

Senate Bill No. 206

(By Senators Kessler (Mr. President) and Hall,

By Request of the Executive)

[Introduced January 17, 2012; referred to the Committee on
Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-6F-2 and §11-6F-4 of the Code of
West Virginia, 1931, as amended, all relating to designating
certain property as a qualified capital addition to a
manufacturing facility; and extending that property special
valuation for twenty-five years.

Be it enacted by the Legislature of West Virginia:

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

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

§11-6F-2. Definitions.

As used in this article, the term:

(a) "Certified capital addition property" means all real
property and personal property included within or to be included
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

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

1 code number 211112, or is a manufacturing facility that uses
2 product produced at a facility with code number 211112, then
3 wherever the term "100 million" is used in this subsection, the
4 term "20 million" shall be substituted and where the term "50
5 million" is used, the term "10 million" shall be substituted; or

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

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

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

15 (iii) Is a manufacturing facility that uses one or more
16 products produced at a facility described in subparagraph (ii) of
17 this subdivision.

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

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

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

6 (iii) Multiparty projects.

7 (f) "Real property" means all property specified in
8 subdivision (p), section ten, article two, chapter two of this code
9 and includes, but is not limited to, lands, buildings and
10 improvements on the land such as sewers, fences, roads, paving and
11 leasehold improvements.

12 **§11-6F-4. Application and certification.**

13 Any person seeking designation of property as certified
14 capital addition property shall first make a sworn application to
15 the State Tax Commissioner on forms prescribed by the State Tax
16 Commissioner on or before the date the property is first required
17 to be reported on an annual return for ad valorem property tax
18 purposes. The State Tax Commissioner shall within ninety days of
19 the application determine in writing whether the property is or
20 will be part of a qualified capital addition to a manufacturing
21 facility as defined in section two of this article and shall
22 provide a copy of the written determination to the applicant and
23 the assessor or assessors in the county or counties in which the
24 manufacturing facility is located. The applicant may file an appeal

1 with the State Tax Commissioner to have a formal hearing for a
2 review and redetermination on qualified capital additions to a
3 manufacturing facility which have been disallowed by the State Tax
4 Commissioner within thirty days of the official written
5 notification from the State Tax Commissioner. After the State Tax
6 Commissioner determines that property is or will be part of a
7 qualified capital addition to a manufacturing facility, the
8 property is and remains certified capital addition property for
9 purposes of this article until the earlier of: (a) The disposition
10 of the property to an unrelated third party other than a transferee
11 who continues to operate the manufacturing facility; (b) the
12 cessation of all business at the manufacturing facility; or (c)
13 with regard to: (1) Property described in subdivision (1),
14 subsection (e), section two of this article, the tenth year
15 succeeding the year in which the qualified capital addition to a
16 manufacturing facility to which the property relates is first
17 placed in service; or (2) property described in subdivision (2),
18 subsection (e), section two of this article, the twenty-fifth year
19 succeeding the year in which the qualified capital addition to a
20 manufacturing facility to which the property relates is first
21 placed in service.

22 All applications and determinations under this section
23 constitute return information and are subject to section twenty-
24 three, article one-a of this chapter. The State Tax Commissioner

1 shall report annually the number of applications filed, certified,
2 denied and pending pursuant to this section for the preceding year
3 along with recommendations regarding the structure, benefits and
4 costs of the valuation method specified in this article to the
5 Joint Committee on Government and Finance and to the Governor:
6 *Provided*, That identifying characteristics and facts about
7 applicants may not in any event be disclosed under this section.

NOTE: The purpose of this bill is to extend the special valuation of certified capital addition property to include certain significant initial investment in certain manufacturing facilities, without the qualifying requirement of preexisting investment, and to enlarge the time over which that special valuation applies from 10 years to 25 years.

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