

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4689

FISCAL  
NOTE

BY DELEGATES BYRD, FLUHARTY, QUEEN, SKAFF,

LAVENDER-BOWE, HANSEN AND LOVEJOY

[Introduced February 04, 2020; Referred to the

Committee on Energy then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article  
 2 designated §8-39-1; to amend said code by adding thereto a new article, designated §11-  
 3 13FF-1, §11-13FF-2, §11-13FF-3, §11-13FF-4, §11-13FF-5, §11-13FF-6, §11-13FF-7,  
 4 §11-13FF-8, §11-13FF-9, §11-13FF-10, §11-13FF-11, §11-13FF-12 and §11-13FF-13;  
 5 and to amend said code by adding thereto a new article, designated §11-13GG-1, §11-  
 6 13GG-2, §11-13GG-3, §11-13GG-4, §11-13GG-5, §11-13GG-6, §11-13GG-7, §11-13GG-  
 7 8, §11-13GG-9, §11-13GG-10, §11-13GG-11, §11-13GG-12 and §11-13GG-13, all  
 8 relating to enacting the West Virginia Technology Attraction Act and the West Virginia  
 9 Information and Technology Investment Act; expanding the availability of new technology  
 10 resources in the state to enhance opportunities for technology investment and availability;  
 11 providing for authorizing local governmental units to construct renewable solar  
 12 technologies to businesses in their jurisdictions and establishing requirements and  
 13 conditions thereto; providing a tax credit for construction of fiber optics technologies in the  
 14 state; providing a tax credit for certain information and technology companies that create  
 15 jobs in the state; requiring rulemaking and other requirements, conditions and limitations  
 16 relating to tax credits created.

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

## **ARTICLE 39. LOCAL GOVERNMENTS RENEWABLE ENERGY PROJECTS**

### **§8-39-1. Authorization for local governmental units to construct renewable energy projects.**

1 (a) Legislative findings.

2 (1) Nationwide, numerous large commercial, industrial and manufacturing companies  
 3 have established corporate sustainability goals and guidelines, primarily geared toward the  
 4 reduction of carbon dioxide and other greenhouse gas emissions through the implementation of  
 5 energy efficiency measures and the deployment of renewable energy sources including solar  
 6 energy.

7           (2) West Virginia does not currently have available renewable energy sources to attract  
8 these large companies, who are large energy consumers. If the state is going to compete in  
9 attracting such businesses, a mechanism for allowing local governments to construct and make  
10 available renewable energy sources to these companies will allow them to make themselves  
11 attractive and competitive for recruiting these businesses to locate in our state.

12           (3) Creating designated locations where local governments can construct solar based  
13 electrical energy sources to provide companies that wish to have a renewable component to their  
14 energy consumption as part of their business plan, will attract commercial, industrial and  
15 manufacturing companies to locate their commercial, industrial and manufacturing facilities within  
16 West Virginia and will create new jobs and tax revenues through these public/private partnerships.

17           (4) Because of the limitations of advisable space for solar photovoltaic arrays, it may be  
18 necessary to use existing utility infrastructure, and authorization for local governments to enter  
19 into agreements with local utilities to utilize existing utility resources is a necessary component of  
20 providing flexibility and for effective local planning to facilitate these local renewable energy  
21 projects.

22           (b) Definitions. – As used in this section:

23           “Eligible solar project” means a solar photovoltaic array having a nameplate capacity of  
24 one megawatt or more that is installed upon land owned or leased by a governmental unit for the  
25 purpose of providing renewable energy source to attract businesses who require renewable  
26 energy be a part of their energy consumption portfolio, and may include projects for which a  
27 certificate of public convenience and necessity authorizing the installation was issued by the  
28 Public Service Commission pursuant to §24-2-11 of this code, when the project is interconnected  
29 with a transmitting utility’s transmission or distribution system.

30           “Entity” means any business entity, including, but not limited to, a corporation, partnership,  
31 limited liability company or sole proprietorship.

32           “Energy consumer” means a commercial, industrial or manufacturing entity or an

33 institution of higher education or a nonprofit organization located or to be located in West Virginia  
34 that has a normal maximum electrical requirement of one megawatt or more per month of actual  
35 demand in the past 12 months, or projected normal maximum electrical requirements of one  
36 megawatt or more per month, of electric power at its West Virginia facilities.

37 “Local governmental unit” means any municipality or county government;

38 “Power purchase agreement” means a contractual arrangement under which the local  
39 governmental unit sells the electrical output of the project to a energy consumer.

40 “Transmitting utility” means an electric utility that owns and operates transmission and  
41 distribution lines within West Virginia and that is regulated as a public utility by the Public Service  
42 Commission.

43 “Wheeling agreement” means an agreement between the owner or operator of an eligible  
44 solar project and one or more transmitting utilities within West Virginia under which electricity  
45 generated at the eligible solar project is transmitted for delivery to a large energy consumer served  
46 by the transmitting utility or utilities.

47 (c) Any local government unit may construct and operate a solar project for the purpose  
48 of providing a large energy consumer power for use at a facility located within the local  
49 government unit.

50 (d) Authorizing wheeling agreements. –

51 (1) Upon procurement of the electrical output of an eligible solar project by a large energy  
52 consumer, either through ownership of the solar project by the large energy consumer or through  
53 a power purchase agreement between the large energy consumer and the owner or operator of  
54 the eligible solar project, the large energy consumer is entitled, upon request, to have the electrical  
55 output transmitted or wheeled over the transmission and/or distribution system of one or more  
56 transmitting utilities between: (A) The point of interconnection between a transmitting utility’s  
57 transmission or distribution system and the eligible solar project; and (B) the point of delivery at  
58 facilities of the large energy consumer located within West Virginia, as designated by the large

59 energy consumer.

60 (2) The rates to be charged by a transmitting utility for wheeling service provided to a large  
61 energy consumer shall be: (A) The rate set forth in the utility's Open Access Transmission Tariff  
62 (OATT) on file with the Federal Energy Regulatory Commission to the extent the utility's  
63 transmission facilities are used; and (B) a wheeling rate to be determined by the Public Service  
64 Commission to the extent the utility's distribution facilities are used. The Public Service  
65 Commission, following a rate proceeding pursuant to §24-2-1 et seq. of this code, shall determine  
66 the wheeling rate for a transmitting utility, and the rates, terms and conditions applicable to the  
67 wheeling service shall be set forth in a tariff sheet upon approval of the rates, terms and conditions  
68 by the Public Service Commission.

69 (e) Authorizing local governmental units to construct solar infrastructure. –

70 Local governmental units are authorized to utilize any property that is either owned, leased  
71 or a right-of-way held by the local governmental unit for the purpose of constructing, transmitting  
72 or operation of an eligible solar project.

73 (f) Not a public utility. –

74 (1) The transmission of electrical output of an eligible solar project to an energy consumer  
75 is not considered the provision of electric service to the public, retail electric service, or retail  
76 supply of electricity, and neither the energy consumer nor the owner or operator of an eligible  
77 solar project is considered an electric supplier within the meaning of this chapter or in violation of  
78 exclusive electric service rights arising therein.

79 (2) Except as explicitly provided in subsection (c) and subdivision (1), subsection (d) of  
80 this section, this section does not modify the restrictions in this chapter on the sale, offer for sale,  
81 or distribution of retail electric service in this state.

## **ARTICLE 13FF. WEST VIRGINIA FIBER OPTICS INVESTMENT ACT.**

### **§11-13FF-1. Short title.**

1 This article may be cited as the “West Virginia Fiber Optics Investment Act”.

**§11-13FF-2. Legislative findings and purpose.**

1           The Legislature finds that the encouragement of economic growth through fiber optic  
2 infrastructure projects in this state is in the public interest and promotes the general welfare of the  
3 people of this state. In order to encourage greater economic growth and development in this state,  
4 there is hereby enacted the West Virginia Fiber Optics Investment Act.

**§11-13FF-3. Definitions.**

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

4           (b) Terms defined. –

5           “Direct fiber optics expenditure” means a transaction that occurs in the State of West  
6 Virginia and includes:

7           (A) Payment of wages, fees and costs for related fringe benefits provided for construction,  
8 management or labor that are subject to West Virginia income tax that directly relate to the  
9 construction of a fiber optics infrastructure project;

10           (B) For projects that contain any other construction activities relating to installing other  
11 utilities, other infrastructure or any other improvements or activity, the tax credits created herein  
12 shall only apply to the portion of the construction activity related to installation and implementation  
13 of fiber optics infrastructure.

14           “Eligible project” means a fiber optics infrastructure project located in the state that will  
15 provide fiber optic technology to residents or businesses located in the state; and may include  
16 projects that provide this technology to out-of-state residents or businesses, as long as in-state  
17 residents or businesses receive service as part of the project.

18           “Fiber optic infrastructure” refers to the technology and medium used in the transmission  
19 of data as pulses of light through a strand or fiber medium made of glass or plastic optical fiber  
20 and includes installation and construction of all necessary technology to support its operation and

21 delivery.

22 “Tax Commissioner” means the West Virginia State Tax Commissioner or his or her  
23 designee.

**§11-13FF-4. Creation of the tax credit.**

1 (a) An eligible company may apply for, and the Tax Commissioner shall allow, a  
2 nonrefundable tax credit in an amount equal to the percentage specified in §11-13FF-5 of this  
3 code of the direct production expenditures incurred in West Virginia that are directly attributable  
4 to the production in West Virginia of a qualified fiber optics project and that occur in West Virginia.

5 (b) Expenditures used for purposes of calculating the tax credit authorized by this article  
6 may not be used by the eligible company for the purpose of calculating or qualifying investment  
7 for claiming the economic opportunity tax credit authorized by §11-13Q-1 et seq. of this code or  
8 the manufacturing investment tax credit authorized by §11-13S-1 et seq. of this code.

**§11-13FF-5. Amount of credit allowed; limitation of the credits.**

1 (a) Base allowance. –

2 The amount of credit allowed to every eligible company, except as provided in subsection  
3 (b) of this section, is 80 percent of the cost of construction of fiber optics facilities.

4 (b) Extra allowance for hiring of local workers. –

5 Any amount allowed in subsection (a) of this section shall be increased by an additional  
6 20 percent if the eligible company, or its authorized payroll service company, employs 10 or more  
7 West Virginia residents as part of its full-time employees working in the state or as apprentices  
8 working in the state.

9 (c) Application of the credits. –

10 The tax credit allowed under this section shall be applied to the eligible company’s state  
11 tax liability as provided in §11-13FF-7 of this code.

**§11-13FF-6. Requirements for credit.**

1 (a) In order for any eligible company to claim a tax credit under this article, it shall comply

2 with the following requirements:

3 (1) Pay all taxes and obligations the eligible company has incurred in West Virginia; and

4 (2) The West Virginia Development Office shall certify to the Tax Division that the project  
5 has or is being constructed and that the eligible company is in compliance with all applicable state  
6 and federal laws relating to construction of the project and the project meets all eligibility  
7 requirements relating to providing the service to state residents and businesses and shall report  
8 this information to the Tax Commissioner in a manner and at times the Development Office and  
9 the Tax Commissioner shall agree upon.

10 (b) Upon completion of a qualified project:

11 (1) An eligible company shall have filed all required West Virginia tax reports and returns  
12 and paid any balance of West Virginia tax due on those returns;

13 (2) All claims for the tax credit shall be filed with an expense verification report prepared  
14 by an independent certified public accountant, utilizing “agreed upon procedures” which are  
15 prescribed by the Development Office in accordance with generally accepted auditing standards  
16 in the United States. The certified public accountant will render a report as to the qualification of  
17 the credits, consistent with guidelines to be determined by the Development Office and approved  
18 by the Tax Commissioner; and

19 (3) An eligible company claiming an extra allowance for employing local workers shall  
20 submit to the Development Office documentation verifying West Virginia residency for all  
21 individuals claimed to qualify for the extra allowance. The documentation shall include the name,  
22 home address and telephone number for all individuals used to qualify for the extra allowance.

23 (c) If the requirements of this section have been complied with, the Development Office  
24 shall approve the tax credit and issue a document granting the appropriate tax credit to the eligible  
25 company and shall report this information to the Tax Commissioner.

**§11-13FF-7. Application of credit to state taxes.**

1 (a) Credit allowed. –



2 Beginning in the taxable year that the expenditures permitted under section four of this  
3 article are incurred, eligible companies and owners of eligible companies, as described in  
4 subsection (d) of this section, are permitted a credit, as described in §11-13FF-5 of this code,  
5 against the taxes imposed by §11-23-1 et seq., §11-24- 1 et seq. and §11-21-1 et seq. of this  
6 code, in that order, as specified in this section.

7 (b) Business franchise tax. –

8 The credit is first applied to reduce the taxes imposed by §11-23-1 et seq. of this code for  
9 the taxable year, determined after application of the credits against tax provided in §11-23-17 of  
10 this code, but before application of any other allowable credits against tax.

11 (c) Personal income tax. –

12 (1) If the eligible taxpayer is an electing small business corporation (as defined in Section  
13 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited  
14 liability company that is treated as a partnership for federal income tax purposes or a sole  
15 proprietorship, then any unused credit, after application of subsections (b) of this subsection, is  
16 allowed as a credit against the taxes imposed by 11-21-1 et seq. of this code on the income from  
17 business or other activity subject to tax under 11-23-1 et seq. of this code, or on income of a sole  
18 proprietor attributable to the business.

19 (2) Electing small business corporations, limited liability companies, partnerships and  
20 other unincorporated organizations shall allocate the credit allowed by this article among its  
21 members in the same manner as profits and losses are allocated for the taxable year.

**§11-13FF-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration**  
**and forfeiture of credit.**

1 (a) No credit is allowed under this section against any employer withholding taxes imposed  
2 by §11-21-1 et seq. of this code.

3 (b) If the tax credit allowed under this article in any taxable year exceeds the sum of the  
4 taxes enumerated in §11-13FF-7 (b) or (c), of this code for that taxable year, the excess may be

5 applied against those taxes, in the order and manner stated in §11-13FF-7 of this code, for  
6 succeeding taxable years until the earlier of the following:

7 (1) The full amount of the excess tax credit is used;

8 (2) The expiration of the second taxable year after the taxable year in which the  
9 expenditures occurred. The tax credit remaining thereafter is forfeited; or

10 (3) The excess tax credit is transferred or sold.

11 (c) No carryback is allowed to a prior taxable year that does not have qualified  
12 expenditures for the amount of any unused portion of any annual credit allowance.

13 (d) For purposes of this chapter, any proceeds received by the eligible company or  
14 transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt  
15 from the West Virginia consumers sales and service tax and use tax and from the corporate net  
16 income tax and personal income tax.

17 (e) The Tax Commissioner may not seek recourse against the transferee for any portion  
18 of the credit that may be subsequently disqualified.

19 (f) Failure to comply with this section will result in the disallowance of the tax credit until  
20 the seller or transferor is in full compliance.

**§11-13FF-9. Legislative rules.**

1 (a) The Tax Commissioner shall propose for promulgation rules pursuant to §29A-3-1 et  
2 seq. of this code as may be necessary to carry out the purposes of this article.

3 (b) The Secretary of the West Virginia Department of Commerce may propose for  
4 promulgation rules pursuant to §29A-3-1 et seq. of this code, as may be necessary to carry out  
5 the purposes of this article.

**§11-13FF-10. Burden of proof.**

1 The burden of proof is on the eligible company claiming the credit allowed by this article  
2 to establish by clear and convincing evidence that the eligible company or credit transferee is  
3 entitled to the amount of credit asserted for the taxable year.

**§11-13FF-11. Tax credit review and accountability.**

1           (a) Beginning on the first day of the third taxable year after the passage of this article and  
2 every two years after that, the Development Office shall submit to the Governor, the President of  
3 the Senate and the Speaker of the House of Delegates a tax credit review and accountability  
4 report evaluating the cost effectiveness of this investment act during the most recent two-year  
5 period for which information is available. The criteria to be evaluated shall include, but not limited  
6 to, for each year of the two-year period:

7           (1) The number of eligible companies claiming the credit;

8           (2) The dollar amount of tax credit certificates issued to taxpayers;

9           (3) The number of residents and businesses receiving fiber optics services as a result of  
10 the tax credit;

11           (4) The number of new jobs, if any, created by the tax credit;

12           (5) The amount of direct expenditures made on qualified projects; and

13           (6) The cost of the credit.

14           (b) Eligible companies claiming the credit shall provide any information the Tax  
15 Commissioner and the Development Office may require preparing the report: *Provided*, That the  
16 information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and  
17 §11-10-5s of this code. However, notwithstanding the provisions of §11-10-5d and §11-10-5s of  
18 this code, the Tax Department may disclose to the to the Development Office tax information  
19 necessary to compile the report required by this section and the report required by §11-13FF-12  
20 of this code.

**§11-13FF-12. Economic development.**

1           The West Virginia Development Office, in consultation and coordination with the  
2 appropriate public and private entities, shall promote, foster, encourage and monitor the  
3 development of the fiber optics technology in this state as part of its comprehensive economic  
4 development strategy for West Virginia and report recommendations for expanding fiber optics

5 services in the state to the Governor and the Joint Committee on Government and Finance  
 6 annually on or before December 1, 2022.

**§11-13FF-13. Effective date, elimination of tax credits, preservation of tax credits earned  
 prior to the sunset date.**

1 The credit allowed by this article is allowed on eligible expenditures occurring after  
 2 December 31, 2021 and expires December 21, 2028.

**ARTICLE 13GG. WEST VIRGINIA INFORMATION AND TECHNOLOGY INVESTMENT  
 ACT.**

**§11-13GG-1. Short title.**

1 This article may be cited as the “West Virginia Information and Technology Investment  
 2 Act”.

**§11-13GG-2. Legislative findings and purpose.**

1 The Legislature finds that the encouragement of economic growth of information  
 2 technology is an important and necessary economic activity that is a part of any future healthy  
 3 state economy, and that West Virginia must create economic incentives to attract these  
 4 businesses to locate within this state. A future vibrant economy in this state must have a strong  
 5 technology component as the state currently loses nearly 1,900 graduating students each year  
 6 from our university and college system moving out-of-state to find these technology jobs, and  
 7 stemming the tide of loss of these most valuable citizens is critically necessary, and the situation  
 8 demands immediate action to facilitate attraction of technology industries to this state. Therefore,  
 9 the purpose of this article is to create a tax credit for the benefit to any company that brings 100  
 10 or more new information technology jobs into West Virginia, and there is hereby enacted the West  
 11 Virginia Information and Technology Investment Act.

**§11-13GG-3. Definitions.**

1 (a) General. – When used in this article, or in the administration of this article, terms

2 defined in subsection (b) of this section have the meanings ascribed to them by this section,  
3 unless a different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. –

5 “Eligible company” means any information technology company that creates 100 or more  
6 new full-time jobs and is located within the State of West Virginia;

7 “Information technology” means equipment, hardware, software, firmware, programs,  
8 systems, networks, infrastructure, media and related material used to automatically, electronically  
9 and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate,  
10 process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert,  
11 converge, interface, switch or disseminate information of any kind or form.

12 “Information technology company” means any business that has a primary purpose of  
13 manufacturing, operating or participating in information technology which is not regulated as a  
14 utility by the Public Service Commission.

15 “Tax Commissioner” means the West Virginia State Tax Commissioner or his or her  
16 designee.

#### **§11-13GG-4. Creation of the tax credit.**

1 (a) An eligible company may apply for, and the Tax Commissioner shall allow, a  
2 nonrefundable tax credit in an amount equal to the percentage specified in §11-13GG-5 of this  
3 code of the income for the company incurred in West Virginia that are directly attributable to the  
4 profits derived from the creating a new information technology facility in the State of West Virginia  
5 which employees 100 or more full-time employees.

6 (b) Expenditures used for purposes of calculating the tax credit authorized by this article  
7 may not be used by the eligible company for the purpose of calculating or qualifying investment  
8 for claiming the economic opportunity tax credit authorized by §11-13Q-1 *et seq.* of this code or  
9 the manufacturing investment tax credit authorized by §11-13S-1 *et seq.* of this code.

#### **§11-13GG-5. Amount of credit allowed; limitation of the credits.**

1 (a) Base allowance. –

2 The amount of credit allowed to every eligible company, except as provided in subsection  
3 (b) of this section, is 100 percent of the company's tax liability.

4 (b) Application of the credits. –

5 The tax credit allowed under this section shall be applied to the eligible company's state  
6 tax liability as provided in §11-13GG-7 of this code.

**§11-13GG-6. Requirements for credit.**

1 (a) In order for any eligible company to claim a tax credit under this article, it shall comply  
2 with the following requirements:

3 (1) Pay all taxes and obligations the eligible company has incurred in West Virginia; and  
4 (2) The West Virginia Development Office shall certify to the Tax Division that the company  
5 has created 100 or more full-time jobs in West Virginia and the eligible company is in compliance  
6 with all applicable state and federal laws relating to construction of the project and the project  
7 meets all eligibility requirements relating to providing the service to state residents and businesses  
8 and shall report this information to the Tax Commissioner in a manner and at times the  
9 Development Office and the Tax Commissioner shall agree upon.

10 (b) Upon completion of a qualified project:

11 (1) An eligible company shall have filed all required West Virginia tax reports and returns  
12 and paid any balance of West Virginia tax due on those returns;

13 (2) All claims for the tax credit shall be filed with an expense verification report prepared  
14 by an independent certified public accountant, utilizing "agreed upon procedures" which are  
15 prescribed by the Development Office in accordance with generally accepted auditing standards  
16 in the United States. The certified public accountant will render a report as to the qualification of  
17 the credits, consistent with guidelines to be determined by the Development Office and approved  
18 by the Tax Commissioner; and

19 (3) An eligible company claiming a tax credit for employing state workers shall submit to

20 the Development Office documentation verifying West Virginia residency for all individuals  
21 claimed to qualify for the extra allowance. The documentation shall include the name, home  
22 address and telephone number for all individuals used to qualify for the extra allowance.

23 (c) If the requirements of this section have been complied with, the Development Office  
24 shall approve the tax credit and issue a document granting the appropriate tax credit to the eligible  
25 company and shall report this information to the Tax Commissioner.

**§11-13GG-7. Application of credit to state taxes.**

1 (a) Credit allowed. –

2 Beginning in the taxable year that the expenditures permitted under §11-13GG-4 of this  
3 code are incurred, eligible companies and owners of eligible companies are permitted a credit, as  
4 described in §11-13GG-5 of this code, against the taxes imposed by §11-23-1 et seq., §11-24- 1  
5 et seq. and §11-21-1 et seq. of the code, in that order, as specified in this section.

6 (b) Business franchise tax. –

7 The credit is first applied to reduce the taxes imposed by §11-23-1 et seq. of the code for  
8 the taxable year, determined after application of the credits against tax provided in §11-23-17 of  
9 this code, but before application of any other allowable credits against tax.

10 (c) Personal income tax. –

11 (1) If the eligible taxpayer is an electing small business corporation (as defined in Section  
12 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited  
13 liability company that is treated as a partnership for federal income tax purposes or a sole  
14 proprietorship, then any unused credit, after application of subsection (b) of this section, is allowed  
15 as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from  
16 business or other activity subject to tax under §11-23-1 et seq. of this code or on income of a sole  
17 proprietor attributable to the business.

18 (2) Electing small business corporations, limited liability companies, partnerships and  
19 other unincorporated organizations shall allocate the credit allowed by this article among its

20 members in the same manner as profits and losses are allocated for the taxable year.

**§11-13GG-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.**

1 (a) No credit is allowed under this section against any employer withholding taxes imposed  
2 by §11-22-1 et seq. of this code.

3 (b) If the tax credit allowed under this article in any taxable year exceeds the sum of the  
4 taxes enumerated in §11-13GG-7 (b) or (c) of this code for that taxable year, the excess may be  
5 applied against those taxes, in the order and manner stated in §11-13GG-7 of this code, for  
6 succeeding taxable years until the earlier of the following:

7 (1) The full amount of the excess tax credit is used;

8 (2) The expiration of the second taxable year after the taxable year in which the  
9 expenditures occurred. The tax credit remaining thereafter is forfeited; or

10 (3) The excess tax credit is transferred or sold.

11 (c) No carryback is allowed to a prior taxable year that does not have qualified  
12 expenditures for the amount of any unused portion of any annual credit allowance.

13 (d) For purposes of this chapter, any proceeds received by the eligible company or  
14 transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt  
15 from the West Virginia consumers sales and service tax and use tax and from the corporate net  
16 income tax and personal income tax.

17 (e) The Tax Commissioner shall not seek recourse against the transferee for any portion  
18 of the credit that may be subsequently disqualified.

19 Failure to comply with this section will result in the disallowance of the tax credit until the  
20 seller or transferor is in full compliance.

**§11-13GG-9. Legislative rules.**

1 (a) The Tax Commissioner shall propose for promulgation rules pursuant to §29A-3-1 et  
2 seq. of this code as may be necessary to carry out the purposes of this article.



3           (b) The Secretary of the West Virginia Department of Commerce may propose for  
4 promulgation rules pursuant to §29A-3-1 et seq. of this code as may be necessary to carry out  
5 the purposes of this article.

**§11-13GG-10. Burden of proof.**

1           The burden of proof is on the eligible company claiming the credit allowed by this article  
2 to establish by clear and convincing evidence that the eligible company or credit transferee is  
3 entitled to the amount of credit asserted for the taxable year.

**§11-13GG-11. Tax credit review and accountability.**

1           (a) Beginning on the first day of the third taxable year after the passage of this article and  
2 every two years after that, the Development Office shall submit to the Governor, the President of  
3 the Senate and the Speaker of the House of Delegates a tax credit review and accountability  
4 report evaluating the cost effectiveness of this investment act during the most recent two-year  
5 period for which information is available. The criteria to be evaluated shall include, but not limited  
6 to, for each year of the two-year period:

7           (1) The number of eligible companies claiming the credit;

8           (2) The dollar amount of tax credit certificates issued to taxpayers;

9           (3) The number of new jobs, if any, created by the tax credit;

10          (4) The amount of direct expenditures made on qualified projects; and

11          (5) The cost of the credit.

12          (b) Eligible companies claiming the credit shall provide any information the Tax  
13 Commissioner and the Development Office may require preparing the report: *Provided*, That the  
14 information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and  
15 §11-10-5s of the code. However, notwithstanding the provisions of §11-10-5d and §11-10-5s of  
16 this code, the Tax Department may disclose to the to the Development Office tax information  
17 necessary to compile the report required by this section and the report required by §11-13GG-12  
18 of this code.

**§11-13GG-12. Economic development.**

1        The West Virginia Development Office, in consultation and coordination with the  
2 appropriate public and private entities, shall promote, foster, encourage and monitor the  
3 development of information technology companies in this state as part of its comprehensive  
4 economic development strategy for West Virginia and report recommendations for expanding and  
5 locating information technology resources and companies in the state to the Governor and the  
6 Joint Committee on Government and Finance annually on or before December 1, 2022.

**§11-13GG-13. Effective date, elimination of tax credits, preservation of tax credits earned prior to the sunset date.**

1        The credit allowed by this article is allowed on eligible expenditures occurring after  
2 December 31, 2021, and expires December 21, 2028.

NOTE: The purpose of this bill is to encourage investments in technologies that will enhance investment and create opportunities to state residences by creating incentives for investment in technology resources in West Virginia; authorizing local governmental units to create solar power generation facilities to provide to businesses desiring availability of those facilities to locate in the state; creating a tax credit for construction of fiber optic infrastructure to attract businesses and residents that desire that technology; and creating a tax credit for information and technology companies that create 250 or more jobs in West Virginia.

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