

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 447

BY SENATORS TAKUBO, BOLEY, CLEMENTS, GRADY,  
HAMILTON, MAYNARD, PHILLIPS, ROBERTS, RUCKER,  
SMITH, STOVER, WELD, WOODRUM, PLYMALE, KARNES,  
NELSON, AND MARONEY

[Introduced February 25, 2021; referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-13Q-9, §11-13Q-10, §11-13Q-10a, and §11-13Q-22 of the  
 2 Code of West Virginia, 1931, as amended, all relating to economic development incentive  
 3 tax credits; specifying economic opportunity tax credit new jobs percentage of 10 percent  
 4 corresponding to the creation of 10 new jobs; terminating tax credit under certain  
 5 circumstances; specifying changes to resolve technical conflict with other sections;  
 6 eliminating superannuated reference to business franchise tax; eliminating superannuated  
 7 reporting requirement; specifying manufacturing activities that qualify for high technology  
 8 manufacturing tax credit; providing definitions; proscribing multiple tax credits for the same  
 9 qualified investment; making technical corrections; and specifying effective dates.

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

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-9. New jobs percentage.**

1 (a) *In general.* -- The new jobs percentage is based on the number of new jobs created in  
 2 this state directly attributable to the qualified investment of the taxpayer.

3 (b) *When a job is attributable.* -- An employee’s position is directly attributable to the  
 4 qualified investment if:

5 (1) The employee’s service is performed or his or her base of operations is at the new or  
 6 expanded business facility;

7 (2) The position did not exist prior to the construction, renovation, expansion, or acquisition  
 8 of the business facility and the making of the qualified investment; and

9 (3) But for the qualified investment, the position would not have existed.

10 (c) *Applicable percentage.* –

11 (1) For the purpose of subsection (a) of this section, the applicable new jobs percentage  
 12 is determined under the following table:

13 If number of		The applicable
14 new jobs is at least:		percentage is:

15	20	20%
16	280	25%
17	520	30%

18 (2) Provided, That for credit applications filed for taxable years beginning on and after  
 19 January 1, 2022, for the purpose of subsection (a) of this section, the applicable new jobs  
 20 percentage is determined under the following table:

21	<u>If number of</u>	<u>The applicable</u>
22	<u>new jobs is at least:</u>	<u>percentage is:</u>
23	<u>10</u>	<u>10%</u>
24	<u>20</u>	<u>20%</u>
25	<u>280</u>	<u>25%</u>
26	<u>520</u>	<u>30%</u>

27 (d) *Certification of new jobs.* -- With the annual return for the applicable taxes filed for the  
 28 taxable year in which the qualified investment is first placed in service or use in this state, the  
 29 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by  
 30 it in this state within the period prescribed in subsection (f) of this section that are, or will be,  
 31 directly attributable to the qualified investment of the taxpayer. For purposes of this section,  
 32 “applicable taxes” means the taxes imposed by §24-13-1 *et seq.*, §24-21-1 *et seq.*, and §24-23-  
 33 1 *et seq.* of this code against which this credit is applied.

34 (e) *Equivalency of permanent employees.* -- The hours of part-time employees shall be  
 35 aggregated to determine the number of equivalent full-time employees for the purpose of this  
 36 section.

37 (f) *Redetermination of new jobs percentage.* -- With the annual return for the applicable  
 38 taxes imposed, filed for the third taxable year in which the qualified investment is in service or  
 39 use, the taxpayer shall certify the actual number of new jobs created by it in this state that are  
 40 directly attributable to the qualified investment of the taxpayer.

41 (1) If the actual number of jobs created would result in a higher new jobs percentage, the  
42 credit allowed under this article shall be redetermined and amended returns filed for the first and  
43 second taxable years that the qualified investment was in service or use in this state.

44 (2) If the actual number of jobs created would result in a lower new jobs percentage, the  
45 credit previously allowed under this article shall be redetermined and amended returns filed for  
46 the first and second taxable years. In applying the amount of redetermined credit allowable for  
47 the two preceding taxable years, the redetermined credit shall first be applied to the extent it was  
48 originally applied in the prior two years to personal income taxes, then to corporation net income  
49 taxes, then to ~~business franchise taxes~~ and, lastly, to business and occupation taxes. Any  
50 additional taxes due under this chapter shall be remitted with the amended returns filed with the  
51 commissioner, along with interest, as provided in §11-10-17 of this code, and a 10-percent penalty  
52 determined on the amount of taxes due with the amended return, which may be waived by the  
53 commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was  
54 due to reasonable cause and not due to willful neglect.

55 (g) *Additional new jobs percentage.* — When the qualified investment is \$20 million or  
56 more and the new or expanded business facility is constructed using construction laborers and  
57 mechanics who are paid an average wage equal to or greater than the prevailing wage for their  
58 respective classes of work determined under chapter 21 of this code, then, if the number of full-  
59 time construction laborers and mechanics working at the job site of the new or expanded business  
60 facility is 75 or more, or if the number of hours of all construction laborers and mechanics working  
61 at the job site is equal to or greater than the number of hours 75-five full-time construction laborers  
62 and mechanics would have worked at the job site during a 12 consecutive month period, a  
63 taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section  
64 shall be allowed a new jobs percentage that is five percentage points higher than the new jobs  
65 percentage allowed under subsection (a) of this section. In no event may construction laborers  
66 and mechanics be used to attain or retain a subsection (a) new jobs percentage. The number of

67 full-time construction laborers and mechanics working at the job site shall be determined by  
68 dividing the total number of hours worked by all construction laborers and mechanics on a new  
69 or expanded business facility during a 12 consecutive month period by 2,080 hours per year. A  
70 taxpayer may not claim the additional new jobs percentage allowed by this section unless the  
71 taxpayer includes with the certification filed under subsection (d) of this section a certification  
72 signed by the general contractor or the construction manager certifying that construction laborers  
73 employed at the job site during a consecutive 12 month period aggregated the equivalent of at  
74 least 75 full-time employees and the taxpayer has received from the general contractor or  
75 construction manager records substantiating the certification, which records shall be retained by  
76 the taxpayer for 13 years after the day the expansion to an existing business facility, or the new  
77 business facility, is first placed in service or use by the taxpayer. For purposes of subsection (g)  
78 of this section:

79 (1) The term "construction laborers and mechanics" means those workers, utilized by a  
80 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including  
81 those workers who use tools or are performing the work of a trade, as distinguished from mental  
82 or managerial and working foremen who devote more than 20 percent of their time during a  
83 workweek performing the duties of a laborer or mechanic; and

84 (2) The term "job site" is limited to the physical place or places where the construction  
85 called for in the contract will remain when the work on it is completed and nearby property, as  
86 described in subdivision (3) of this subsection, used by the contractor or subcontractor during  
87 construction that, because of proximity, can reasonably be included in the "site".

88 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile  
89 factories, batch plants, borrow pits, job headquarters and tool yards are part of the "job site"  
90 provided they are dedicated exclusively, or nearly so, to performance of the contract or project  
91 and are located in proximity to the actual construction location so that it would be reasonable to  
92 include them.

93 (4) The term “job site” does not include permanent home offices, branch offices, branch  
94 plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose  
95 locations and continuance in operation are determined without regard to the contract or  
96 subcontract for construction of a new or expanded business facility.

**§11-13Q-10. Credit for small business.**

1 (a) *Small business defined.* -- For purposes of this section, the term “small business”  
2 means a business which has annual gross receipts of not more than \$7 million (including the  
3 gross receipts of any affiliates in its controlled group): *Provided*, That beginning January 1, 2004,  
4 and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall  
5 apply in lieu of the \$7 million amount during that calendar year. This amount is prescribed by  
6 increasing the \$7 million amount by the cost-of-living adjustment for that calendar year. The  
7 requirements for annual gross receipts, once met by a given taxpayer in that taxable year when  
8 qualified investment is first placed in service or use, may not again be applied to that same  
9 taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained  
10 entitlement in that year.

11 (1) *Cost-of-living adjustment.* -- For purposes of subsection (a), the cost-of-living  
12 adjustment for any calendar year is the percentage (if any) by which the consumer price index for  
13 the preceding calendar year exceeds the consumer price index for the calendar year 2002.

14 (2) *Consumer price index for any calendar year.* -- For purposes of subdivision (1) of this  
15 subsection, the consumer price index for any calendar year is the average of the federal consumer  
16 price index as of the close of the 12-month period ending on August 31 of that calendar year.

17 (3) *Consumer price index.* -- For purposes of subdivision (2) above, the term “Federal  
18 Consumer Price Index” means the most recent consumer price index for all urban consumers  
19 published by the United States department of labor.

20 (4) *Rounding.* -- If any increase under subdivision (1) above is not a multiple of \$50, the  
21 increase shall be rounded to the next lowest multiple of \$50.

22 (b) *Amount of credit allowed.* --

23 (1) *Credit allowed.* -- An eligible small business taxpayer is allowed a credit against the  
24 portion of taxes imposed by this state that are attributable to and the direct consequence of the  
25 eligible small business taxpayer's qualified investment in a new or expanded business in this state  
26 which results in the creation of at least 10 new jobs within 12 months after placing qualified  
27 investment into service. The amount of this credit is determined as provided in subdivision (2) of  
28 this subsection.

29 (2) *Amount of credit.* -- The annual amount of credit allowable under this subsection is  
30 determined by dividing the amount of the eligible small business taxpayer's "qualified investment"  
31 (determined under §11-13Q-8. of this code) in "property purchased for business expansion" (as  
32 defined in §11-13Q-3 of this code) by 10. The amount of qualified investment so apportioned to  
33 each year of the 10-year credit period is the annual measure against which taxpayer's annual  
34 new jobs percentage (determined under subsection (d) of this section,) is applied. The product of  
35 this calculation establishes the maximum amount of credit allowable each year for 10 consecutive  
36 years under this section due to the qualified investment.

37 (3) *Application of credit.* -- The annual credit allowance ~~must~~ shall be taken beginning with  
38 the taxable year in which the taxpayer places the qualified investment into service or use in this  
39 state, unless the taxpayer elects to delay the beginning of the 10-year credit period until the next  
40 succeeding taxable year. This election is made in the annual income tax return filed under this  
41 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in  
42 service or use. Once made, this election cannot be revoked. The annual credit allowance shall be  
43 taken and applied in the manner prescribed in §11-13Q-7 of this code.

44 (c) *New jobs.* -- The term "new jobs" has the meaning ascribed to it in §11-13Q-3 of this  
45 code.

46 (1) The term "new employee" has the meaning ascribed to it in §11-13Q-3 of this code:  
47 *Provided*, That this term does not include employees filling new jobs who:

48 (A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue  
49 Code of 1986, or a person who owns 10 percent or more of the business with such ownership  
50 interest to be determined under rules set forth in subsection (b), section 267 of said Internal  
51 Revenue Code; or

52 (B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's  
53 qualified investment is placed in service or use and is rehired by the taxpayer during the six-month  
54 period beginning on the date taxpayer's qualified investment is placed in service or use.

55 (2) *When a job is attributable.* -- An employee's position is directly attributable to the  
56 qualified investment if:

57 (A) The employee's service is performed or his or her base of operations is at the new or  
58 expanded business facility;

59 (B) The position did not exist prior to the construction, renovation, expansion, or  
60 acquisition of the business facility and the making of the qualified investment; and

61 (C) But for the qualified investment, the position would not have existed.

62 (d) *New jobs percentage.* -- The annual new jobs percentage is based on the number of  
63 new jobs created in this state by the taxpayer directly attributable to taxpayer's qualified  
64 investment.

65 (1) If at least 10 new jobs are created and filled during the taxable year in which the  
66 qualified investment is placed in service or use, the applicable new jobs percentage is 10 percent.

67 (2) During each of the remaining nine years of the 10-year credit period, the annual new  
68 jobs percentage is based on the average number of new jobs filled during that taxable year:

69 *Provided,* That for purposes of estimating the new jobs percentage that will be applicable for each  
70 subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable  
71 year immediately prior thereto, and in the annual income tax return filed under this chapter for the  
72 then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for  
73 that year based on the average number of new employees employed in new jobs during that year



74 (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

75 (e) *Certification of new jobs.* -- With the annual income tax return filed under this chapter  
76 for each taxable year during the 10-year credit period, the taxpayer shall certify:

77 (1) The new jobs percentage for that taxable year;

78 (2) The amount of the credit allowance for that year;

79 (3) If the business is a partnership, limited liability company or electing small business  
80 corporation, the amount of credit allocated to the partners, members, or shareholders, as the case  
81 may be for that year;

82 (4) That qualified investment property continue to be used in the business, or if any of it  
83 was disposed of during the year the date of disposition and that the property was not disposed of  
84 prior to expiration of its useful life, as determined under §11-13Q-8 of this code; and

85 (5) That the new jobs created by the qualified investment continue to exist and are filled  
86 by persons who meet the definition of new employee (as defined in this section).

87 (f) *Small business project.* -- A small business may apply to the commissioner under §11-  
88 13Q-3 6f of this code for certification as a project if that project will create at least 10 new jobs.

89 (g) *Rules.* -- The commissioner may prescribe such rules as he or she determines  
90 necessary in order to determine the amount of credit allowed under this section to a taxpayer; to  
91 verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the  
92 credit allowed.

93 (h) The commissioner may require a taxpayer intending to claim credit under this section  
94 to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins  
95 reducing his or her monthly or quarterly installment payments of estimated tax for the credit  
96 provided in this section.

97 (i) Termination of Credit -- No credit is allowable under this section to any taxpayer for  
98 investment placed in service or use in any tax year beginning on or after January 1, 2022.  
99 Taxpayers that have gained lawful entitlement to the credit allowable under this section pursuant

100 to qualified investment placed in service or use prior to January 1, 2022, shall retain that  
 101 entitlement and apply the credit in due course pursuant to the requirements and limitations of this  
 102 article.

**§11-13Q-10a. Credit allowed for specified high technology manufacturers.**

1 (a) *High technology manufacturing business defined.* –

2 For purposes of this section, the term “high technology manufacturing business” means  
 3 and is limited to only those businesses ~~engaging in a~~ engaged in a business enumerated in  
 4 subdivision (1) of this subsection: *Provided, That for tax years beginning on and after January 1,*  
 5 2022, the term “high technology manufacturing business” means and is limited to only those  
 6 businesses engaged in a business enumerated in subdivision (1) or subdivision (2), or both, of  
 7 this subsection.

8 (1) “High technology manufacturing business” means a manufacturing activity properly  
 9 classified as having one or more of the following six-digit North American Industry Classification  
 10 System code numbers.

North American Industry Classification System Code	Manufacturing Activity
	Computer & Peripheral Equipment
334111	Electronic Computers
334112	Computer Storage Devices
	Electronic Components
334411	Electron Tubes
334414	Electronic Capacitors
	Semiconductors
334413	Semiconductor & Related Devices
333295	Semiconductor Machinery

12 (2) “High technology manufacturing business” means, in addition to those activities  
13 enumerated in subdivision (1) of this subsection:

14 (A) The activity of manufacturing drones, target drones, unmanned aircraft or unmanned  
15 robotic aircraft,

16 (B) The activity of manufacturing autonomous motor vehicles,

17 (C) The activity of manufacturing robots, robotic medical machines or equipment or robotic  
18 surgical machines or equipment,

19 (D) The activity of manufacturing machines, equipment and products predominantly  
20 operated by and incorporating artificial intelligence.

21 (E) The activity of manufacturing biotechnology products.

22 (F) The activity of manufacturing medical devices.

23 (3) Definitions – For purposes of this section.

24 (A) Artificial Intelligence -- For purposes of this section “artificial intelligence” means  
25 computers and computer systems that, by design and function, perform tasks that would typically  
26 require human intelligence, including decision-making, visual perception, speech recognition, or  
27 translation of one human language into another human language.

28 (B) Autonomous -- For purposes of this section “autonomous” means that set of  
29 characteristics of a machine which taken as a whole cause the machine to be capable of  
30 performing designated tasks without immediate direct or explicit human control or intervention  
31 beyond initial programming and preliminary set up and initiation.

32 (C) Autonomous Motor Vehicle -- For purposes of this section, The term “autonomous  
33 motor vehicle” means a motor vehicle that conforms to Level 3, level 4 or level 5 of the Society of  
34 Automotive Engineers automation level definitions specified in SAE International Standard J3016.

35 (D) Biotechnology

36 (i) “Biotechnology” means scientific invention, processes and methods, or industrial  
37 invention, processes and methods, based on the science of biology, microbiology, molecular

38 biology, cellular biology, biochemistry, or biophysics, or any combination thereof. Biotechnology  
39 includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering,  
40 cell fusion techniques, and bioprocesses, using living organisms, or parts of organisms.

41 (ii) Biotechnology does not include farming, agriculture, or animal or apiary husbandry, or  
42 the production of any crop or agricultural product by traditional growing processes or by  
43 hydroponic growing processes, or fish farming, or the raising or growing or production of fish or  
44 any aquatic animal or product.

45 (iii) Biotechnology does not include zymurgy, wine making, brewing, preparation of yeast  
46 used in food production or preparation, or any food or drink preparation or production.

47 (E) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin,  
48 antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product  
49 produced through the application of biotechnology that is used in the prevention, treatment, or  
50 cure of diseases or injuries to humans, animals, or plants.

51 (F) Drone – For purposes of this section "drone" means an unmanned aircraft that may be  
52 controlled either remotely or by an autonomous system, which may work with internal systemic  
53 sensors or ground positioning satellite systems, or both.

54 (G) "Medical device" means an instrument, apparatus, implement, machine, contrivance,  
55 implant, in vitro reagent, or other similar or related article, including any component, part, or  
56 accessory, that is:

57 (i) Recognized in the national formulary or any supplement thereof, or the United States  
58 pharmacopeia, or any supplement thereof;

59 (ii) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or  
60 prevention of disease or other conditions in human beings or animals; or

61 (iii) Intended to affect the structure or any function of the body of human beings or animals,  
62 and which does not achieve any of its primary intended purposes through chemical action within  
63 or on the body of human beings or animals and which is not dependent upon being metabolized

64 for the achievement of any of its principal intended purposes.

65 (H) Program – For purposes of this section “program” means a set of instructions that can  
66 be executed by a computer, or other machine or device to perform calculations, processes or  
67 operations, or a combination thereof, to execute a specific task or series of tasks.

68 (I) Robot – For purposes of this section “robot” means a programmable machine, for which  
69 operating instructions are typically derived from computer programming, which machine is: (i)  
70 Capable of performing operations and processes involving physical movement; (ii) designed to  
71 operate with a degree of autonomy; (iii) capable of processing data and information, including  
72 data or information derived from visual perception or other physical perceptions; and (iv) capable  
73 of engaging in intelligent behavior derived from artificial intelligence.

74 (b) *Amount of credit allowed.*

75 (1) *Credit allowed.* -- An eligible high technology manufacturing business taxpayer is  
76 allowed a credit against the portion of taxes imposed by this state that are attributable to and the  
77 direct consequence of the eligible high technology manufacturing business taxpayer’s qualified  
78 investment in a new or expanded high technology manufacturing business in this state which  
79 results in the creation of at least 20 new jobs within 12 months after placing qualified investment  
80 into service. The amount of this credit is determined as provided in this section.

81 (2) *Amount of credit.* -- The annual amount of credit allowable under this subsection is 100  
82 percent of the tax attributable to qualified investment, for each consecutive year of a 20-year credit  
83 period.

84 (3) *Application of credit.* -- The annual credit allowance ~~must~~ shall be taken beginning with  
85 the taxable year in which the taxpayer places the qualified investment into service or use in this  
86 state, unless the taxpayer elects to delay the beginning of the 20-year credit period until the next  
87 succeeding taxable year. This election is made in the annual income tax return filed under this  
88 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in  
89 service or use. Once made, this election cannot be revoked. The annual credit allowance shall be

90 taken and applied against the taxes enumerated in section seven of this article. The credit shall  
91 offset 100 percent of tax attributable to qualified investment and shall be applied for a period of  
92 20 consecutive years without carryover.

93 (c) *New jobs.* -- The term “new jobs” has the meaning ascribed to it in §11-13Q-3 of this  
94 code.

95 (1) The term “new employee” has the meaning ascribed to it in §11-13Q-3 of this code:  
96 *Provided,* That this term does not include employees filling new jobs who:

97 (A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue  
98 Code of 1986, or a person who owns 10 percent or more of the business with such ownership  
99 interest to be determined under rules set forth in subsection (b), section 267 of the Internal  
100 Revenue Code of 1986; or

101 (B) Worked for the taxpayer during the six-month period ending on the date the taxpayer’s  
102 qualified investment is placed in service or use and is rehired by the taxpayer during the six-month  
103 period beginning on the date taxpayer’s qualified investment is placed in service or use.

104 (2) *When a job is attributable.* -- An employee’s position is directly attributable to the  
105 qualified investment if:

106 (A) The employee’s service is performed or his or her base of operations is at the new or  
107 expanded business facility;

108 (B) The position did not exist prior to the construction, renovation, expansion, or  
109 acquisition of the business facility and the making of the qualified investment;

110 (C) But for the qualified investment, the position would not have existed; and

111 (D) The median compensation of the new jobs attributable to the qualified investment is  
112 greater than \$45,000 per year: *Provided,* That this median compensation amount shall be  
113 adjusted for inflation each year in accordance with the provisions of this section.

114 (3) *Median compensation adjusted for inflation.* -- The median compensation requirements  
115 applicable to high technology manufacturing business taxpayers for purposes of this section, shall

116 be adjusted for inflation by application of a cost-of-living adjustment. The adjusted median  
117 compensation amount shall be applicable, as adjusted, each year throughout the 20-year credit  
118 period. Failure of a taxpayer entitled to credit under this section to meet the median compensation  
119 requirement for any year will result in forfeiture of the credit for that year. However, if in any  
120 succeeding year within the original 20 year credit period, the taxpayer pays a median  
121 compensation to its employees which exceeds the inflation adjusted median compensation  
122 amount for that year, the taxpayer shall regain entitlement to take the credit for that year only. No  
123 credit forfeited in a prior year shall be taken, and the tax year or years to which the forfeited credit  
124 would have been applied shall be forfeited and deducted from the remainder of the years over  
125 which the credit can be taken.

126 (A) *Cost-of-living adjustment.* -- For purposes of this section, the cost-of-living adjustment  
127 for any calendar year is the percentage, if any, by which the consumer price index for the  
128 preceding calendar year exceeds the consumer price index for the calendar year 2007.

129 (B) *Consumer price index for any calendar year.* -- For purposes of this section, the  
130 consumer price index for any calendar year is the average of the federal consumer price index as  
131 of the close of the 12-month period ending on ~~the thirty-first day of August~~ 31 of such calendar  
132 year.

133 (C) *Consumer price index.* -- For purposes of this section, the term "Federal Consumer  
134 Price Index" means the last consumer price index for all urban consumers published by the United  
135 States Department of Labor.

136 (D) *Rounding.* -- If any increase in the median compensation amount under this section is  
137 not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

138 (d) *Credit exclusion.* --

139 (1) Any taxpayer that has taken the credit against tax authorized under this section shall  
140 not be eligible for application of the credit allowed under any other section of this article during  
141 the twenty year credit period authorized by this section for the same qualified investment on which

142 credit allowed by this article was taken.

143 (2) Any taxpayer that has taken the credit against tax authorized under this section may  
144 not take the credit authorized under any other provision of this code for the same qualified  
145 investment on which credit allowed by this article was taken.

146 (e) *Rules.* -- The commissioner may prescribe such rules as he or she determines  
147 necessary in order to determine the amount of credit allowed under this section to a taxpayer; to  
148 verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the  
149 credit allowed.

150 (f) *Notices and reports.* -- The commissioner may require a taxpayer intending to claim  
151 credit under this section to file with the commissioner a notice of intent to claim this credit before  
152 the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated  
153 tax for the credit provided in this section.

154 ~~(g) *Report to the Legislature.* -- The Tax Commissioner shall report to the Legislature by~~  
155 ~~January 1, 2014, regarding the use of this tax credit. The Tax Commissioner shall forward this~~  
156 ~~report to the Joint Committee on Government and Finance and the House and Senate Finance~~  
157 ~~Committees~~

**§11-13Q-22. Credit available for taxpayers which do not satisfy the new jobs percentage requirement.**

1 (a) Notwithstanding any provision of this article to the contrary, a taxpayer engaged in one  
2 or more of the industries or business activities specified in §11-13Q-19 of this code which does  
3 not satisfy the new jobs percentage requirement prescribed in §11-13Q-9 (c) of this code ~~or, if the~~  
4 ~~taxpayer is a small business as defined in section ten of this article, does not create at least ten~~  
5 ~~new jobs within twelve months after placing qualified investment into service as required by~~  
6 ~~section ten of this article~~ but which otherwise fulfills the requirements prescribed in this article, is  
7 permitted to claim a credit against the taxes specified in §11-13Q-7 of this code in the order so  
8 specified that are attributable to and the consequence of the taxpayer's business operations in



9 this state which result in the creation of net new jobs. Credit under this section is allowed in the  
10 amount of \$3,000 per year, per new job created and filled by a new employee, as those terms are  
11 defined in §11-13Q-3 of this code for a period of five consecutive years beginning in the tax year  
12 when the new employee is first hired. In no case may the number of new employees determined  
13 for purposes of this section exceed the total net increase in the taxpayer's employment in this  
14 state. Credit allowed under this section shall be allowed beginning in the tax year when the new  
15 employee is first hired: *Provided*, That each new job:

16 (1) Pays at least \$32,000 annually. Beginning January 1, 2010, and on January 1 of each  
17 year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the \$32,000  
18 amount during that calendar year. This amount is prescribed by increasing the \$32,000 figure by  
19 the cost-of-living adjustment for that calendar year;

20 (2) Provides health insurance and may offer benefits including child care, retirement, or  
21 other benefits; and

22 (3) Is a full-time, permanent position, as those terms are defined in section three of this  
23 article.

24 (b) Jobs that pay less than \$32,000 annually, or less than the amount prescribed by the  
25 commissioner pursuant to subdivision (1) of this subsection, whichever is higher, or that pay that  
26 salary but do not also provide benefits in addition to the salary do not qualify for the credit  
27 authorized by this section. Jobs that are less than full-time, permanent positions do not qualify for  
28 the credit authorized by this section.

29 The employer having obtained entitlement to the credit shall may not be required to raise  
30 wages of employees currently employed in jobs upon which the initial credit was based by reason  
31 of the cost-of-living adjustment.

32 ~~(b)~~ (c) For purposes of this section, the following definitions apply:

33 (1) *Cost-of-living adjustment*. -- For purposes of subsection (a) of this section, the cost-of-  
34 living adjustment for any calendar year is the percentage (if any) by which the consumer price

35 index for the preceding calendar year exceeds the consumer price index for the calendar year  
36 2009.

37 (2) *Consumer price index for any calendar year.* -- For purposes of subdivision (1) of this  
38 subsection, the consumer price index for any calendar year is the average of the federal consumer  
39 price index as of the close of the 12-month period ending on August 31 of that calendar year.

40 (3) *Consumer price index.* -- For purposes of subdivision (2) of this subsection, the term  
41 "federal consumer price index" means the most recent consumer price index for all urban  
42 consumers published by the United States Department of Labor.

43 (4) *Rounding.* -- If any increase under subdivision (1) of this subsection is not a multiple  
44 of \$50, the increase shall be rounded to the next lowest multiple of \$50.

45 ~~(e)~~ (d) Unused credit remaining in any tax year after application against the taxes specified  
46 in §11-13Q-7 of this code is forfeited and does not carry forward to any succeeding tax year and  
47 does not carry back to a prior tax year.

48 ~~(d)~~ (e) The tax credit authorized by this section may be taken in addition to any credits  
49 allowable under §11-13C-1 *et seq.* ~~article thirteen-e~~, §11-13D-1 *et seq.*, §11-13E-1 *et seq.*, §11-  
50 13F-1 *et seq.*, §11-13G-1 *et seq.*, §11-13J-1 *et seq.*, §11-13R-1 *et seq.*, or §11-13S-1 *et seq.* of  
51 this code. However, any taxpayer that is taking, or that has taken, any credit against tax authorized  
52 under this article may not take the credit authorized under any other provision of this code for the  
53 same qualified investment on which credit allowed by this article was taken.

54 ~~(e)~~ (f) *Reduction in number of employees credit forfeiture.* -- If, during the year when a  
55 new job was created for which credit was granted under this section or during any of the next  
56 succeeding four tax years thereafter, net jobs that are attributable to and the consequence of the  
57 taxpayer's business operations in this state decrease, counting both new jobs for which credit  
58 was granted under this section and preexisting jobs, then the total amount of credit to which the  
59 taxpayer is entitled under this section shall be decreased and forfeited in the amount of \$3,000  
60 for each net job lost.

61            (g) Amendments to this section enacted in 2021 shall be effective for tax years beginning  
62    on and after January 1, 2022.

NOTE: The purpose of this bill is to amend the economic opportunity tax credit and the high technology manufacturing tax credit to provide more targeted and effective tax incentives for economic development.

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