who:

(i) Makes a qualified expenditure, as provided in §11-13NN-4 of this article, in a certified road or highway infrastructure improvement project or coal or natural gas production and processing facility; and

(ii) Is subject to the tax imposed by §11-13A-3 or §11-13A-3a of this code; and

(B) Includes an affiliated group of taxpayers if the group elects to file a consolidated severance tax return under article §11-13A-1 *et seq.* of this code.

(4) "Partner" means a member of a partnership as defined by this section.

(5) "Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through which any business, financial operation, or venture is carried on. Partnership does not include any trust, estate, corporation, or sole proprietorship.

(6) “Person" includes any natural person, corporation, or partnership.

(7) "Related person" means:

(A) A corporation, partnership, association, or trust controlled by a taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of a taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of a taxpayer; or

(D) A member of the same controlled group as a taxpayer.

(8) "Road" and "highway" each have the same meaning as the terms "road", "public road", and "highway" are defined in §17-1-3 of this code.

(9) "Road or highway infrastructure improvement" means construction, improvement, repair, upgrade, and modernization of roads, public roads, and highways in this state, consistent with the purposes of this article, and for the purpose of:

(A) Widening, increasing weight limits, enhancing safety, improving traffic flow, or otherwise facilitating the commercial transportation of goods or passengers within this state; or

(B) Facilitating or improving ingress and egress of vehicles to commercial and industrial sites.

(10) "Tax Commissioner" means the Tax Commissioner of the West Virginia State Tax Division.

(11) "Taxpayer" means any person subject to the tax imposed by §11-13A-3 or §11-13A-3a of this code.

(12) "Transportation Secretary" means the Cabinet Secretary of the West Virginia Department of Transportation.

§11-13NN-4. Expenditures qualifying for tax credit.

(a) The following expenditures for road or highway infrastructure improvement projects qualify for the tax credit provided by this article when provided in furtherance of a road or highway infrastructure improvement project:

(1) Payments made by an eligible taxpayer for labor performed or tangible personal property, materials, services, or supplies furnished;

(2) The cost of real property and improvements thereto, purchased by an eligible taxpayer and donated to the state; and

(3) The fair market value of real property, and improvements thereto, owned by an eligible taxpayer and donated to the state.

(b) The following expenditures for coal or natural gas production and processing facilities qualify for the tax credit provided by this article:

(1) Payments made by an eligible taxpayer for labor performed or tangible personal property, materials, services, or supplies furnished in furtherance of construction, installation, or fabrication of haul roads, ventilation structures, mine shafts, slopes, boreholes, dewatering structures, preparation plants, or loadouts, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors at a coal mine or coal or natural gas production or processing facility; and

(2) The cost of any real property, improvements thereto, and machinery and equipment. This includes the cost of repairs, upgrades, or refurbishments to machinery and equipment

purchased or leased by an eligible taxpayer and directly used as part of a coal or natural gas production or processing facility. Examples of such include, but are not limited to, the cost to purchase, lease, or repair items such as longwall miners, including repair, refurbishment, or replacement of associated shears, shields, or hydraulics; continuous miners; highwall miners; augers; roof bolters; excavators; dozers; haulage vehicles; equipment used in blasting related to surface mining; conveyor belts; car-dumps; chain conveyors; ventilation fans; man trips; roof trusses; and shuttle cars.

(c) Property and services do not qualify as expenditures for road or highway infrastructure improvement projects nor for expenditures for coal or natural gas production and processing facilities if acquired:

(1) From a person whose relationship to the person making the expenditure would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January 2004; or

(2) By one component member of a controlled group from another component member of the same controlled group, except that the Tax Commissioner may waive this disqualification if the expenditure is for property or services acquired from a related person for fair market value.

§11-13NN-5. Tax credit allowed; amount of credit; application of credit; carry forward of unused credit for 10 years.

(a) *Tax credit allowed.* – An eligible taxpayer is allowed a credit against a portion of its annual severance tax liability as provided by this article.

(b) *Amount of credit.* – The amount of credit allowable is determined by adding the amount of the eligible taxpayer's expenditures for road or highway infrastructure improvement projects, as determined and certified by the Transportation Secretary, plus the amount of the eligible taxpayer's qualified investment in coal or natural gas production and processing facilities, and multiplying that sum by 50 percent. The product of this calculation is the maximum amount of credit allowable under this article.

(c) *Application of credit.* – The amount of credit allowable may be taken against up to 20 percent of the eligible taxpayer's annual severance tax liability imposed by §11-13A-3 or §11-13A-3a of this code. Where the eligible taxpayer's expenditure involves a road or highway infrastructure improvement, the credit may be taken in the year the improvement is completed, as certified by the Transportation Secretary. Where the expenditure involves coal or natural gas production and processing facilities, the credit may be taken in the year the property is first placed into service or use by the eligible taxpayer. The annual credit allowance shall be taken in the manner prescribed in §11-13NN-7 of this article. The aggregate annual credit allowance may be claimed by the eligible taxpayer against its severance tax liability shown on its monthly tax returns at the rate of one-twelfth of the annual credit allowance per month.

(d) *Unused credit.* – If any credit remains after application of subsection (c) of this section, the remaining amount may be carried forward to each ensuing tax year until used or until expiration of the ninth taxable year subsequent to the year in which the credit was first available. Any unused credit remaining after the 10th year is forfeited. Carryback to a prior taxable year is not allowed for any unused portion of an annual credit allowance.

(e) *Placed in service or use.* – Property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the eligible taxpayer's depreciation practice, the period for depreciation regarding the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13NN-6. Application for road or highway infrastructure improvement project; contents of application; review of credit application; limitation on total credits authorized; taking of credit.

(a) *Application for credit required.* – Prior to asserting a claim for the credit allowed by this article for any expenditure for road or highway infrastructure improvement project, the person first shall apply to the Transportation Secretary for certification of the project. An application for the certification shall be filed with and approved by the Transportation Secretary prior to commencing any project construction.

(b) *Contents of application for certification.* – An application for certification of a road or highway infrastructure improvement project shall contain:

(1) A detailed description of the project;

(2) Any engineering drawing required to construct the infrastructure improvements included in the application;

(3) A list of any contractors who will work on the project;

(4) A description of the work each contractor will perform;

(5) The project timetable;

(6) A detailed itemization of the total project cost;

(7) The amount of credit requested; and

(8) Any other information the Transportation Secretary may require.

(c) *Review of application.* – Once a project application is filed, the Transportation Secretary shall work with the taxpayer to ensure that the application contains all the required information. An application for certification may be supplemented or amended at any time after filing until all of the required information has been provided. Once a complete application has been filed, the Transportation Secretary shall review it and determine whether the project is certified as eligible for a tax credit under this article.

(d) *Limitation on credit amount.* – The tax credit available for any certified road or highway infrastructure improvement project may not exceed $100,000, regardless of the total project cost. The Secretary shall maintain a record of each taxpayer's total certified expenditures.

(e) *Taking of credit.* – An eligible taxpayer claiming a credit for certified expenditures for any road or highway infrastructure improvement shall include with its severance tax returns any information supporting the computation of the credit and any other information the Transportation

Secretary requires.

§11-13NN-7. Qualified investment in coal or natural gas production and processing facilities.

(a) *General.* – A qualified investment in coal or natural gas production and processing facilities is the applicable percentage of the cost of each expenditure for coal or natural gas production and processing facilities that are placed in service or use in this state by the taxpayer during the taxable year.

(b) *Applicable percentage.* – The applicable percentage of any property is determined as follows:

If useful life is:	The applicable percentage is:
Fewer than 4 years:	0
4 years or more but fewer than 6 years:	33-1/3
6 years or more but fewer than 8 years:	66-2/3
8 years or more:	100

The useful life of the property is determined as of the date the property is first placed in service or use in this state by the taxpayer, determined in accordance with such rules and requirements as the Tax Commissioner may prescribe.

(c) *Cost.* – The cost of any property acquired for business expansion is determined as follows:

(1) *Trade-ins.* – Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.

(2) *Damaged, destroyed, or stolen property.* – If property is stolen or is damaged or destroyed by fire, flood, storm, or other casualty, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) *Rental of real property.* – The cost of real property acquired by written lease for a primary term of 10 years or longer is 100 percent of the rent reserved for the primary term of the

lease, not to exceed 20 years.

(4) *Rental of tangible personal property.* – Any rent reserved does not include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation. The cost of tangible personal property acquired by written lease for a primary term of:

(A) Four years or longer, is one-third of the rent reserved for the primary term of the lease;

(B) Six years or longer, is two-thirds of the rent reserved for the primary term of the lease; and

(C) Eight years or longer, is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years.

(5) *Self-constructed property.* – The cost of self-constructed property is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

§11-13NN-8. Transfer of tax credit to successors.

(a) *Mere change in form of business.* – The tax credit allowed in this article is not lost due to a mere change in the form of conducting business in this state if the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available for the project.

(b) *Transfer or sale to successor.* – The tax credit allowed in this article is not lost due to transfer or sale of the stock or assets of the eligible taxpayer to a successor business that continues to operate in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains for each subsequent taxable year.

§11-13NN-9. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) *Disposition of property or cessation of use.* – The unused portion of any credit for property is forfeited for the taxable year and all ensuing years if, during any taxable year, the property:

(1) Is disposed of prior to the end of its useful life, as determined under §11-13NN-9 of this

article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under §11-13NN-7 of this article.

(b) *Redetermination of allowable credit amount*. – Except when the property is stolen or is damaged or destroyed by fire, flood, storm, or other casualty, a taxpayer who forfeits an unused portion of credit pursuant to this section shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under §11-13NN-7 of this article to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the taxpayer's business. The taxpayer then shall file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the taxpayer's annual severance tax return.

(c) *Cessation of operation of coal or natural gas production or processing facility.* – If during any taxable year the taxpayer ceases operation of a coal or natural gas production or processing facility in this state for which credit was allowed under this article, before expiration of the useful life of the property for which the tax credit was allowed, then the unused portion of the credit is forfeited. Except when the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine the amount of credit allowed by reducing the applicable percentage of cost of the property allowed under §11-13NN-7 of this article to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the taxpayer's business. The taxpayer then shall file a reconciliation statement with its annual severance tax return, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the taxpayer's annual severance tax return.

§11-13NN-10. Identification of qualified property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) The identity;

(2) The actual or reasonably determined cost;

(3) The straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified property.

§11-13NN-11. Failure to keep records of qualified property.

A taxpayer who does not keep the records required by this article for identification of qualified property is treated as having disposed of any qualified property during the taxable year that the taxpayer cannot establish was still on hand in this state at the end of that year. If the taxpayer cannot establish when qualified property on which the credit was claimed was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as having placed the property in service in the next most recent year.

§11-13NN-12. Effective date.

The credit allowed by this article is allowed for tax years beginning on or after January 1, 2027.