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COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 465

(SENATORS McCABE, KESSLER (ACTING PRESIDENT),
BROWNING, UNGER, SNYDER, STOLLINGS,
PLYMALE, WELLS, PALUMBO, BEACH,
KLEMPA, YOST AND FOSTER, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; TO TAKE EFFECT JULY 1, 2011.]

SB 465

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OFFICE OF THE CLERK
WEST VIRGINIA
LEGISLATIVE STATE

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BEACH, KLEMPA, YOST AND FOSTER, *original sponsors*)

[Passed March 12, 2011; to take effect July 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2H-1 and §5B-2H-2; to amend said code by adding thereto a new section, designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code; to amend said code by adding thereto a new section, designated §11-6D-9; to amend and reenact §11-6F-2 and §11-6F-3 of said code; to amend and reenact §11-13Q-20 of said code; to amend and reenact §11-13R-3 of said code; to amend and reenact §11-13S-3 and §11-13S-4 of said code; to amend and reenact §11-15-8d of said code; and to amend and reenact §24-2F-3 of said code, all relating generally to the Marcellus Gas and Manufacturing Development Act of 2011; providing short title; making legislative findings and

declarations; providing guideline for valuation of drilling rigs for property tax purposes; authorizing the Tax Commissioner to promulgate rules; amending and reinstating alternative fuel motor vehicle tax credit; providing credit for alternative fuel refueling facilities; making legislative findings; stating legislative purpose; defining terms; allowing credit for purchase of alternative fuel motor vehicles, conversion of vehicles to alternative fuel motor vehicles and for commercial and residential alternative fuel refueling facilities; providing for expiration of credits; requiring Tax Commissioner to promulgate rules and design forms; providing for carryover of unused credits and for recapture of credits; amending definition of “manufacturing” for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; providing new rules for treatment of certified capital addition property; adding additional requirements for reports to Governor and Legislature; amending definition of “research and development” for purposes of strategic research and development tax credit; amending definition of “manufacturing” for purposes of manufacturing investment tax credit; requiring certain business activities comply with certain hiring requirements in order to be eligible for the manufacturing investment tax credit and sales tax exemption; providing additional exception to limitation on right to assert sales and use tax exemptions; and clarifying meaning of “natural gas” for purposes of Alternative and Renewable Energy Portfolio Standard Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2H-1 and §5B-2H-2; that said code be amended by adding thereto a new section, designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of said code be amended and reenacted; that §11-13Q-20 of said code be amended and reenacted; that §11-13R-3 of said code be amended and reenacted; that §11-13S-3 and §11-13S-4 of

said code be amended and reenacted; that §11-15-8d of said code be amended and reenacted; and that §24-2F-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.

§5B-2H-1. Short Title.

- 1 This article shall be known and cited as the “Marcellus
- 2 Gas and Manufacturing Development Act.”

§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 opportu-
- 4 nity 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,
- 9 transmission of natural gas and related products and the
- 10 transportation of manufactured products.

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

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

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

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

28 (7) Agencies should review their existing significant
29 legislative, interpretive and procedural rules to determine
30 whether any such rules should be modified, streamlined,
31 expanded or repealed so as to make the agency's regulatory
32 program more effective or less burdensome in achieving the
33 regulatory objectives.

34 (8) The West Virginia Economic Development Authority
35 established in article fifteen, chapter thirty-one of this code
36 and the West Virginia Infrastructure and Jobs Development
37 Council created in article fifteen-a, chapter thirty-one of this
38 code, should, where appropriate, provide assistance that
39 grows or sustains this segment of the economy.

40 (b) The Legislature declares that facilitating the develop-
41 ment of business activity directly and indirectly related to
42 development of the Marcellus shale serves the public interest
43 of the citizens of this state by promoting economic develop-
44 ment and improving economic opportunities for the citizens
45 of this state.

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

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

1 Notwithstanding any provision of this code to the contrary
2 and to facilitate the equal and uniform taxation of oil and
3 natural gas drilling rigs throughout the state, the State Tax
4 Commissioner shall annually compile a schedule of oil and
5 natural gas drilling rig values based on the values shown in

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

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

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

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the Legisla-
3 ture hereby finds that the use of alternative fuels is in the
4 public interest and promotes the general welfare of the
5 people of this state insofar as it addresses serious concerns
6 for our environment and our state's and nation's dependence
7 on foreign oil as a source of energy. The Legislature further
8 finds that this state has an abundant supply of alternative
9 fuels and an extensive supply network and that, by encour-
10 aging the use of alternatively-fueled motor vehicles, the state
11 will be reducing its dependence on foreign oil and attempt-
12 ing to improve its air quality. The Legislature further finds
13 that the wholesale cost of fuel for certain alternatively-
14 fueled motor vehicles is significantly lower than the cost of
15 fueling traditional motor vehicles with oil based fuels.

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

26 motor vehicles. It is the intent of the Legislature that the
27 alternative fuel motor vehicle tax credit previously expired
28 in 2006 be hereby reinstated with changes and amendments
29 as set forth herein. Therefore, in order to encourage the use
30 of alternatively-fueled motor vehicles and possibly reduce
31 unnecessary pollution of our environment and reduce our
32 dependence on foreign sources of energy, there is hereby
33 created an alternative-fuel motor vehicles tax credit and an
34 alternative-fuel infrastructure tax credit.

§11-6D-2. Definitions.

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

3 (a) "Alternative fuel" includes:

4 (1) Compressed natural gas;

5 (2) Liquified natural gas;

6 (3) Liquified petroleum gas;

7 (4) Ethanol;

8 (5) Fuel mixtures that contain eighty-five percent or more
9 by volume, when combined with gasoline or other fuels, of
10 the following:

11 (A) Methanol;

12 (B) Ethanol; or

13 (C) Other alcohols;

14 (6) Natural gas hydrocarbons and derivatives;

15 (7) Hydrogen;

16 (8) Coal-derived liquid fuels; and

17 (9) Electricity, including electricity from solar energy.

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

20 (1) Operates solely on one alternative fuel;

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

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

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

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

29 (1) A plug-in hybrid electric vehicle manufactured by an
30 established motor vehicle manufacturer of plug-in hybrid
31 electric vehicles that can operate solely on electric power
32 and that is capable of recharging its battery from an on-
33 board generation source and an off-board electricity source;
34 and

35 (2) A plug-in hybrid electric vehicle conversion that
36 provides an increase in city fuel economy of seventy-five
37 percent or more as compared to a comparable nonhybrid
38 version vehicle for a minimum of twenty miles and that is
39 capable of recharging its battery from an on-board genera-
40 tion source and an off-board electricity source. A vehicle is
41 comparable if it is the same model year and the same vehicle
42 class as established by the United States Environmental
43 Protection Agency and is comparable in weight, size and use.
44 Fuel economy comparisons shall be made using city fuel
45 economy standards in a manner that is substantially similar
46 to the manner in which city fuel economy is measured in
47 accordance with procedures set forth in 40 C.F.R. 600 as in
48 effect on January 1, 2011.

49 (e) “Qualified alternative fuel vehicle refueling infrastruc-
50 ture” means property owned by the applicant for the tax
51 credit and used for storing alternative fuels and for dispens-
52 ing such alternative fuels into fuel tanks of motor vehicles,
53 including, but not limited to, compression equipment,
54 storage tanks and dispensing units for alternative fuel at the
55 point where the fuel is delivered: *Provided*, That the property
56 is installed and located in this state and is not located on a
57 private residence or private home.

58 (f) “Qualified alternative fuel vehicle home refueling
59 infrastructure” means property owned by the applicant for
60 the tax credit located on a private residence or private home
61 and used for storing alternative fuels and for dispensing such
62 alternative fuels into fuel tanks of motor vehicles, including,
63 but not limited to, compression equipment, storage tanks and
64 dispensing units for alternative fuel at the point where the
65 fuel is delivered or for providing electricity to plug-in hybrid
66 electric vehicles or electric vehicles: *Provided*, That the
67 property is installed and located in this state.

68 (g) “Taxpayer” means any natural person, corporation,
69 limited liability company or partnership subject to the tax
70 imposed under article twenty-one, article twenty-three or
71 article twenty-four of this chapter or any combination
72 thereof.

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

1 The tax credits for the purchase of alternative-fuel motor
2 vehicles or conversion to alternative-fuel motor vehicles,
3 qualified alternative fuel vehicle refueling infrastructure and
4 qualified alternative fuel vehicle home refueling infrastruc-
5 ture provided in this article may be applied against the tax
6 liability of a taxpayer imposed by the provisions of either
7 article twenty-one, article twenty-three or article twenty-

8 four of this chapter but in no case may more than one credit
9 be granted for the same alternative-fuel motor vehicle as
10 defined in subdivision (b), section two of this article. This
11 credit shall be available for those tax years beginning on or
12 after January 1, 2011.

§11-6D-4. Eligibility for credit.

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

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

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

11 (c) Constructs or purchases and installs qualified alterna-
12 tive fuel vehicle refueling infrastructure or qualified alterna-
13 tive fuel vehicle home refueling infrastructure that is capable
14 of dispensing alternative fuel for alternative-fuel motor
15 vehicles.

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

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

1 (a) For taxable years beginning on and after January 1,
2 2011, the amount of the credit allowed under this article for
3 an alternative-fuel motor vehicle that weighs less than
4 twenty-six thousand pounds is thirty-five percent of the
5 purchase price of the alternative-fuel motor vehicle up to a

6 maximum amount of \$7,500 or fifty percent of the actual cost
7 of converting from a traditionally fueled motor vehicle to an
8 alternative fuel motor vehicle up to a maximum amount of
9 \$7,500.

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

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

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to January 1, 2014, the amount of the credit
3 allowed under this article for qualified alternative fuel
4 vehicle refueling infrastructure is equal to an amount of fifty
5 percent of the total costs directly associated with the
6 construction or purchase and installation of the alternative
7 fuel vehicle refueling infrastructure up to a maximum of
8 \$250,000: *Provided*, That if the qualified alternative fuel
9 vehicle refueling infrastructure is generally accessible for
10 public use, the amount of the credit allowed will be multi-
11 plied by 1.25 and the maximum amount allowable will be
12 \$312,500. The amount of credit allowed may not exceed the
13 cost of construction of the alternative fuel vehicle refueling
14 infrastructure.

15 (b) For taxable years beginning on and after January 1,
16 2014, but prior to January 1, 2016, the amount of the credit
17 allowed under this article for qualified alternative fuel
18 vehicle refueling infrastructure is equal to an amount of fifty
19 percent of the total costs directly associated with the
20 construction or purchase and installation of the alternative
21 fuel vehicle refueling infrastructure up to a maximum of

22 \$200,000: *Provided*, That if the qualified alternative fuel
23 vehicle refueling infrastructure is generally accessible for
24 public use, the amount of the credit allowed will be multi-
25 plied by 1.25 and the maximum amount allowable will be
26 \$250,000. The amount of credit allowed may not exceed the
27 cost of construction of the alternative fuel vehicle refueling
28 infrastructure.

29 (c) For taxable years beginning on and after January 1,
30 2016, but prior to January 1, 2022, the amount of the credit
31 allowed under this article for qualified alternative fuel
32 vehiclerefuelinginfrastructure is equal to an amount of fifty
33 percent of the total costs directly associated with the
34 construction or purchase and installation of the alternative
35 fuel vehicle refueling infrastructure up to a maximum of
36 \$150,000: *Provided*, That if the qualified alternative fuel
37 vehicle refueling infrastructure is generally accessible for
38 public use, the amount of the credit allowed will be multi-
39 plied by 1.25 and the maximum amount allowable will be
40 \$187,500. The amount of credit allowed may not exceed the
41 cost of construction of the alternative fuel vehicle refueling
42 infrastructure.

43 (d) For taxable years beginning on and after January 1,
44 2011, the amount of the credit allowed under this article for
45 qualified alternative fuel vehicle home refueling infrastruc-
46 ture is equal to an amount of fifty percent of the total costs
47 directly associated with the construction or purchase and
48 installation of the alternative fuel vehicle home refueling
49 infrastructure up to a maximum of \$10,000.

50 (e) The cost of construction of the alternative fuel vehicle
51 refueling infrastructure or alternative fuel vehicle home
52 refueling infrastructure eligible for a tax credit under this
53 section does not include costs associated with exploration,
54 development or production activities necessary for severing
55 natural resources from the soil or ground.

56 (f) When the taxpayer is a pass-through entity treated like
57 a partnership for federal and state income tax purposes, the

58 credit allowed under this article for the year shall flow
59 through to the equity owners of the pass-through entity in
60 the same manner that distributive share flows through to the
61 equity owners and in accordance with any legislative rule
62 the Tax Commissioner may propose for legislative approval
63 in accordance with article three, chapter twenty-nine-a of
64 this code to administer this section.

65 (g) No credit allowed by this article may be applied against
66 employer withholding taxes imposed by article twenty-one
67 of this chapter.

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

1 No person is eligible to receive a tax credit under this
2 article for: (1) An alternative-fuel motor vehicle purchased
3 after December 31, 2021; (2) a vehicle converted to an
4 alternative-fuel motor vehicle after December 31, 2021; or (3)
5 the construction or purchase and installation of qualified
6 alternative fuel vehicle refueling infrastructure or qualified
7 alternative fuel vehicle home refueling infrastructure
8 occurring after December 31, 2021.

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

1 (a) The Tax Commissioner shall design and provide to the
2 public simplified forms and schedules to implement and
3 effectuate the provisions of this article.

4 (b) The Tax Commissioner shall promulgate new rules for
5 the administration of this article consistent with its provi-
6 sions and in accordance with article three, chapter twenty-
7 nine-a of this code as the Commissioner deems necessary
8 after the effective date of the amendments to this article.
9 Such rules shall include rules relating to the necessary
10 documentation required to be filed in order to take the tax
11 credits allowed in this article.

12 (c) Within one year prior to the expiration of the credit
13 established in this article, the State Tax Commissioner shall

14 provide a written report to the Legislature setting forth the
15 utilization of the credit, the benefit of the credit and the
16 overall cost of the credit.

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

1 (a) If the tax credit allowed under this article in any
2 taxable year exceeds the taxpayer's tax liability as deter-
3 mined in accordance with article twenty-one, article twenty-
4 three or article twenty-four of this chapter for that taxable
5 year, the excess may be applied for succeeding taxable years
6 until the full amount of the excess tax credit is used.

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

9 (c) A tax credit is subject to recapture, elimination or
10 reduction if it is determined by the State Tax Commissioner
11 that a taxpayer was not entitled to the credit, in whole or in
12 part, in the tax year in which it was claimed by the taxpayer.
13 The amount of credit that flows through to equity owners of
14 a passthrough entity may be recaptured or recovered from
15 either the taxpayer or the equity owners in the discretion of
16 the Tax Commissioner.

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED
CAPITAL ADDITIONS TO MANUFACTURING
FACILITIES.**

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) "Certified capital addition property" means all real
3 property and personal property included within or to be
4 included within a qualified capital addition to a manufactur-
5 ing facility that has been certified by the State Tax Commis-
6 sioner in accordance with section four of this article: *Pro-*
7 *vided*, That airplanes and motor vehicles licensed by the

8 Division of Motor Vehicles shall in no event constitute
9 certified capital addition property.

10 (b) "Manufacturing" means any business activity classified
11 as having a sector identifier, consisting of the first two digits
12 of the six-digit North American Industry Classification
13 System codenumber of thirty-one, thirty-two or thirty-three
14 or the six digit code number 211112.

15 (c) "Manufacturing facility" means any factory, mill,
16 chemical plant, refinery, warehouse, building or complex of
17 buildings, including land on which it is located, and all
18 machinery, equipment, improvements and other real prop-
19 erty and personal property located at or within the facility
20 used in connection with the operation of the facility in a
21 manufacturing business.

22 (d) "Personal property" means all property specified in
23 subdivision (q), section ten, article two, chapter two of this
24 code and includes, but is not limited to, furniture, fixtures,
25 machinery and equipment, pollution control equipment,
26 computers and related data processing equipment, spare
27 parts and supplies.

28 (e) "Qualified capital addition to a manufacturing facility"
29 means all real property and personal property, the combined
30 original cost of all of the property which exceeds \$50 million
31 to be constructed, located or installed at or within two miles
32 of a manufacturing facility owned or operated by the person
33 making the capital addition that has a total original cost
34 before the capital addition of at least \$100 million. If the
35 capital addition is made in a steel, chemical or polymer
36 alliance zone as designated from time-to-time by executive
37 order of the Governor, then the person making the capital
38 addition may for purposes of satisfying the requirements of
39 this subsection join in a multiparty project with a person
40 owning or operating a manufacturing facility that has a total
41 original cost before the capital addition of at least \$100
42 million if the capital addition creates additional production

43 capacity of existing or related products or feedstock or
44 derivative products respecting the manufacturing facility,
45 consists of a facility used to store, handle, process or produce
46 raw materials for the manufacturing facility, consists of a
47 facility used to store, handle or process natural gas to
48 produce fuel for the generation of steam or electricity for the
49 manufacturing facility or consists of a facility that generates
50 steam or electricity for the manufacturing facility, including
51 but not limited to a facility that converts coal to a gas or
52 liquid for the manufacturing facility's use in heating,
53 manufacturing or generation of electricity. Beginning on and
54 after July 1, 2011, when the new capital addition is a facility
55 that is or will be classified under the North American
56 Industry Classification System with a six digit code number
57 211112, or is a manufacturing facility that uses product
58 produced at a facility with code number 211112, then
59 wherever the term "100 million" is used in this subsection,
60 the term "20 million" shall be substituted and where the
61 term "50 million" is used, the term "10 million" shall be
62 substituted.

63 (f) "Real property" means all property specified in subdivi-
64 sion (p), section ten, article two, chapter two of this code and
65 includes, but is not limited to, lands, buildings and improve-
66 ments on the land such as sewers, fences, roads, paving and
67 leasehold improvements.

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

1 Notwithstanding any other provisions of law, the value of
2 certified capital addition property, for purposes of ad
3 valorem property taxation under this chapter, is its salvage
4 value, which for purposes of this article is five percent of the
5 certified capital addition property's original cost. For capital
6 additions certified on or after July 1, 2011, the value of the
7 land before any improvements shall be subtracted from the
8 value of the capital addition and the unimproved land value
9 shall not be given salvage value treatment.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-20. Tax credit review and accountability.

1 (a) Beginning on February 1, 2006, and every third year
2 thereafter, the commissioner shall submit to the Governor,
3 the President of the Senate and the Speaker of the House of
4 Delegates a tax credit review and accountability report
5 evaluating the cost effectiveness of the economic opportunity
6 credit during the most recent three-year period for which
7 information is available. The criteria to be evaluated shall
8 include, but not be limited to, for each year of the three-year
9 period:

10 (1) The numbers of taxpayers claiming the credit;

11 (2) The net number of new jobs created by all taxpayers
12 claiming the credit;

13 (3) The cost of the credit;

14 (4) The cost of the credit per new job created; and

15 (5) Comparison of employment trends for an industry and
16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide any
18 information the Tax Commissioner may require to prepare
19 the report: *Provided*, That the information provided is
20 subject to the confidentiality and disclosure provisions of
21 sections five-d and five-s, article ten of this chapter.

22 (c) On or before February 1, 2013, the Department of
23 Commerce, in consultation with the Tax Commissioner, the
24 Department of Transportation and the Department of
25 Environmental Protection shall submit to the Governor, the
26 President of the Senate and the Speaker of the House of
27 Delegates a report of the impact of all the tax credits and
28 other economic incentives provided in the act of the Legisla-
29 ture which amended and reenacted this section during 2011
30 upon economic development in this state, including but not
31 limited to the creation of jobs in this state, upon the state's

32 infrastructure, including but not limited to the need for
33 construction or maintenance of the roads and highways of
34 the state, upon the natural resources of the state, and upon
35 public and private property interests in the state.

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

§11-13R-3. Definitions.

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

7 (b) *Terms defined.* —

8 (1) “Base amount” means:

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

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

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

26 (2) “Commissioner” and “Tax Commissioner” are used
27 interchangeably herein and mean the Tax Commissioner of
28 the State of West Virginia or his or her delegate.

29 (3) “Controlled group” means a controlled group as defined
30 by section 1563 of the Internal Revenue Code of 1986, as
31 amended.

32 (4) “Corporation” means any corporation, limited liability
33 company, joint-stock company or association and any
34 business conducted by a trustee or trustees wherein interest
35 or ownership is evidenced by a certificate of interest or
36 ownership or similar written instrument.

37 (5) “Delegate” in the phrase “or his or her delegate,” when
38 used in reference to the Tax Commissioner, means any
39 officer or employee of the State Tax Division of the Depart-
40 ment of Tax and Revenue duly authorized by the Tax
41 Commissioner directly, or indirectly by one or more
42 redelegations of authority, to perform the functions men-
43 tioned or described in this article.

44 (6) “Eligible taxpayer” means any person that is subject to
45 the tax imposed by article twenty-three or article twenty-
46 four of this chapter that is engaged in qualified research and
47 development that has paid or incurred investment in quali-
48 fied research and development credit property or that has
49 paid or incurred qualified research and development ex-
50 penses as defined in section four of this article. In the case of
51 a sole proprietorship subject to neither the tax imposed by
52 article twenty-three nor the tax imposed by article twenty-
53 four, the term “eligible taxpayer” means any sole proprietor
54 who is subject to the tax imposed by article twenty-one of
55 this chapter and who is engaged in qualified research and
56 development that has paid or incurred investment in quali-
57 fied research and development credit property or that has
58 paid or incurred qualified research and development ex-
59 penses as defined in section four of this article.

60 (7) “Partnership” includes a syndicate, group, pool, joint
61 venture or other unincorporated organization through or by

62 means of which any business, financial operation or venture
63 is carried on, and which is not a trust or estate, a corporation
64 or a sole proprietorship. The term “partner” includes a
65 member in such a syndicate, group, pool, joint venture or
66 other organization.

67 (8) “Person” includes any natural person, corporation,
68 limited liability company or partnership.

69 (9) “Qualified research and development credit property”
70 means depreciable property purchased for the conduct of
71 qualified research and development.

72 (10) “Research and development” means systematic
73 scientific, engineering or technological study and investiga-
74 tion in a field of knowledge in the physical, computer or
75 software sciences often involving the formulation of hypoth-
76 eses and experimentation for the purpose of revealing new
77 facts, theories or principles or increasing scientific knowl-
78 edge which may reveal the basis for new or enhanced
79 products, equipment or manufacturing processes.

80 (A) Research and development includes, but is not limited
81 to, design, refinement and testing of prototypes of new or
82 improved products or equipment or the design, refinement
83 and testing of manufacturing processes before commercial
84 sales relating thereto have begun. For purposes of this
85 section, commercial sales includes, but is not limited to, sales
86 of prototypes or sales for market testing.

87 (B) Research and development does not include:

88 (i) Market research;

89 (ii) Sales research;

90 (iii) Efficiency surveys;

91 (iv) Consumer surveys;

92 (v) Product market testing;

- 93 (vi) Product testing by product consumers or through
94 consumer surveys for evaluation of consumer product
95 performance or consumer product usability;
- 96 (vii) The ordinary testing or inspection of materials or
97 products for quality control;
- 98 (viii) Management studies;
- 99 (ix) Advertising;
- 100 (x) Promotions;
- 101 (xi) The acquisition of another's patent, model, production
102 or process or investigation or evaluation of the value or
103 investment potential related thereto;
- 104 (xii) Research in connection with literary, historical or
105 similar activities;
- 106 (xiii) Research in the social sciences, economics, humani-
107 ties or psychology and other nontechnical activities; and
- 108 (xiv) The providing of sales services or any other service,
109 whether technical service or nontechnical service.
- 110 (11) "Related person" means:
- 111 (A) A corporation, limited liability company, partnership,
112 association or trust controlled by the taxpayer;
- 113 (B) An individual, corporation, limited liability company,
114 partnership, association or trust that is in control of the
115 taxpayer;
- 116 (C) A corporation, limited liability company, partnership,
117 association or trust controlled by an individual, corporation,
118 partnership, association or trust that is in control of the
119 taxpayer; or

120 (D) A member of the same controlled group as the tax-
121 payer.

122 For purposes of this article, “control”, with respect to a
123 corporation, means ownership, directly or indirectly, of stock
124 possessing fifty percent or more of the total combined voting
125 power of all classes of the stock of the corporation entitled to
126 vote. “Control”, with respect to a trust, means ownership,
127 directly or indirectly, of fifty percent or more of the benefi-
128 cial interest in the principal or income of the trust. The
129 ownership of stock in a corporation, of a capital or profits
130 interest in a partnership or association or of a beneficial
131 interest in a trust is determined in accordance with the rules
132 for constructive ownership of stock provided in section
133 267(c) of the United States Internal Revenue Code of 1986, as
134 amended, other than paragraph (3) of that section.

135 (12) “Taxpayer” means any person subject to the tax
136 imposed by article twenty-three or twenty-four of this
137 chapter or both. In the case of a sole proprietorship subject
138 to neither the tax imposed by article twenty-three nor the
139 tax imposed by article twenty-four, the term “taxpayer”
140 means any sole proprietor who is subject to the tax imposed
141 by article twenty-one of this chapter.

142 (13) “This code” means the Code of West Virginia, 1931, as
143 amended.

144 (14) “This state” means the State of West Virginia.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-3. Definitions.

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

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

5 (1) "Eligible taxpayer" means an industrial taxpayer who
6 purchases new property for the purpose of industrial expan-
7 sion or for the purpose of industrial revitalization of an
8 existing industrial facility in this state.

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

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

18 (4) "Industrial revitalization" or "revitalization" means
19 capital investment in an industrial facility located in this
20 state to replace or modernize buildings, equipment, machin-
21 ery and other tangible personal property used in connection
22 with the operation of the facility in an industrial business of
23 the taxpayer including the acquisition of any real property
24 necessary to the industrial revitalization.

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

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

32 (7) "Property purchased for manufacturing investment"
33 means real property, and improvements thereto, and tangible
34 personal property but only if the property was constructed or
35 purchased on or after January 1, 2003, for use as a compo-
36 nent part of a new, expanded or revitalized industrial
37 facility. This term includes only that tangible personal
38 property with respect to which depreciation, or amortization

39 in lieu of depreciation, is allowable in determining the
40 federal income tax liability of the industrial taxpayer, that
41 has a useful life, at the time the property is placed in service
42 or use in this state, of four years or more. Property acquired
43 by written lease for a primary term of ten years or longer, if
44 used as a component part of a new or expanded industrial
45 facility, is included within this definition.

46 (A) "Property purchased for manufacturing investment"
47 does not include:

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

51 (ii) Motor vehicles licensed by the department of motor
52 vehicles;

53 (iii) Airplanes;

54 (iv) Off-premises transportation equipment;

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

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

62 (B) Purchases or acquisitions of land or depreciable
63 property qualify as purchases of property purchased for
64 manufacturing investment for purposes of this article only if:

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

69 (ii) The property is not acquired from a related person or
70 by one component member of a controlled group from
71 another component member of the same controlled group.
72 The Tax Commissioner may waive this requirement if the
73 property was acquired from a related party for its then fair
74 market value; and

75 (iii) The basis of the property for federal income tax
76 purposes, in the hands of the person acquiring it, is not
77 determined, in whole or in part, by reference to the federal
78 adjusted basis of the property in the hands of the person
79 from whom it was acquired or under Section 1014(e) of the
80 United States Internal Revenue Code of 1986, as amended.

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

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

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

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers
2 and to persons described in subdivision (5), subsection (b) of
3 this section a credit against the taxes imposed by articles
4 thirteen-a, twenty-three and twenty-four of this chapter:
5 *Provided,* That a tax credit for any eligible taxpayer operat-
6 ing a business activity classified as having a sector identifier,
7 consisting of the six digit code number 211112 such eligible
8 taxpayer must comply with the provisions of subsection (e)
9 of this section for all construction related thereto in order to
10 be eligible for any credit under this article. The amount of
11 credit shall be determined as hereinafter provided in this
12 section.

13 (b) *Amount of credit allowable.* — The amount of allowable
14 credit under this article is equal to five percent of the

15 qualified manufacturing investment (as determined in
16 section five of this article) and shall reduce the severance
17 tax, imposed under article thirteen-a of this chapter, the
18 business franchise tax imposed under article twenty-three of
19 this chapter and the corporation net income tax imposed
20 under article twenty-four of this chapter, in that order,
21 subject to the following conditions and limitations:

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

27 (2) *Severance tax.* — The credit is applied to reduce the
28 severance tax imposed under article thirteen-a of this
29 chapter (determined before application of the credit allowed
30 by section three, article twelve-b of this chapter and before
31 any other allowable credits against tax and before applica-
32 tion of the annual exemption allowed by section ten, article
33 thirteen-a of this chapter). The amount of annual credit
34 allowed may not reduce the severance tax, imposed under
35 article thirteen-a of this chapter, below fifty percent of the
36 amount which would be imposed for such taxable year in the
37 absence of this credit against tax: *Provided*, That for tax
38 years beginning on and after January 1, 2009, the amount of
39 annual credit allowed may not reduce the severance tax,
40 imposed under article thirteen-a of this chapter, below forty
41 percent of the amount which would be imposed for such
42 taxable year in the absence of this credit against tax. When
43 in any taxable year the taxpayer is entitled to claim credit
44 under this article and article thirteen-d of this chapter, the
45 total amount of all credits allowable for the taxable year may
46 not reduce the amount of the severance tax, imposed under
47 article thirteen-a of this chapter, below fifty percent of the
48 amount which would be imposed for such taxable year
49 (determined before application of the credit allowed by
50 section three, article twelve-b of this chapter and before any
51 other allowable credits against tax and before application of
52 the annual exemption allowed by section ten, article

53 thirteen-a of this chapter): *Provided, however*, That when in
54 any taxable year beginning on and after January 1, 2009, the
55 taxpayer is entitled to claim credit under this article and
56 article thirteen-d of this chapter, the total amount of all
57 credits allowable for the taxable year may not reduce the
58 amount of the severance tax imposed under article thirteen-a
59 of this chapter, below forty percent of the amount which
60 would be imposed for such taxable year as determined before
61 application of the credit allowed by section three, article
62 twelve-b of this chapter and before any other allowable
63 credits against tax and before application of the annual
64 exemption allowed by section ten, article thirteen-a of this
65 chapter;

66 (3) *Business franchise tax.* —

67 After application of subdivision (2) of this subsection, any
68 unused credit is next applied to reduce the business fran-
69 chise tax imposed under article twenty-three of this chapter
70 (determined after application of the credits against tax
71 provided in section seventeen, article twenty-three of this
72 chapter, but before application of any other allowable
73 credits against tax). The amount of annual credit allowed
74 will not reduce the business franchise tax, imposed under
75 article twenty-three of this chapter, below fifty percent of
76 the amount which would be imposed for such taxable year in
77 the absence of this credit against tax: *Provided*, That for tax
78 years beginning on and after January 1, 2009, the amount of
79 annual credit allowed will not reduce the business franchise
80 tax, imposed under article twenty-three of this chapter,
81 below forty percent of the amount which would be imposed
82 for such taxable year in the absence of this credit against
83 tax. When in any taxable year the taxpayer is entitled to
84 claim credit under this article and article thirteen-d of this
85 chapter, the total amount of all credits allowable for the
86 taxable year will not reduce the amount of the business
87 franchise tax, imposed under article twenty-three of this
88 chapter, below fifty percent of the amount which would be
89 imposed for the taxable year (determined after application
90 of the credits against tax provided in section seventeen,

91 article twenty-three of this chapter, but before application
92 of any other allowable credits against tax): *Provided,*
93 *however,* That when in any taxable year beginning on and
94 after January 1, 2009, the taxpayer is entitled to claim credit
95 under this article and article thirteen-d of this chapter, the
96 total amount of all credits allowable for the taxable year will
97 not reduce the amount of the business franchise tax, imposed
98 under article twenty-three of this chapter, below forty
99 percent of the amount which would be imposed for the
100 taxable year as determined after application of the credits
101 against tax provided in section seventeen, article twenty-
102 three of this chapter, but before application of any other
103 allowable credits against tax;

104 (4) *Corporation net income tax.* —

105 After application of subdivision (3) of this subsection, any
106 unused credit is next applied to reduce the corporation net
107 income tax imposed under article twenty-four of this chapter
108 (determined before application of any other allowable credits
109 against tax). The amount of annual credit allowed will not
110 reduce corporation net income tax, imposed under article
111 twenty-four of this chapter, below fifty percent of the
112 amount which would be imposed for such taxable year in the
113 absence of this credit against tax: *Provided,* That for tax
114 years beginning on and after January 1, 2009, the amount of
115 annual credit allowed will not reduce corporation net income
116 tax, imposed under article twenty-four of this chapter, below
117 forty percent of the amount which would be imposed for such
118 taxable year in the absence of this credit against tax. When
119 in any taxable year the taxpayer is entitled to claim credit
120 under this article and article thirteen-d of this chapter, the
121 total amount of all credits allowable for the taxable year may
122 not reduce the amount of the corporation net income tax,
123 imposed under article twenty-four of this chapter, below
124 fifty percent of the amount which would be imposed for the
125 taxable year (determined before application of any other
126 allowable credits against tax): *Provided, however,* That when
127 in any taxable year beginning on and after January 1, 2009,
128 the taxpayer is entitled to claim credit under this article and

129 article thirteen-d of this chapter, the total amount of all
130 credits allowable for the taxable year may not reduce the
131 amount of the corporation net income tax, imposed under
132 article twenty-four of this chapter, below forty percent of the
133 amount which would be imposed for the taxable year as
134 determined before application of any other allowable credits
135 against tax;

136 (5) *Pass-through entities.* —

137 (A) If the eligible taxpayer is a limited liability company,
138 small business corporation or a partnership, then any unused
139 credit (after application of subdivisions (2), (3) and (4) of this
140 subsection) is allowed as a credit against the taxes imposed
141 by article twenty-four of this chapter on owners of the
142 eligible taxpayer on the conduit income directly derived
143 from the eligible taxpayer by its owners. Only those portions
144 of the tax imposed by article twenty-four of this chapter that
145 are imposed on income directly derived by the owner from
146 the eligible taxpayer are subject to offset by this credit.

147 (B) The amount of annual credit allowed will not reduce
148 corporation net income tax, imposed under article twenty-
149 four of this chapter, below fifty percent of the amount which
150 would be imposed on the conduit income directly derived
151 from the eligible taxpayer by each owner for such taxable
152 year in the absence of this credit against the taxes (deter-
153 mined before application of any other allowable credits
154 against tax): *Provided*, That for tax years beginning on and
155 after January 1, 2009, the amount of annual credit allowed
156 will not reduce corporation net income tax, imposed under
157 article twenty-four of this chapter, below forty percent of the
158 amount which would be imposed on the conduit income
159 directly derived from the eligible taxpayer by each owner for
160 such taxable year in the absence of this credit against the
161 taxes as determined before application of any other allow-
162 able credits against tax.

163 (C) When in any taxable year the taxpayer is entitled to
164 claim credit under this article and article thirteen-d of this

165 chapter, the total amount of all credits allowable for the
166 taxable year will not reduce the corporation net income tax
167 imposed on the conduit income directly derived from the
168 eligible taxpayer by each owner below fifty percent of the
169 amount that would be imposed for such taxable year on the
170 conduit income (determined before application of any other
171 allowable credits against tax): *Provided*, That when in any
172 taxable year beginning on and after January 1, 2009, the
173 taxpayer is entitled to claim credit under this article and
174 article thirteen-d of this chapter, the total amount of all
175 credits allowable for the taxable year will not reduce the
176 corporation net income tax imposed on the conduit income
177 directly derived from the eligible taxpayer by each owner
178 below forty percent of the amount that would be imposed for
179 such taxable year on the conduit income as determined
180 before application of any other allowable credits against tax;

181 (6) Small business corporations, limited liability compa-
182 nies, partnerships and other unincorporated organizations
183 shall allocate any unused credit after application of subdivi-
184 sions (2), (3) and (4) of this subsection among their members
185 in the same manner as profits and losses are allocated for the
186 taxable year; and

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

189 (c) No carryover to a subsequent taxable year or carryback
190 to a prior taxable year is allowed for the amount of any
191 unused portion of any annual credit allowance. Any unused
192 credit is forfeited.

193 (d) *Application for credit required.* —

194 (1) *Application required.* — Notwithstanding any provision
195 of this article to the contrary, no credit is allowed or may be
196 applied under this article for any qualified investment
197 property placed in service or use until the person claiming
198 the credit makes written application to the Tax Commis-
199 sioner for allowance of credit as provided in this section.

200 This application shall be in the form prescribed by the Tax
201 Commissioner and shall provide the number and type of jobs
202 created, if any, by the manufacturing investment, the average
203 wage rates and benefits paid to employees filling the new
204 jobs and any other information the Tax Commissioner may
205 require. This application shall be filed with the Tax Commis-
206 sioner no later than the last day for filing the annual return,
207 determined by including any authorized extension of time for
208 filing the return, required under article twenty-one or
209 twenty-four of this chapter for the taxable year in which the
210 property to which the credit relates is placed in service or
211 use.

212 (2) *Failure to file.* — The failure to timely apply the
213 application for credit under this section results in forfeiture
214 of fifty percent of the annual credit allowance otherwise
215 allowable under this article. This penalty applies annually
216 until the application is filed.

217 (e) (1) Any person or entity undertaking any construction
218 related to any business activity included within North
219 American Industrial Code six digit code number 211112, the
220 value of which is an amount equal to or greater than
221 \$500,000, shall hire at least seventy-five percent of employ-
222 ees for said construction from the local labor market, to be
223 rounded off, with at least two employees from outside the
224 local labor market permissible for each employer per project,
225 “the local labor market” being defined as every county in
226 West Virginia and any county outside of West Virginia if any
227 portion of that county is within fifty miles of the border of
228 West Virginia.

229 (2) Any person or entity unable to employ the minimum
230 number of employees from the local labor market shall
231 inform the nearest office of the bureau of employment
232 programs’ division of employment services of the number of
233 qualified employees needed and provide a job description of
234 the positions to be filled.

235 (3) If, within three business days following the placing of
236 a job order, the division is unable to refer any qualified job
237 applicants to the person or entity engaged in said construc-
238 tion or refers less qualified job applicants than the number
239 requested, then the division shall issue a waiver to the person
240 or entity engaged in said construction stating the unavail-
241 ability of applicants and shall permit the person or entity
242 engaged in said construction to fill any positions covered by
243 the waiver from outside the local labor market. The waiver
244 shall be either oral or in writing and shall be issued within
245 the prescribed three days. A waiver certificate shall be sent
246 to the person or entity engaged in said construction for its
247 permanent project records.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

1 (a) Persons who perform “contracting” as defined in
2 section two of this article or persons acting in an agency
3 capacity may not assert any exemption to which the pur-
4 chaser of such contracting services or the principal is
5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled is invalid unless the tangible personal property or
7 taxable service is actually purchased by such taxpayer and
8 is directly invoiced to and paid by such taxpayer. This
9 section does not apply to purchases by an employee for his or
10 her employer, purchases by a partner for his or her partner-
11 ship or purchases by a duly authorized officer of a corpora-
12 tion, or unincorporated organization, for his or her corpora-
13 tion or unincorporated organization so long as the purchase
14 is invoiced to and paid by the employer, partnership, corpo-
15 ration or unincorporated organization.

16 (b) *Transition rule.* — This section does not apply to
17 purchases of tangible personal property or taxable services
18 in fulfillment of a purchasing agent or procurement agent
19 contract executed and legally binding on the parties thereto
20 prior to September 15, 1999. This transition rule does not
21 apply to any purchases of tangible personal property or

22 taxable services made under such a contract after August 31,
23 1991 and this transition rule does not apply if the primary
24 purpose of the purchasing agent or procurement agent
25 contract was to avoid payment of consumers sales and use
26 taxes. Effective July 1, 2007, this section does not apply to
27 purchases of services, machinery, supplies or materials,
28 except gasoline and special fuel, to be directly used or
29 consumed in the construction, alteration, repair or improve-
30 ment of a new or existing building or structure by a person
31 performing “contracting”, as defined in section two of this
32 article, if the purchaser of the “contracting” services would
33 be entitled to claim the refundable exemption under subdivi-
34 sion (2), subsection (b), section nine of this article had it
35 purchased the services, machinery, supplies or materials.
36 Effective July 1, 2009, this section does not apply to pur-
37 chases of services, computers, servers, building materials and
38 tangible personal property, except purchases of gasoline and
39 special fuel, to be installed into a building or facility or
40 directly used or consumed in the construction, alteration,
41 repair or improvement of a new or existing building or
42 structure by a person performing “contracting”, as defined
43 in section two of this article, if the purchaser of the “con-
44 tracting” services would be entitled to claim the exemption
45 under subdivision (7), subsection (a), section nine-h of this
46 article. This section shall not apply to qualified purchases of
47 computers and computer software, primary material han-
48 dling equipment, racking and racking systems, and their
49 components, or to qualified purchases of building materials
50 and certain tangible personal property, as those terms are
51 defined in section nine-n of this article, by a person perform-
52 ing “contracting,” as defined in section two of this article, if
53 the purchaser of the “contracting” services would be entitled
54 to claim the refundable exemption under section nine-n of
55 this article. Purchases of gasoline and special fuel shall not
56 be treated as exempt pursuant to this section.

57 (c) Effective July 1, 2011, notwithstanding any other
58 provision of this code to the contrary, this section shall apply
59 as to purchases of services, machinery, supplies or materials,
60 except gasoline and special fuel, to be directly used or

61 consumed in the construction, alteration, repair or improve-
62 ment of a new or existing natural gas compressor station or
63 gas transmission line having a diameter of twenty inches or
64 more by a person performing “contracting”, as defined in
65 section two of this article, even though the purchaser of the
66 “contracting” services would be entitled to claim the
67 refundable exemption under subdivision (2), subsection (b),
68 section nine of this article had it purchased the services,
69 machinery, supplies or materials, unless the person or entity
70 performing “contracting” under this subsection, as the term
71 “contracting” is defined in section two of this article,
72 complies with subsection (e), section four, article thirteen-s
73 of this chapter.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-3. Definitions.

1 Unless the context clearly requires a different meaning, as
2 used in this article:

3 (1) “Advanced coal technology” means a technology that is
4 used in a new or existing energy generating facility to reduce
5 airborne carbon emissions associated with the combustion or
6 use of coal and includes, but is not limited to, carbon dioxide
7 capture and sequestration technology, supercritical technol-
8 ogy, advanced supercritical technology as that technology is
9 determined by the Public Service Commission, ultrasuper-
10 critical technology and pressurized fluidized bed technology
11 and any other resource, method, project or technology
12 certified by the commission as advanced coal technology.

13 (2) “Alternative and renewable energy portfolio standard”
14 or “portfolio standard” means a requirement in any given
15 year that requires an electric utility to own credits in an
16 amount equal to a certain percentage of electric energy sold

17 in the preceding calendar year by the electric utility to retail
18 customers in this state.

19 (3) "Alternative energy resources" means any of the
20 following resources, methods or technologies for the produc-
21 tion or generation of electricity:

22 (A) Advanced coal technology;

23 (B) Coal bed methane;

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

26 (D) Fuel produced by a coal gasification or liquefaction
27 facility;

28 (E) Synthetic gas;

29 (F) Integrated gasification combined cycle technologies;

30 (G) Waste coal;

31 (H) Tire derived fuel;

32 (I) Pumped storage hydroelectric projects; and

33 (J) Any other resource, method, project or technology
34 certified as an alternative energy resource by the Public
35 Service Commission.

36 (4) "Alternative and renewable energy resource credit" or
37 "credit" means a tradable instrument that is used to estab-
38 lish, verify and monitor the generation of electricity from
39 alternative and renewable energy resource facilities, energy
40 efficiency or demand-side energy initiative projects or
41 greenhouse gas emission reduction or offset projects.

42 (5) "Alternative energy resource facility" means a facility
43 or equipment that generates electricity from alternative
44 energy resources.

45 (6) “Commission” or “Public Service Commission” means
46 the Public Service Commission of West Virginia as continued
47 pursuant to section three, article one of this chapter.

48 (7) “Customer-generator” means an electric retail customer
49 who owns and operates a customer-sited generation project
50 utilizing an alternative or renewable energy resource or a net
51 metering system in this state.

52 (8) “Electric utility” means any electric distribution
53 company or electric generation supplier that sells electricity
54 to retail customers in this state. Unless specifically provided
55 for otherwise, for the purposes of this article, the term
56 “electric utility” may not include rural electric cooperatives,
57 municipally-owned electric facilities or utilities serving less
58 than thirty thousand residential electric customers in West
59 Virginia.

60 (9) “Energy efficiency or demand-side energy initiative
61 project” means a project in this state that promotes customer
62 energy efficiency or the management of customer consump-
63 tion of electricity through the implementation of:

64 (A) Energy efficiency technologies, equipment, manage-
65 ment practices or other strategies utilized by residential,
66 commercial, industrial, institutional or government custom-
67 ers that reduce electricity consumption by those customers;

68 (B) Load management or demand response technologies,
69 equipment, management practices, interruptible or
70 curtailable tariffs, energy storage devices or other strategies
71 in residential, commercial, industrial, institutional and
72 government customers that shift electric load from periods
73 of higher demand to periods of lower demand;

74 (C) Industrial by-product technologies consisting of the use
75 of a by-product from an industrial process, including, but not
76 limited to, the reuse of energy from exhaust gases or other
77 manufacturing by-products that can be used in the direct
78 production of electricity at the customer’s facility;

79 (D) Customer-sited generation, demand-response, energy
80 efficiency or peak demand reduction capabilities, whether
81 new or existing, that the customer commits for integration
82 into the electric utility's demand-response, energy efficiency
83 or peak demand reduction programs; or

84 (E) Infrastructure and modernization projects that help
85 promote energy efficiency, reduce energy losses or shift load
86 from periods of higher demand to periods of lower demand,
87 including the modernization of metering and communica-
88 tions, (also known as "smart grid"), distribution automation,
89 energy storage, distributed energy resources and investments
90 to promote the electrification of transportation.

91 (10) "Greenhouse gas emission reduction or offset project"
92 means a project to reduce or offset greenhouse gas emissions
93 from sources in this state other than the electric utility's own
94 generating and energy delivery operations. Greenhouse gas
95 emission reduction or offset projects include, but are not
96 limited to:

97 (A) Methane capture and destruction from landfills, coal
98 mines or farms;

99 (B) Forestation, afforestation or reforestation; and

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

102 (11) "Net metering" means measuring the difference
103 between electricity supplied by an electric utility and
104 electricity generated from an alternative or renewable
105 energy resource facility owned or operated by an electric
106 retail customer when any portion of the electricity generated
107 from the alternative or renewable energy resource facility is
108 used to offset part or all of the electric retail customer's
109 requirements for electricity.

110 (12) "Reclaimed surface mine" means a surface mine, as
111 that term is defined in section three, article three, chapter

112 twenty-two of this code, that is reclaimed or is being re-
113 claimed in accordance with state or federal law.

114 (13) "Renewable energy resource" means any of the
115 following resources, methods, projects or technologies for the
116 production or generation of electricity:

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

118 (B) Solar thermal energy;

119 (C) Wind power;

120 (D) Run of river hydropower;

121 (E) Geothermal energy, which means a technology by
122 which electricity is produced by extracting hot water or
123 steam from geothermal reserves in the earth's crust to power
124 steam turbines that drive generators to produce electricity;

125 (F) Biomass energy, which means a technology by which
126 electricity is produced from a nonhazardous organic material
127 that is available on a renewable or recurring basis, including
128 pulp mill sludge;

129 (G) Biologically derived fuel including methane gas,
130 ethanol or biodiesel fuel;

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

134 (I) Recycled energy, which means useful thermal, mechani-
135 cal or electrical energy produced from: (i) Exhaust heat from
136 any commercial or industrial process; (ii) waste gas, waste
137 fuel or other forms of energy that would otherwise be flared,
138 incinerated, disposed of or vented; and (iii) electricity or
139 equivalent mechanical energy extracted from a pressure drop
140 in any gas, excluding any pressure drop to a condenser that
141 subsequently vents the resulting heat; and

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

144 (14) "Renewable energy resource facility" means a facility
145 or equipment that generates electricity from renewable
146 energy resources.

147 (15) "Waste coal" means a technology by which electricity
148 is produced by the combustion of the by-product, waste or
149 residue created from processing coal, such as gob.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
Acting President of the Senate

[Signature]
.....
Speaker of the House of Delegates

2011 APR -5 PM 3:11
OFFICE OF THE
SECRETARY OF STATE
SMT

The within *is approved* this the *4th*
Day of *April* 2011.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 10:10am