

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 4449

5 (By Delegates Phillips, R., Lynch, Tomblin, Eldridge, Barker,  
6 Marcum, White, Caputo, Skaff, Craig and Sumner)

7  
8 [Passed March 6, 2014; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §11-13BB-3 and §11-13BB-14 of the Code  
11 of West Virginia, 1931, as amended, relating to the West  
12 Virginia Innovative Mine Safety Technology Tax Credit Act;  
13 including proximity detection systems and cameras used on  
14 continuous mining machines and underground haulage equipment  
15 for tax credit purposes; and extending termination date for  
16 credit.

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

18 That §11-13BB-3 and §11-13BB-14 of the Code of West Virginia,  
19 1931, as amended, be amended and reenacted to read as follows:

20 **ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX**  
21 **CREDIT ACT.**

22 **§11-13BB-3. Definitions.**

23 (a) Any term used in this article has the meaning ascribed by

1 this section unless a different meaning is clearly required by the  
2 context of its use or by definition in this article.

3 (b) For purposes of this article, the term:

4 (1) "Certified eligible safety property" means eligible safety  
5 property in which an eligible taxpayer has made qualified  
6 investment for which credit has been certified under this article.

7 (2) "Coal mining company" means:

8 (A) A person subject to tax imposed on the severance of coal  
9 by section three, article thirteen-a of this chapter; or

10 (B) A person working as a contract miner of coal, mining coal  
11 in this state, under contract with a person subject to tax imposed  
12 on the severance of coal by section three, article thirteen-a of  
13 this chapter.

14 (3) "Director" means the Director of the Office of Miners'  
15 Health, Safety and Training or West Virginia Office of Miners'  
16 Health, Safety and Training established under article one, chapter  
17 twenty two-a of this code.

18 (4) "Eligible safety property" means safety technology  
19 equipment that, at the time of acquisition, is on the list of  
20 approved innovative mine safety technology: *Provided*, That eligible  
21 safety property includes proximity detection systems and cameras  
22 used on continuous mining machines and underground haulage  
23 equipment and machine mounted methane monitors required by section  
24 forty-three, article two, chapter twenty-two-a of this code.

1           (5) "Eligible taxpayer" means a coal mining company that  
2 purchases eligible safety property.

3           (6) "List of approved innovative mine safety technology" means  
4 the list required to be compiled and maintained by the Mine Safety  
5 Technology Task Force and approved and published by the director  
6 under this article.

7           (7) "Office of Miners' Health, Safety and Training" or "West  
8 Virginia Office of Miners' Health, Safety and Training" means the  
9 Office of Miners' Health, Safety and Training established under  
10 article one, chapter twenty two-a of this code.

11           (8) "Person" includes any corporation, limited liability  
12 company or partnership.

13           (9) "Qualified investment" means the eligible taxpayer's  
14 investment in eligible safety property pursuant to a qualified  
15 purchase as qualified and limited by section six of this article.

16           (10) "Qualified purchase" means and includes only acquisitions  
17 of eligible safety property for use in this state.

18           (A) A lease of eligible safety property may constitute a  
19 qualified purchase if the lease was entered into and became  
20 effective at a time when the equipment is on the list of approved  
21 innovative mine safety technology and if the primary term of the  
22 lease for the eligible safety property is five years or more.  
23 Leases having a primary term of less than five years do not  
24 qualify.

1 (B) "Qualified purchase" does not include:

2 (i) Purchases or leases of realty or any cost for, or related  
3 to, the construction of a building, facility or structure attached  
4 to realty;

5 (ii) Purchases or leases of property not exclusively used in  
6 West Virginia;

7 (iii) Repair costs including materials used in the repair  
8 unless, for federal income tax purposes, the cost of the repair  
9 must be capitalized and not expensed;

10 (iv) Motor vehicles licensed by the Division of Motor  
11 Vehicles;

12 (v) Clothing;

13 (vi) Airplanes;

14 (vii) Off-premises transportation equipment;

15 (viii) Leases of tangible personal property having a primary  
16 term of less than five years;

17 (ix) Property that is used outside this state; and

18 (x) Property that is acquired incident to the purchase of the  
19 stock or assets of an industrial taxpayer that was or had been used  
20 by the seller in his or her industrial business in this state or in  
21 which investment was previously the basis of a credit against tax  
22 taken under any other article of this chapter.

23 (C) Acquisitions, including leases, of eligible safety  
24 property may constitute qualified purchases for purposes of this

1 article only if:

2 (i) The property is not acquired from a person whose  
3 relationship to the person acquiring it would result in the  
4 disallowance of deductions under Section 267 or 707(b) of the  
5 United States Internal Revenue Code of 1986, as amended;

6 (ii) The property is not acquired from a related person or by  
7 one component member of a controlled group from another component  
8 member of the same controlled group but the Tax Commissioner may  
9 waive this requirement if the property was acquired from a related  
10 party for its then fair market value; and

11 (iii) The basis of the property for federal income tax  
12 purposes, in the hands of the person acquiring it, is not  
13 determined, in whole or in part, by reference to the federal  
14 adjusted basis of the property in the hands of the person from whom  
15 it was acquired or under Section 1014(e) of the United States  
16 Internal Revenue Code of 1986, as amended.

17 (11) "Safety technology" means depreciable tangible personal  
18 property and equipment, other than clothing, principally designed  
19 to directly minimize workplace injuries and fatalities in coal  
20 mines.

21 (12) "Taxpayer" means a person subject to any of the taxes  
22 imposed by article thirteen-a, twenty-three or twenty-four of this  
23 chapter.

24 **§11-13BB-14. Termination.**

1           The tax credit authorized in this article shall terminate  
2   December 31, 2018.