

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 465**

6 (By Senators McCabe, Kessler (Acting President),  
7 Browning, Unger, Snyder, Stollings, Plymale, Wells, Palumbo,  
8 Beach, Klempa, Yost and Foster)

9 \_\_\_\_\_  
10 [Originating in the Committee on Finance;  
11 reported February 24, 2011.]

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14  
15 A BILL to amend the Code of West Virginia, 1931, as amended, by  
16 adding thereto a new article, designated §5B-2H-1, §5B-2H-2  
17 and §5B-2H-3; to amend said code by adding thereto a new  
18 section, designated §11-1C-11c; to amend and reenact §11-6D-1,  
19 §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and  
20 §11-6D-8 of said code; to amend said code by adding thereto a  
21 new section, designated §11-6D-9; to amend and reenact §11-6F-  
22 2 and §11-6F-3 of said code; to amend said code by adding  
23 thereto a new section, designated §11-13A-5b; to amend and  
24 reenact §11-13R-3 of said code; to amend and reenact §11-13S-3  
25 and §11-13S-4 of said code; to amend and reenact §11-15-8d of  
26 said code; and to amend and reenact §24-2F-3 of said code, all

1 relating generally to the Marcellus Gas and Manufacturing  
2 Development Act of 2011; providing short title; making  
3 legislative findings and declarations; creating a tax credit  
4 for the personal property tax on horizontal drilling rigs and  
5 related equipment; authorizing the Tax Commissioner to  
6 promulgate rules; amending and reinstating alternative-fuel  
7 motor vehicles tax credit; providing credit for alternative-  
8 fuel refueling facilities; making legislative findings;  
9 stating legislative purpose; defining terms; allowing credit  
10 for purchase of alternative-fuel motor vehicles, conversion of  
11 vehicles to alternative-fuel motor vehicles and for commercial  
12 and residential alternative-fuel refueling facilities;  
13 providing for expiration of credits; requiring Tax  
14 Commissioner to promulgate rules and design forms; providing  
15 for carryover of unused credits and for recapture of credits;  
16 amending definition of "manufacturing" for purposes of special  
17 method for appraising qualified capital additions to  
18 manufacturing facilities for property tax purposes; providing  
19 new rules for treatment of certified capital addition  
20 property; setting baseline for oil and gas severance tax  
21 collections; providing for excess distribution and deposit of  
22 excess collections; amending definition of "research and  
23 development" for purposes of strategic research and  
24 development tax credit; amending definition of "manufacturing"  
25 for purposes of manufacturing investment tax credit; requiring  
26 certain business activities comply with the West Virginia Jobs

1 Act in order to be eligible for the manufacturing investment  
2 tax credit; providing additional exception to limitation on  
3 right to assert sales and use tax exemptions; and clarifying  
4 meaning of "natural gas" for purposes of Alternative and  
5 Renewable Energy Portfolio Standard Act.

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

7 That the Code of West Virginia, 1931, as amended, be amended  
8 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2 and  
9 §5B-2H-3; that said code be amended by adding thereto a new  
10 section, designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3,  
11 §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be  
12 amended and reenacted; that said code be amended by adding thereto  
13 a new section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of  
14 said code be amended and reenacted; that said code be amended by  
15 adding thereto a new section, designated §11-13A-5b; that §11-13R-3  
16 of said code be amended and reenacted; that §11-13S-3 and §11-13S-4  
17 of said code be amended and reenacted; that §11-15-8d of said code  
18 be amended and reenacted; and that §24-2F-3 of said code be amended  
19 and reenacted, all to read as follows:

20 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

21 **ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.**

22 **§5B-2H-1. Short Title.**

23 This article shall be known and cited as the "Marcellus Gas  
24 and Manufacturing Development Act".

25 **§5B-2H-2. Legislative findings; declaration of public policy.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing  
3 technologies and drilling practices have created the opportunity  
4 for the efficient development of natural gas contained in  
5 underground shales and other geological formations.

6 (2) With development of the Marcellus shale comes the  
7 opportunity for economic development in related areas of the  
8 economy including, but not limited to, manufacturing, transmission  
9 of natural gas and related products and the transportation of  
10 manufactured products.

11 (3) It is in the interest of national security to encourage  
12 post-production uses of natural gas and its various components as  
13 a replacement for oil imported from other countries.

14 (4) Producers of natural gas, transporters of natural gas and  
15 manufacturers of products using natural gas face a significant  
16 number of regulatory requirements, some of which may be redundant,  
17 inconsistent, or overlapping. Agencies should work together, where  
18 practical, to avoid duplication, promote better coordination and  
19 reduce these requirements, thus reducing costs, simplifying and  
20 harmonizing rules and streamlining regulatory oversight.

21 (5) In developing regulatory actions and identifying  
22 appropriate approaches, agencies should attempt to promote  
23 coordination, simplification, and harmonization.

24 (6) Agencies should also seek to identify, as appropriate,  
25 means to achieve regulatory goals that are designed to promote  
26 innovation.

1 (7) Agencies should review their existing significant  
2 legislative, interpretive and procedural rules to determine whether  
3 any such rules should be modified, streamlined, expanded or  
4 repealed so as to make the agency's regulatory program more  
5 effective or less burdensome in achieving the regulatory  
6 objectives.

7 (8) The West Virginia Economic Development Authority  
8 established in article fifteen, chapter thirty-one of this code and  
9 the West Virginia Infrastructure and Jobs Development Council  
10 created in article fifteen-a, chapter thirty-one of this code,  
11 should, where appropriate, provide assistance that grows or  
12 sustains this segment of the economy.

13 (b) The Legislature declares that facilitating the development  
14 of business activity directly and indirectly related to development  
15 of the Marcellus shale serves the public interest of the citizens  
16 of this state by promoting economic development and improving  
17 economic opportunities for the citizens of this state.

18 **§5B-2H-3. Tax Credit for the amount of personal property tax on all**  
19 **horizontal drilling rigs and related equipment.**

20 (a) Each company organized in the state of West Virginia with  
21 corporate headquarters in the state of West Virginia, that owns a  
22 horizontal drilling rig and related equipment to horizontal  
23 drilling is entitled to a tax credit against the taxes imposed in  
24 articles thirteen, thirteen-a, twenty-one, twenty-three, and  
25 twenty-four of chapter eleven of this code for the amount provided  
26 in subsection (b) of this section: Provided, that such company

1 complies with the West Virginia Jobs Act as provided in Article  
2 one-c, chapter twenty one of this code.

3 (b) The amount of credit allowed under this section is one  
4 hundred percent of the annual personal property taxes imposed on  
5 the company as a result of the company's ownership of the  
6 horizontal drilling rig and related equipment to the horizontal  
7 drilling.

8 (c) All companies eligible for this tax credit may only take  
9 such credit for a five year period.

10 (d) No company is eligible to take this credit after July 1,  
11 2013.

12 (e) No carryover of the credit is allowed.

13 (f) The tax commissioner shall propose rules for legislative  
14 approval in accordance with article three, chapter twenty-nine-a of  
15 this code to carry out the policy and purposes of this section, to  
16 provide any necessary clarification of the provisions of this  
17 section and to efficiently provide for the general administration  
18 of this section. The tax commissioner is authorized to promulgate  
19 emergency rules to implement the provisions of this section.

20 **CHAPTER 11. TAXATION.**

21 **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

22 **§11-1C-11c. Valuation of oil and gas drilling rigs.**

23 Notwithstanding any provision of this code to the contrary and  
24 to facilitate the equal and uniform taxation of oil and natural gas  
25 drilling rigs throughout the state, the State Tax Commissioner

1 shall annually compile a schedule of oil and natural gas drilling  
2 rig values based on the wholesale values shown in a nationally  
3 recognized guide or bulletin published during the calendar year  
4 that includes the assessment date, using the appropriate depth  
5 rating assigned to the drawworks by its manufacturer and the actual  
6 condition of the drilling rig. The State Tax Commissioner shall  
7 furnish the schedule to each assessor and it shall be used by him  
8 or her as a guide in placing the assessed values on all oil and  
9 natural gas drilling rigs in his or her county. This section  
10 applies to assessment years beginning on and after July 1, 2011.

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

12 **§11-6D-1. Legislative findings and purpose.**

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

1 fuels.

2       However, because the cost of motor vehicles which utilize  
3 alternative-fuel technologies remains high in relation to motor  
4 vehicles that employ more traditional technologies, citizens of  
5 this state who might otherwise choose an alternatively-fueled motor  
6 vehicle are forced by economic necessity to continue using motor  
7 vehicles that are fueled by more conventional means. Additionally,  
8 the availability of commercial and residential infrastructure to  
9 support alternatively-fueled vehicles available to the public is  
10 inadequate to encourage the use of alternatively-fueled motor  
11 vehicles. Therefore, in order to encourage the use of  
12 alternatively-fueled motor vehicles and possibly reduce unnecessary  
13 pollution of our environment and reduce our dependence on foreign  
14 sources of energy, there is hereby created an alternative-fuel  
15 motor vehicles tax credit and an alternative-fuel infrastructure  
16 tax credit.

17 **§11-6D-2. Definitions.**

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

20       (a) "Alternative fuel" includes:

21       (1) Compressed natural gas;

22       (2) Liquified natural gas;

23       (3) Liquified petroleum gas;

24       ~~(4) Methanol;~~

25       ~~(5) Ethanol;~~

26       ~~(6) Fuel mixtures that contain eighty-five percent or more by~~

1 ~~volume, when combined with gasoline or other fuels, of the~~  
2 ~~following:~~

3 ~~(A) Methanol;~~

4 ~~(B) Ethanol; or~~

5 ~~(C) Other alcohols;~~

6 (4) Natural gas hydrocarbons and derivatives;

7 (5) Hydrogen;

8 ~~(7)~~ (6) Coal-derived liquid fuels; and

9 ~~(8)~~ (7) Electricity, including electricity from solar energy.

10 (b) "Alternative-fuel motor vehicle" means a motor vehicle  
11 that as a new or retrofitted or converted fuel vehicle:

12 (1) Operates solely on one alternative fuel;

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

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

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

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

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

24 (2) A plug-in hybrid electric vehicle conversion that provides  
25 an increase in city fuel economy of seventy-five percent or more as  
26 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) "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, including  
14 but not limited to, compression equipment, storage tanks and  
15 dispensing units for alternative fuel at the point where the fuel  
16 is delivered: *Provided*, That the property is installed and located  
17 in this state and is not located on a private residence or private  
18 home.

19 (f) "Qualified alternative fuel vehicle home refueling  
20 infrastructure" means property owned by the applicant for the tax  
21 credit located on a private residence or private home and used for  
22 storing alternative fuels and for dispensing such alternative fuels  
23 into fuel tanks of motor vehicles, including but not limited to,  
24 compression equipment, storage tanks and dispensing units for  
25 alternative fuel at the point where the fuel is delivered or for  
26 providing electricity to plug-in hybrid electric vehicles or

1 electric vehicles: Provided, That the property is installed and  
2 located in this state.

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

7 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**  
8 **qualified alternative fuel vehicle refueling**  
9 **infrastructure; application against personal income**  
10 **tax, business franchise tax or corporate net income**  
11 **tax; effective date.**

12 The tax ~~credit~~ credits for the purchase of alternative-fuel  
13 motor vehicles or conversion to alternative-fuel motor vehicles,  
14 qualified alternative fuel vehicle refueling infrastructure and  
15 qualified alternative fuel vehicle home refueling infrastructure  
16 provided in this article may be applied against the tax liability  
17 of a taxpayer imposed by the provisions of either article twenty-  
18 one, article twenty-three or article twenty-four of this chapter  
19 but in no case may more than one credit be granted for the same  
20 alternative-fuel motor vehicle as defined in subdivision (b),  
21 section two of this article. This credit shall be available for  
22 those tax years beginning after ~~June 30, 1997~~ January 1, 2011.

23 **§11-6D-4. Eligibility for credit.**

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

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

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

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

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

14 (c) Constructs or purchases and installs qualified alternative  
15 fuel vehicle refueling infrastructure or qualified alternative fuel  
16 vehicle home refueling infrastructure that is capable of dispensing  
17 alternative fuel for alternative-fuel motor vehicles.

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

22 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

23 (a) For taxable years beginning on and after January 1, 2011,  
24 the amount of the credit allowed under this article for an  
25 alternative-fuel motor vehicle that weighs less than twenty-six  
26 thousand pounds is thirty-five percent of the purchase price of the

1 alternative-fuel motor vehicle up to a maximum amount of \$7,500 or  
2 fifty percent of the actual cost of converting from a traditionally  
3 fueled motor vehicle to an alternative fuel motor vehicle up to a  
4 maximum amount of \$7,500.

5 (b) For taxable years beginning on and after January 1, 2011,  
6 the amount of the credit allowed under this article for an  
7 alternative-fuel motor vehicle that weighs more than twenty-six  
8 thousand pounds is thirty-five percent of the purchase price of the  
9 alternative-fuel motor vehicle up to a maximum amount of \$25,000 or  
10 fifty percent of the actual cost of converting from a traditionally  
11 fueled motor vehicle to an alternative fuel motor vehicle up to a  
12 maximum amount of \$25,000.

13 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**  
14 **refueling infrastructure and qualified alternative**  
15 **fuel vehicle home refueling infrastructure.**

16 (a) For taxable years beginning on and after January 1, 2011  
17 but prior to January 1, 2014, the amount of the credit allowed  
18 under this article for qualified alternative fuel vehicle refueling  
19 infrastructure is equal to an amount of fifty percent of the total  
20 costs directly associated with the construction or purchase and  
21 installation of the alternative fuel vehicle refueling  
22 infrastructure up to a maximum of \$250,000: *Provided*, That if the  
23 qualified alternative fuel vehicle refueling infrastructure is  
24 generally accessible for public use, the amount of the credit  
25 allowed will be multiplied by 1.25 and the maximum amount allowable

1 will be \$312,500. The amount of credit allowed may not exceed the  
2 cost of construction of the alternative fuel vehicle refueling  
3 infrastructure.

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

17 (c) For taxable years beginning on and after January 1, 2016,  
18 but prior to January 1, 2022, the amount of the credit allowed  
19 under this article for qualified alternative fuel vehicle refueling  
20 infrastructure is equal to an amount of fifty percent of the total  
21 costs directly associated with the construction or purchase and  
22 installation of the alternative fuel vehicle refueling  
23 infrastructure up to a maximum of \$150,000: *Provided*, That if the  
24 qualified alternative fuel vehicle refueling infrastructure is  
25 generally accessible for public use, the amount of the credit  
26 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) The cost of construction of the alternative fuel vehicle  
12 refueling infrastructure or alternative fuel vehicle home refueling  
13 infrastructure eligible for a tax credit under this section does  
14 not include costs associated with exploration, development or  
15 production activities necessary for severing natural resources from  
16 the soil or ground.

17 (f) When the taxpayer is a pass-through entity treated like a  
18 partnership for federal and state income tax purposes, the credit  
19 allowed under this article for the year shall flow through to the  
20 equity owners of the pass-through entity in the same manner that  
21 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,  
24 chapter twenty-nine-a of this code to administer this section.

25 (g) No credit allowed by this article may be applied against  
26 employer withholding taxes imposed by article twenty-one of this

1 chapter.

2 **§11-6D-7. Duration of availability of credit.**

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

10 **§11-6D-8. Commissioner to design forms and schedules; promulgation**  
11 **of rules.**

12 (a) The Tax Commissioner shall design and provide to the  
13 public simplified forms and schedules to implement and effectuate  
14 the provisions of this article.

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

22 (c) Within one year ~~following~~ prior to the expiration of the  
23 credit established in this article, the State Tax Commissioner  
24 shall provide a written report to the Legislature setting forth the  
25 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.

18 **ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL**

19 **ADDITIONS TO MANUFACTURING FACILITIES.**

20 **§11-6F-2. Definitions.**

21 As used in this article, the term:

22 (a) "Certified capital addition property" means all real  
23 property and personal property included within or to be included  
24 within a qualified capital addition to a manufacturing facility  
25 that has been certified by the State Tax Commissioner in accordance

1 with section four of this article: *Provided*, That airplanes and  
2 motor vehicles licensed by the Division of Motor Vehicles shall in  
3 no event constitute certified capital addition property.

4 (b) "Manufacturing" means any business activity classified as  
5 having a sector identifier, consisting of the first two digits of  
6 the six-digit North American Industry Classification System code  
7 number of thirty-one, thirty-two or thirty-three or the six digit  
8 code number 211112.

9 ~~(b)~~ (c) "Manufacturing facility" means any factory, mill,  
10 chemical plant, refinery, warehouse, building or complex of  
11 buildings, including land on which it is located, and all  
12 machinery, equipment, improvements and other real property and  
13 personal property located at or within the facility used in  
14 connection with the operation of the facility in a manufacturing  
15 business.

16 ~~(c)~~ (d) "Personal property" means all property specified in  
17 subdivision (q), section ten, article two, chapter two of this code  
18 and includes, but is not limited to, furniture, fixtures, machinery  
19 and equipment, pollution control equipment, computers and related  
20 data processing equipment, spare parts and supplies.

21 ~~(d)~~ (e) "Qualified capital addition to a manufacturing  
22 facility" means all real property and personal property, the  
23 combined original cost of all of the property which exceeds \$50  
24 million to be constructed, located or installed at or within two  
25 miles of a manufacturing facility owned or operated by the person  
26 making the capital addition that has a total original cost before

1 the capital addition of at least \$100 million. ~~Provided, That~~ If  
2 the capital addition is made in a steel, chemical or polymer  
3 alliance zone as designated from time-to-time by executive order of  
4 the Governor, then the person making the capital addition may for  
5 purposes of satisfying the requirements of this subsection join in  
6 a multiparty project with a person owning or operating a  
7 manufacturing facility that has a total original cost before the  
8 capital addition of at least \$100 million if the capital addition  
9 creates additional production capacity of existing or related  
10 products or feedstock or derivative products respecting the  
11 manufacturing facility, consists of a facility used to store,  
12 handle, process or produce raw materials for the manufacturing  
13 facility, consists of a facility used to store, handle or process  
14 natural gas to produce fuel for the generation of steam or  
15 electricity for the manufacturing facility or consists of a  
16 facility that generates steam or electricity for the manufacturing  
17 facility. Beginning July 1, 2011, wherever the number "100" is used  
18 in this subsection, the number "20" shall be substituted and where  
19 the number "50" is used, the number "10" shall be substituted.

20 ~~(e)~~ (f) "Real property" means all property specified in  
21 subdivision (p), section ten, article two, chapter two of this code  
22 and includes, but is not limited to, lands, buildings and  
23 improvements on the land such as sewers, fences, roads, paving and  
24 leasehold improvements.

25 **§11-6F-3. Tax treatment of certified capital addition property.**

26 Notwithstanding any other provisions of law, the value of



1 Fund shall be separate and apart from the General Revenue Fund and  
2 shall be administered by the West Virginia Department of  
3 Environmental Protection. Expenditures from the special revenue  
4 account shall be for the purposes set forth in this section and  
5 made in accordance with appropriations from the Legislature and  
6 pursuant to the provisions of article three, chapter twelve of this  
7 code and after the fulfilment of the provisions of article two,  
8 chapter eleven-b of this code: *Provided*, That for the fiscal year  
9 ending June 30, 2012, expenditures are authorized from collections.  
10 Moneys in the Marcellus Shale Permit Fund not expended at the close  
11 of the fiscal year do not lapse or revert to the General Fund but  
12 are carried forward to the next fiscal year. Interest earnings on  
13 the revolving fund becomes a part of the revolving fund and do not  
14 lapse or revert to the General Fund. The West Virginia Department  
15 of Environmental Protection shall use the moneys in the Marcellus  
16 Shale Permit Fund for the purposes of paying for additional costs  
17 associated with permitting activity in the marcellus shale.

18 (3) The remaining balance after the distributions in  
19 subdivision (1) and (2) of this subsection shall be divided pro  
20 rata among the General Fund and the State Road Fund.

21 (c) This section shall have no force or effect after June 30,  
22 2016.

23 **ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.**

24 **§11-13R-3. Definitions.**

25 (a) *General.* -- When used in this article or in the

1 administration of this article, terms defined in subsection (b) of  
2 this section have the meanings ascribed to them by this section  
3 unless a different meaning is clearly required by either the  
4 context in which the term is used or by specific definition in this  
5 article.

6 (b) *Terms defined.* --

7 (1) "Base amount" means:

8 (A) The average annual combined qualified research and  
9 development expenditure for the three taxable years immediately  
10 preceding the taxable year for which a credit is claimed under this  
11 article;

12 (B) For a taxpayer that has filed a tax return under article  
13 twenty-three of this chapter for fewer than three but at least one  
14 prior taxable year, determined on the basis of all filings by the  
15 taxpayer's controlled group, the base amount is the average annual  
16 combined qualified research and development expenditure for the  
17 number of immediately preceding taxable years, other than short  
18 taxable years, during which the taxpayer has filed a tax return  
19 under article twenty-three of this chapter; or

20 (C) For a taxpayer that has not filed a tax return under  
21 article twenty-three of this chapter for at least one taxable year,  
22 determined on the basis of all filings by the taxpayer's controlled  
23 group, the base amount is zero.

24 (2) "Commissioner" and "Tax Commissioner" are used  
25 interchangeably herein and mean the Tax Commissioner of the State  
26 of West Virginia or his or her delegate.

1 (3) "Controlled group" means a controlled group as defined by  
2 section 1563 of the Internal Revenue Code of 1986, as amended.

3 (4) "Corporation" means any corporation, limited liability  
4 company, joint-stock company or association and any business  
5 conducted by a trustee or trustees wherein interest or ownership is  
6 evidenced by a certificate of interest or ownership or similar  
7 written instrument.

8 (5) "Delegate" in the phrase "or his or her delegate," when  
9 used in reference to the Tax Commissioner, means any officer or  
10 employee of the State Tax Division of the Department of Tax and  
11 Revenue duly authorized by the Tax Commissioner directly, or  
12 indirectly by one or more redelegations of authority, to perform  
13 the functions mentioned or described in this article.

14 (6) "Eligible taxpayer" means any person that is subject to  
15 the tax imposed by article twenty-three or article twenty-four of  
16 this chapter that is engaged in qualified research and development  
17 that has paid or incurred investment in qualified research and  
18 development credit property or that has paid or incurred qualified  
19 research and development expenses as defined in section four of  
20 this article. In the case of a sole proprietorship subject to  
21 neither the tax imposed by article twenty-three nor the tax imposed  
22 by article twenty-four, the term "eligible taxpayer" means any sole  
23 proprietor who is subject to the tax imposed by article twenty-one  
24 of this chapter and who is engaged in qualified research and  
25 development that has paid or incurred investment in qualified  
26 research and development credit property or that has paid or

1 incurred qualified research and development expenses as defined in  
2 section four of this article.

3 (7) "Partnership" includes a syndicate, group, pool, joint  
4 venture or other unincorporated organization through or by means of  
5 which any business, financial operation or venture is carried on,  
6 and which is not a trust or estate, a corporation or a sole  
7 proprietorship. The term "partner" includes a member in such a  
8 syndicate, group, pool, joint venture or other organization.

9 (8) "Person" includes any natural person, corporation, limited  
10 liability company or partnership.

11 (9) "Qualified research and development credit property" means  
12 depreciable property purchased for the conduct of qualified  
13 research and development.

14 (10) "Research and development" means systematic scientific,  
15 engineering or technological study and investigation in a field of  
16 knowledge in the physical, computer or software sciences often  
17 involving the formulation of hypotheses and experimentation for the  
18 purpose of revealing new facts, theories or principles or  
19 increasing scientific knowledge which may reveal the basis for new  
20 or enhanced products, equipment or manufacturing processes.

21 (A) Research and development includes, but is not limited to,  
22 design, refinement and testing of prototypes of new or improved  
23 products ~~or design~~ or equipment or the design, refinement and  
24 testing of manufacturing processes before commercial sales relating  
25 thereto have begun. For purposes of this section, commercial sales  
26 includes, but is not limited to, sales of prototypes or sales for

1 market testing.

2 (B) Research and development does not include:

3 (i) Market research;

4 (ii) Sales research;

5 (iii) Efficiency surveys;

6 (iv) Consumer surveys;

7 (v) Product market testing;

8 (vi) Product testing by product consumers or through consumer  
9 surveys for evaluation of consumer product performance or consumer  
10 product usability;

11 (vii) The ordinary testing or inspection of materials or  
12 products for quality control; ~~(quality control testing);~~

13 (viii) Management studies;

14 (ix) Advertising;

15 (x) Promotions;

16 (xi) The acquisition of another's patent, model, production or  
17 process or investigation or evaluation of the value or investment  
18 potential related thereto;

19 (xii) Research in connection with literary, historical or  
20 similar activities;

21 (xiii) Research in the social sciences, economics, humanities  
22 or psychology and other nontechnical activities; and

23 (xiv) The providing of sales services or any other service,  
24 whether technical service or nontechnical service.

25 (11) "Related person" means:

26 (A) A corporation, limited liability company, partnership,

1 association or trust controlled by the taxpayer;

2 (B) An individual, corporation, limited liability company,  
3 partnership, association or trust that is in control of the  
4 taxpayer;

5 (C) A corporation, limited liability company, partnership,  
6 association or trust controlled by an individual, corporation,  
7 partnership, association or trust that is in control of the  
8 taxpayer; or

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

10 For purposes of this article, "control", with respect to a  
11 corporation, means ownership, directly or indirectly, of stock  
12 possessing fifty percent or more of the total combined voting power  
13 of all classes of the stock of the corporation entitled to vote.  
14 "Control", with respect to a trust, means ownership, directly or  
15 indirectly, of fifty percent or more of the beneficial interest in  
16 the principal or income of the trust. The ownership of stock in a  
17 corporation, of a capital or profits interest in a partnership or  
18 association or of a beneficial interest in a trust is determined in  
19 accordance with the rules for constructive ownership of stock  
20 provided in section 267(c) of the United States Internal Revenue  
21 Code of 1986, as amended, other than paragraph (3) of that section.

22 (12) "Taxpayer" means any person subject to the tax imposed by  
23 article twenty-three or twenty-four of this chapter or both. In the  
24 case of a sole proprietorship subject to neither the tax imposed by  
25 article twenty-three nor the tax imposed by article twenty-four,  
26 the term "taxpayer" means any sole proprietor who is subject to the

1 tax imposed by article twenty-one of this chapter.

2 (13) "This code" means the Code of West Virginia, 1931, as  
3 amended.

4 (14) "This state" means the State of West Virginia.

5 **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

6 **§11-13S-3. Definitions.**

7 (a) Any term used in this article has the meaning ascribed by  
8 this section unless a different meaning is clearly required by the  
9 context of its use or by definition in this article.

10 (b) For purpose of this article, the term:

11 (1) "Eligible taxpayer" means an industrial taxpayer who  
12 purchases new property for the purpose of industrial expansion or  
13 for the purpose of industrial revitalization of an existing  
14 industrial facility in this state.

15 (2) "Industrial expansion" means capital investment in a new  
16 or expanded industrial facility in this state.

17 (3) "Industrial facility" means any factory, mill, plant,  
18 refinery, warehouse, building or complex of buildings located  
19 within this state, including the land on which it is located, and  
20 all machinery, equipment and other real and tangible personal  
21 property located at or within the facility primarily used in  
22 connection with the operation of the manufacturing business.

23 (4) "Industrial revitalization" or "revitalization" means  
24 capital investment in an industrial facility located in this state  
25 to replace or modernize buildings, equipment, machinery and other  
26 tangible personal property used in connection with the operation of

1 the facility in an industrial business of the taxpayer including  
2 the acquisition of any real property necessary to the industrial  
3 revitalization.

4 (5) "Industrial taxpayer" means any taxpayer who is primarily  
5 engaged in a manufacturing business.

6 (6) "Manufacturing" means any business activity classified as  
7 having a sector identifier, consisting of the first two digits of  
8 the six-digit North American Industry Classification System code  
9 number, of thirty-one, thirty-two or thirty-three or the six digit  
10 code number 211112.

11 (7) "Property purchased for manufacturing investment" means  
12 real property, and improvements thereto, and tangible personal  
13 property but only if the property was constructed or purchased on  
14 or after ~~the first day of January, two thousand three,~~ January 1,  
15 2003, for use as a component part of a new, expanded or revitalized  
16 industrial facility. This term includes only that tangible  
17 personal property with respect to which depreciation, or  
18 amortization in lieu of depreciation, is allowable in determining  
19 the federal income tax liability of the industrial taxpayer, that  
20 has a useful life, at the time the property is placed in service or  
21 use in this state, of four years or more. Property acquired by  
22 written lease for a primary term of ten years or longer, if used as  
23 a component part of a new or expanded industrial facility, is  
24 included within this definition.

25 (A) "Property purchased for manufacturing investment" does not  
26 include:

1 (i) Repair costs, including materials used in the repair,  
2 unless for federal income tax purposes, the cost of the repair must  
3 be capitalized and not expensed;

4 (ii) Motor vehicles licensed by the department of motor  
5 vehicles;

6 (iii) Airplanes;

7 (iv) Off-premises transportation equipment;

8 (v) Property which is primarily used outside this state; and

9 (vi) Property which is acquired incident to the purchase of  
10 the stock or assets of an industrial taxpayer which property was or  
11 had been used by the seller in his or her industrial business in  
12 this state or in which investment was previously the basis of a  
13 credit against tax taken under any other article of this chapter.

14 (B) Purchases or acquisitions of land or depreciable property  
15 qualify as purchases of property purchased for manufacturing  
16 investment for purposes of this article only if:

17 (i) The property is not acquired from a person whose  
18 relationship to the person acquiring it would result in the  
19 disallowance of deductions under section 267 or 707(b) of the  
20 United States Internal Revenue Code of 1986, as amended;

21 (ii) The property is not acquired from a related person or by  
22 one component member of a controlled group from another component  
23 member of the same controlled group. The Tax Commissioner may waive  
24 this requirement if the property was acquired from a related party  
25 for its then fair market value; and

26 (iii) The basis of the property for federal income tax

1 purposes, in the hands of the person acquiring it, is not  
2 determined, in whole or in part, by reference to the federal  
3 adjusted basis of the property in the hands of the person from whom  
4 it was acquired or under Section 1014(e) of the United States  
5 Internal Revenue Code of 1986, as amended.

6 (8) "Qualified manufacturing investment" means that amount  
7 determined under section five of this article as qualified  
8 manufacturing investment.

9 (9) "Taxpayer" means any person subject to any of the taxes  
10 imposed by article thirteen-a, twenty-three or twenty-four of this  
11 chapter or any combination of those articles of this chapter.

12 **11-13S-4. Amount of credit allowed for manufacturing investment.**

13 (a) *Credit allowed.* -- There is allowed to eligible taxpayers  
14 and to persons described in subdivision (5), subsection (b) of this  
15 section a credit against the taxes imposed by articles thirteen-a,  
16 twenty-three and twenty-four of this chapter: Provided, that a tax  
17 credit for any eligible taxpayer operating a business activity  
18 classified as having a sector identifier, consisting of the six  
19 digit code number 211112, such eligible taxpayer must comply with  
20 the West Virginia Jobs Act as provided in Article one-c, chapter  
21 twenty one of this code in order to be eligible for any credit  
22 under this article. The amount of credit shall be determined as  
23 hereinafter provided in this section.

24 (b) *Amount of credit allowable.* -- The amount of allowable  
25 credit under this article is equal to five percent of the qualified  
26 manufacturing investment (as determined in section five of this

1 article) and shall reduce the severance tax, imposed under article  
2 thirteen-a of this chapter, the business franchise tax imposed  
3 under article twenty-three of this chapter and the corporation net  
4 income tax imposed under article twenty-four of this chapter, in  
5 that order, subject to the following conditions and limitations:

6 (1) The amount of credit allowable is applied over a ten-year  
7 period, at the rate of one-tenth thereof per taxable year,  
8 beginning with the taxable year in which the property purchased for  
9 manufacturing investment is first placed in service or use in this  
10 state;

11 (2) *Severance tax.* -- The credit is applied to reduce the  
12 severance tax imposed under article thirteen-a of this chapter  
13 (determined before application of the credit allowed by section  
14 three, article twelve-b of this chapter and before any other  
15 allowable credits against tax and before application of the annual  
16 exemption allowed by section ten, article thirteen-a of this  
17 chapter). The amount of annual credit allowed may not reduce the  
18 severance tax, imposed under article thirteen-a of this chapter,  
19 below fifty percent of the amount which would be imposed for such  
20 taxable year in the absence of this credit against tax: *Provided,*  
21 That for tax years beginning on and after January 1, 2009, the  
22 amount of annual credit allowed may not reduce the severance tax,  
23 imposed under article thirteen-a of this chapter, below forty  
24 percent of the amount which would be imposed for such taxable year  
25 in the absence of this credit against tax. When in any taxable  
26 year the taxpayer is entitled to claim credit under this article

1 and article thirteen-d of this chapter, the total amount of all  
2 credits allowable for the taxable year may not reduce the amount of  
3 the severance tax, imposed under article thirteen-a of this  
4 chapter, below fifty percent of the amount which would be imposed  
5 for such taxable year (determined before application of the credit  
6 allowed by section three, article twelve-b of this chapter and  
7 before any other allowable credits against tax and before  
8 application of the annual exemption allowed by section ten, article  
9 thirteen-a of this chapter): *Provided, however,* That when in any  
10 taxable year beginning on and after January 1, 2009, the taxpayer  
11 is entitled to claim credit under this article and article  
12 thirteen-d of this chapter, the total amount of all credits  
13 allowable for the taxable year may not reduce the amount of the  
14 severance tax, imposed under article thirteen-a of this chapter,  
15 below forty percent of the amount which would be imposed for such  
16 taxable year as determined before application of the credit allowed  
17 by section three, article twelve-b of this chapter and before any  
18 other allowable credits against tax and before application of the  
19 annual exemption allowed by section ten, article thirteen-a of this  
20 chapter;

21 (3) *Business franchise tax.* --

22 After application of subdivision (2) of this subsection, any  
23 unused credit is next applied to reduce the business franchise tax  
24 imposed under article twenty-three of this chapter (determined  
25 after application of the credits against tax provided in section  
26 seventeen, article twenty-three of this chapter, but before

1 application of any other allowable credits against tax). The  
2 amount of annual credit allowed will not reduce the business  
3 franchise tax, imposed under article twenty-three of this chapter,  
4 below fifty percent of the amount which would be imposed for such  
5 taxable year in the absence of this credit against tax: *Provided,*  
6 That for tax years beginning on and after January 1, 2009, the  
7 amount of annual credit allowed will not reduce the business  
8 franchise tax, imposed under article twenty-three of this chapter,  
9 below forty percent of the amount which would be imposed for such  
10 taxable year in the absence of this credit against tax. When in  
11 any taxable year the taxpayer is entitled to claim credit under  
12 this article and article thirteen-d of this chapter, the total  
13 amount of all credits allowable for the taxable year will not  
14 reduce the amount of the business franchise tax, imposed under  
15 article twenty-three of this chapter, below fifty percent of the  
16 amount which would be imposed for the taxable year (determined  
17 after application of the credits against tax provided in section  
18 seventeen, article twenty-three of this chapter, but before  
19 application of any other allowable credits against tax): *Provided,*  
20 *however,* That when in any taxable year beginning on and after  
21 January 1, 2009, the taxpayer is entitled to claim credit under  
22 this article and article thirteen-d of this chapter, the total  
23 amount of all credits allowable for the taxable year will not  
24 reduce the amount of the business franchise tax, imposed under  
25 article twenty-three of this chapter, below forty percent of the  
26 amount which would be imposed for the taxable year as determined

1 after application of the credits against tax provided in section  
2 seventeen, article twenty-three of this chapter, but before  
3 application of any other allowable credits against tax;

4 (4) *Corporation net income tax.* --

5 After application of subdivision (3) of this subsection, any  
6 unused credit is next applied to reduce the corporation net income  
7 tax imposed under article twenty-four of this chapter (determined  
8 before application of any other allowable credits against tax).

9 The amount of annual credit allowed will not reduce corporation net  
10 income tax, imposed under article twenty-four of this chapter,  
11 below fifty percent of the amount which would be imposed for such  
12 taxable year in the absence of this credit against tax: *Provided,*  
13 That for tax years beginning on and after January 1, 2009, the  
14 amount of annual credit allowed will not reduce corporation net  
15 income tax, imposed under article twenty-four of this chapter,  
16 below forty percent of the amount which would be imposed for such  
17 taxable year in the absence of this credit against tax. When in  
18 any taxable year the taxpayer is entitled to claim credit under  
19 this article and article thirteen-d of this chapter, the total  
20 amount of all credits allowable for the taxable year may not reduce  
21 the amount of the corporation net income tax, imposed under article  
22 twenty-four of this chapter, below fifty percent of the amount  
23 which would be imposed for the taxable year (determined before  
24 application of any other allowable credits against tax): *Provided,*  
25 *however,* That when in any taxable year beginning on and after  
26 January 1, 2009, the taxpayer is entitled to claim credit under

1 this article and article thirteen-d of this chapter, the total  
2 amount of all credits allowable for the taxable year may not reduce  
3 the amount of the corporation net income tax, imposed under article  
4 twenty-four of this chapter, below forty percent of the amount  
5 which would be imposed for the taxable year as determined before  
6 application of any other allowable credits against tax;

7 (5) *Pass-through entities.* --

8 (A) If the eligible taxpayer is a limited liability company,  
9 small business corporation or a partnership, then any unused credit  
10 (after application of subdivisions (2), (3) and (4) of this  
11 subsection) is allowed as a credit against the taxes imposed by  
12 article twenty-four of this chapter on owners of the eligible  
13 taxpayer on the conduit income directly derived from the eligible  
14 taxpayer by its owners. Only those portions of the tax imposed by  
15 article twenty-four of this chapter that are imposed on income  
16 directly derived by the owner from the eligible taxpayer are  
17 subject to offset by this credit.

18 (B) The amount of annual credit allowed will not reduce  
19 corporation net income tax, imposed under article twenty-four of  
20 this chapter, below fifty percent of the amount which would be  
21 imposed on the conduit income directly derived from the eligible  
22 taxpayer by each owner for such taxable year in the absence of this  
23 credit against the taxes (determined before application of any  
24 other allowable credits against tax): *Provided*, That for tax years  
25 beginning on and after January 1, 2009, the amount of annual credit  
26 allowed will not reduce corporation net income tax, imposed under

1 article twenty-four of this chapter, below forty percent of the  
2 amount which would be imposed on the conduit income directly  
3 derived from the eligible taxpayer by each owner for such taxable  
4 year in the absence of this credit against the taxes as determined  
5 before application of any other allowable credits against tax.

6 (C) When in any taxable year the taxpayer is entitled to claim  
7 credit under this article and article thirteen-d of this chapter,  
8 the total amount of all credits allowable for the taxable year will  
9 not reduce the corporation net income tax imposed on the conduit  
10 income directly derived from the eligible taxpayer by each owner  
11 below fifty percent of the amount that would be imposed for such  
12 taxable year on the conduit income (determined before application  
13 of any other allowable credits against tax): *Provided*, That when  
14 in any taxable year beginning on and after January 1, 2009, the  
15 taxpayer is entitled to claim credit under this article and article  
16 thirteen-d of this chapter, the total amount of all credits  
17 allowable for the taxable year will not reduce the corporation net  
18 income tax imposed on the conduit income directly derived from the  
19 eligible taxpayer by each owner below forty percent of the amount  
20 that would be imposed for such taxable year on the conduit income  
21 as determined before application of any other allowable credits  
22 against tax;

23 (6) Small business corporations, limited liability companies,  
24 partnerships and other unincorporated organizations shall allocate  
25 any unused credit after application of subdivisions (2), (3) and  
26 (4) of this subsection among their members in the same manner as

1 profits and losses are allocated for the taxable year; and

2 (7) No credit is allowed under this article against any tax  
3 imposed by article twenty-one of this chapter.

4 (c) No carryover to a subsequent taxable year or carryback to  
5 a prior taxable year is allowed for the amount of any unused  
6 portion of any annual credit allowance. Any unused credit is  
7 forfeited.

8 (d) *Application for credit required.* --

9 (1) *Application required.* -- Notwithstanding any provision of  
10 this article to the contrary, no credit is allowed or may be  
11 applied under this article for any qualified investment property  
12 placed in service or use until the person claiming the credit makes  
13 written application to the Tax Commissioner for allowance of credit  
14 as provided in this section. This application shall be in the form  
15 prescribed by the Tax Commissioner and shall provide the number and  
16 type of jobs created, if any, by the manufacturing investment, the  
17 average wage rates and benefits paid to employees filling the new  
18 jobs and any other information the Tax Commissioner may require.  
19 This application shall be filed with the Tax Commissioner no later  
20 than the last day for filing the annual return, determined by  
21 including any authorized extension of time for filing the return,  
22 required under article twenty-one or twenty-four of this chapter  
23 for the taxable year in which the property to which the credit  
24 relates is placed in service or use.

25 (2) *Failure to file.* -- The failure to timely apply the  
26 application for credit under this section results in forfeiture of

1 fifty percent of the annual credit allowance otherwise allowable  
2 under this article. This penalty applies annually until the  
3 application is filed.

4 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

5 **§11-15-8d. Limitations on right to assert exemptions.**

6 (a) Persons who perform "contracting" as defined in section  
7 two of this article or persons acting in an agency capacity may not  
8 assert any exemption to which the purchaser of such contracting  
9 services or the principal is entitled. Any statutory exemption to  
10 which a taxpayer may be entitled ~~shall be~~ is invalid unless the  
11 tangible personal property or taxable service is actually purchased  
12 by such taxpayer and is directly invoiced to and paid by such  
13 taxpayer. This section ~~shall not~~ does not apply to purchases by an  
14 employee for his or her employer, purchases by a partner for his or  
15 her partnership or purchases by a duly authorized officer of a  
16 corporation, or unincorporated organization, for his or her  
17 corporation or unincorporated organization so long as the purchase  
18 is invoiced to and paid by the employer, partnership, corporation  
19 or unincorporated organization.

20 (b) *Transition rule.* -- This section ~~shall not~~ does not apply  
21 to purchases of tangible personal property or taxable services in  
22 fulfillment of a purchasing agent or procurement agent contract  
23 executed and legally binding on the parties thereto prior to  
24 September 15, 1999. ~~Provided, That~~ This transition rule ~~shall not~~  
25 does not apply to any purchases of tangible personal property or

1 taxable services made under such a contract after August 31, 1991  
2 and this transition rule ~~shall not~~ does not apply if the primary  
3 purpose of the purchasing agent or procurement agent contract was  
4 to avoid payment of consumers sales and use taxes. ~~However,~~  
5 Effective July 1, 2007, this section ~~shall not~~ does not apply to  
6 purchases of services, machinery, supplies or materials, except  
7 gasoline and special fuel, to be directly used or consumed in the  
8 construction, alteration, repair or improvement of a new or  
9 existing building or structure by a person performing  
10 "contracting", as defined in section two of this article, if the  
11 purchaser of the "contracting" services would be entitled to claim  
12 the refundable exemption under subdivision (2), subsection (b),  
13 section nine of this article had it purchased the services,  
14 machinery, supplies or materials. Effective July 1, 2009, this  
15 section ~~shall not~~ does not apply to purchases of services,  
16 computers, servers, building materials and tangible personal  
17 property, except purchases of gasoline and special fuel, to be  
18 installed into a building or facility or directly used or consumed  
19 in the construction, alteration, repair or improvement of a new or  
20 existing building or structure by a person performing  
21 "contracting", as defined in section two of this article, if the  
22 purchaser of the "contracting" services would be entitled to claim  
23 the exemption under subdivision (7), subsection (a), section nine-h  
24 of this article. Effective July 1, 2011, this section does not  
25 apply to purchases of services, machinery, supplies or materials,  
26 except gasoline and special fuel, to be directly used or consumed

1 in the construction, alteration, repair or improvement of a new or  
2 existing natural gas compressor station or gas transmission line  
3 having a diameter of twenty inches or more by a person performing  
4 "contracting", as defined in section two of this article, if the  
5 purchaser of the "contracting" services would be entitled to claim  
6 the refundable exemption under subdivision (2), subsection (b),  
7 section nine of this article had it purchased the services,  
8 machinery, supplies or materials.

9                   **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

10 **ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.**

11 **§24-2F-3. Definitions.**

12           Unless the context clearly requires a different meaning, as  
13 used in this article:

14           (1) "Advanced coal technology" means a technology that is used  
15 in a new or existing energy generating facility to reduce airborne  
16 carbon emissions associated with the combustion or use of coal and  
17 includes, but is not limited to, carbon dioxide capture and  
18 sequestration technology, supercritical technology, advanced  
19 supercritical technology as that technology is determined by the  
20 Public Service Commission, ultrasupercritical technology and  
21 pressurized fluidized bed technology and any other resource,  
22 method, project or technology certified by the commission as  
23 advanced coal technology.

24           (2) "Alternative and renewable energy portfolio standard" or  
25 "portfolio standard" means a requirement in any given year that

1 requires an electric utility to own credits in an amount equal to  
2 a certain percentage of electric energy sold in the preceding  
3 calendar year by the electric utility to retail customers in this  
4 state.

5 (3) "Alternative energy resources" means any of the following  
6 resources, methods or technologies for the production or generation  
7 of electricity:

8 (A) Advanced coal technology;

9 (B) Coal bed methane;

10 (C) Natural gas, including any component of raw natural gas;

11 (D) Fuel produced by a coal gasification or liquefaction  
12 facility;

13 (E) Synthetic gas;

14 (F) Integrated gasification combined cycle technologies;

15 (G) Waste coal;

16 (H) Tire-derived fuel;

17 (I) Pumped storage hydroelectric projects; and

18 (J) Any other resource, method, project or technology  
19 certified as an alternative energy resource by the Public Service  
20 Commission.

21 (4) "Alternative and renewable energy resource credit" or  
22 "credit" means a tradable instrument that is used to establish,  
23 verify and monitor the generation of electricity from alternative  
24 and renewable energy resource facilities, energy efficiency or  
25 demand-side energy initiative projects or greenhouse gas emission  
26 reduction or offset projects.

1 (5) "Alternative energy resource facility" means a facility or  
2 equipment that generates electricity from alternative energy  
3 resources.

4 (6) "Commission" or "Public Service Commission" means the  
5 Public Service Commission of West Virginia as continued pursuant to  
6 section three, article one of this chapter.

7 (7) "Customer-generator" means an electric retail customer who  
8 owns and operates a customer-sited generation project utilizing an  
9 alternative or renewable energy resource or a net metering system  
10 in this state.

11 (8) "Electric utility" means any electric distribution company  
12 or electric generation supplier that sells electricity to retail  
13 customers in this state. Unless specifically provided for  
14 otherwise, for the purposes of this article, the term "electric  
15 utility" may not include rural electric cooperatives, municipally-  
16 owned electric facilities or utilities serving less than thirty  
17 thousand residential electric customers in West Virginia.

18 (9) "Energy efficiency or demand-side energy initiative  
19 project" means a project in this state that promotes customer  
20 energy efficiency or the management of customer consumption of  
21 electricity through the implementation of:

22 (A) Energy efficiency technologies, equipment, management  
23 practices or other strategies utilized by residential, commercial,  
24 industrial, institutional or government customers that reduce  
25 electricity consumption by those customers;

26 (B) Load management or demand response technologies,

1 equipment, management practices, interruptible or curtailable  
2 tariffs, energy storage devices or other strategies in residential,  
3 commercial, industrial, institutional and government customers that  
4 shift electric load from periods of higher demand to periods of  
5 lower demand;

6 (C) Industrial by-product technologies consisting of the use  
7 of a by-product from an industrial process, including, but not  
8 limited to, the reuse of energy from exhaust gases or other  
9 manufacturing by-products that can be used in the direct production  
10 of electricity at the customer's facility;

11 (D) Customer-sited generation, demand-response, energy  
12 efficiency or peak demand reduction capabilities, whether new or  
13 existing, that the customer commits for integration into the  
14 electric utility's demand-response, energy efficiency or peak  
15 demand reduction programs; or

16 (E) Infrastructure and modernization projects that help  
17 promote energy efficiency, reduce energy losses or shift load from  
18 periods of higher demand to periods of lower demand, including the  
19 modernization of metering and communications, (also known as "smart  
20 grid"), distribution automation, energy storage, distributed energy  
21 resources and investments to promote the electrification of  
22 transportation.

23 (10) "Greenhouse gas emission reduction or offset project"  
24 means a project to reduce or offset greenhouse gas emissions from  
25 sources in this state other than the electric utility's own  
26 generating and energy delivery operations. Greenhouse gas emission

1 reduction or offset projects include, but are not limited to:

2 (A) Methane capture and destruction from landfills, coal mines  
3 or farms;

4 (B) Forestation, afforestation or reforestation; and

5 (C) Nitrous oxide or carbon dioxide sequestration through  
6 reduced fertilizer use or no-till farming.

7 (11) "Net metering" means measuring the difference between  
8 electricity supplied by an electric utility and electricity  
9 generated from an alternative or renewable energy resource facility  
10 owned or operated by an electric retail customer when any portion  
11 of the electricity generated from the alternative or renewable  
12 energy resource facility is used to offset part or all of the  
13 electric retail customer's requirements for electricity.

14 (12) "Reclaimed surface mine" means a surface mine, as that  
15 term is defined in section three, article three, chapter twenty-two  
16 of this code, that is reclaimed or is being reclaimed in accordance  
17 with state or federal law.

18 (13) "Renewable energy resource" means any of the following  
19 resources, methods, projects or technologies for the production or  
20 generation of electricity:

21 (A) Solar photovoltaic or other solar electric energy;

22 (B) Solar thermal energy;

23 (C) Wind power;

24 (D) Run of river hydropower;

25 (E) Geothermal energy, which means a technology by which  
26 electricity is produced by extracting hot water or steam from

1 geothermal reserves in the earth's crust to power steam turbines  
2 that drive generators to produce electricity;

3 (F) Biomass energy, which means a technology by which  
4 electricity is produced from a nonhazardous organic material that  
5 is available on a renewable or recurring basis, including pulp mill  
6 sludge;

7 (G) Biologically derived fuel including methane gas, ethanol  
8 or biodiesel fuel;

9 (H) Fuel cell technology, which means any electrochemical  
10 device that converts chemical energy in a hydrogen-rich fuel  
11 directly into electricity, heat and water without combustion;

12 (I) Recycled energy, which means useful thermal, mechanical or  
13 electrical energy produced from: (i) Exhaust heat from any  
14 commercial or industrial process; (ii) waste gas, waste fuel or  
15 other forms of energy that would otherwise be flared, incinerated,  
16 disposed of or vented; and (iii) electricity or equivalent  
17 mechanical energy extracted from a pressure drop in any gas,  
18 excluding any pressure drop to a condenser that subsequently vents  
19 the resulting heat; and

20 (J) Any other resource, method, project or technology  
21 certified by the commission as a renewable energy resource.

22 (14) "Renewable energy resource facility" means a facility or  
23 equipment that generates electricity from renewable energy  
24 resources.

25 (15) "Waste coal" means a technology by which electricity is  
26 produced by the combustion of the by-product, waste or residue

1 created from processing coal, such as gob.

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(NOTE: The purpose of this bill is to enact the Marcellus Gas and Manufacturing Development Act of 2011 which encourages and facilitates the development of oil and gas wells and the downstream uses of natural gas in this state and economic development in this state associated with production and various downstream uses.

§5B-2H-1, §5B-2H-2, §11-1C-11C, §11-6D-9 and §11-13A-5b are new; therefore, strike-throughs and underscoring have been omitted.

§11-6D-5, §11-6D-6 and §11-6D-7 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.

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