

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4086**

4 (By Mr. Speaker (Mr. Thompson))
5 [By Request of the Executive]

6 (Originating in the Committee on Finance)

7 [January 20, 2012]

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10 A BILL to amend and reenact §11-6F-2 and §11-6F-4 of the Code of
11 West Virginia, 1931, as amended, all relating to designating
12 certain property as a qualified capital addition to a
13 manufacturing facility and extending that property special
14 valuation to the twenty-fifth year succeeding the year in
15 which the qualified capital addition is first placed in
16 service.

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

18 That §11-6F-2 and §11-6F-4 of the Code of West Virginia, 1931,
19 as amended, be amended and reenacted, all to read as follows:

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

22 **§11-6F-2. Definitions.**

23 As used in this article, the term:

24 (a) "Certified capital addition property" means all real
25 property and personal property included within or to be included
26 within a qualified capital addition to a manufacturing facility

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

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

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

16 (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 (e) "Qualified capital addition to a manufacturing facility"
22 means either:

23 (1) All real property and personal property, the combined
24 original cost of ~~all of the property~~ which exceeds \$50 million to
25 be constructed, located or installed at or within two miles of a
26 manufacturing facility owned or operated by the person making the

1 capital addition that has a total original cost before the capital
2 addition of at least \$100 million. If the capital addition is made
3 in a steel, chemical or polymer alliance zone as designated from
4 time-to-time by executive order of the Governor, then the person
5 making the capital addition may for purposes of satisfying the
6 requirements of this subsection join in a multiparty project with
7 a person owning or operating a manufacturing facility that has a
8 total original cost before the capital addition of at least \$100
9 million if the capital addition creates additional production
10 capacity of existing or related products or feedstock or derivative
11 products respecting the manufacturing facility, consists of a
12 facility used to store, handle, process or produce raw materials
13 for the manufacturing facility, consists of a facility used to
14 store, handle or process natural gas to produce fuel for the
15 generation of steam or electricity for the manufacturing facility
16 or consists of a facility that generates steam or electricity for
17 the manufacturing facility, including but not limited to a facility
18 that converts coal to a gas or liquid for the manufacturing
19 facility's use in heating, manufacturing or generation of
20 electricity. Beginning on and after July 1, 2011, when the new
21 capital addition is a facility that is or will be classified under
22 the North American Industry Classification System with a six digit
23 code number 211112, or is a manufacturing facility that uses
24 product produced at a facility with code number 211112, then
25 wherever the term "100 million" is used in this subsection, the
26 term "20 million" shall be substituted and where the term "50

1 million" is used, the term "10 million" shall be substituted; or

2 (2) (A) All real property and personal property, the combined
3 original cost of which exceeds \$2 billion to be constructed,
4 located or installed at a facility, or a combination of facilities
5 by a single entity or combination of entities engaged in a unitary
6 business, that:

7 (i) Is or will be classified under the North American Industry
8 Classification System with a six digit code number 211112; or

9 (ii) Is a manufacturing facility that uses one or more
10 products produced at a facility with code number 211112; or

11 (iii) Is a manufacturing facility that uses one or more
12 products produced at a facility described in subparagraph (ii) of
13 this subdivision.

14 (B) No preexisting investment made, or in place before the
15 capital addition shall be required for property specified in this
16 subdivision (2). The requirements set forth in subdivision (1) of
17 this subsection shall not apply to property specified in this
18 subdivision (2) relating to:

19 (i) Location or installation of investment at or within two
20 miles of a manufacturing facility owned or operated by the person
21 making the capital addition;

22 (ii) Total original cost of preexisting investment before the
23 capital addition of at least \$100 million or \$20 million; or

24 (iii) Multiparty projects.

25 (f) "Real property" means all property specified in
26 subdivision (p), section ten, article two, chapter two of this code

1 and includes, but is not limited to, lands, buildings and
2 improvements on the land such as sewers, fences, roads, paving and
3 leasehold improvements: Provided, That for capital additions
4 certified on or after July 1, 2011, the value of the land before
5 any improvements shall be subtracted from the value of the capital
6 addition and the unimproved land value shall not be given salvage
7 value treatment.

8 **§11-6F-4. Application and certification.**

9 Any person seeking designation of property as certified
10 capital addition property shall first make a sworn application to
11 the State Tax Commissioner on forms prescribed by the State Tax
12 Commissioner on or before the date the property is first required
13 to be reported on an annual return for ad valorem property tax
14 purposes. The State Tax Commissioner shall within ninety days of
15 the application determine in writing whether the property is or
16 will be part of a qualified capital addition to a manufacturing
17 facility as defined in section two of this article and shall
18 provide a copy of the written determination to the applicant and
19 the assessor or assessors in the county or counties in which the
20 manufacturing facility is located. The applicant may file an appeal
21 with the State Tax Commissioner to have a formal hearing for a
22 review and redetermination on qualified capital additions to a
23 manufacturing facility which have been disallowed by the State Tax
24 Commissioner within thirty days of the official written
25 notification from the State Tax Commissioner. After the State Tax
26 Commissioner determines that property is or will be part of a

1 qualified capital addition to a manufacturing facility, the
2 property is and remains certified capital addition property for
3 purposes of this article until the earlier of: (a) The disposition
4 of the property to an unrelated third party other than a transferee
5 who continues to operate the manufacturing facility; (b) the
6 cessation of all business at the manufacturing facility; or (c)
7 with regard to: (1) Property described in subdivision (1),
8 subsection (e), section two of this article, the tenth year
9 succeeding the year in which the qualified capital addition to a
10 manufacturing facility to which the property relates is first
11 placed in service; or (2) property described in subdivision (2),
12 subsection (e), section two of this article, the twenty-fifth year
13 succeeding the year in which the qualified capital addition to a
14 manufacturing facility to which the property relates is first
15 placed in service.

16 All applications and determinations under this section
17 constitute return information and are subject to section twenty-
18 three, article one-a of this chapter. The State Tax Commissioner
19 shall report annually the number of applications filed, certified,
20 denied and pending pursuant to this section for the preceding year
21 along with recommendations regarding the structure, benefits and
22 costs of the valuation method specified in this article to the
23 Joint Committee on Government and Finance and to the Governor:
24 *Provided,* That identifying characteristics and facts about
25 applicants may not in any event be disclosed under this section.