

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4658

FISCAL
NOTE

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[Introduced February 11, 2022; Referred to the Select
Committee on Tourism and Economic Diversification
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, and
3 §11-13MM-6, all relating to the Critical Mineral Reinvestment Tax Credit; establishing a
4 short title; providing for legislative findings, purpose, and definitions; providing for the
5 amount of credit and limitations; defining the credit allowed for opening or relocating a
6 manufacturing facility or corporate headquarters in this state who use rare earth elements
7 or critical minerals in the manufacturing of their products; clarifying the credit allowable for
8 certified projects; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. CRITICAL MINERAL REINVESTMENT TAX CREDIT.

§11-13MM-1. Short title.

1 This article may be cited as the “Critical Mineral Reinvestment Tax Credit Act.”

§11-13MM-2. Legislative findings; purpose; and definitions.

1 The Legislature finds that:

2 (a) West Virginia enjoys a relatively new competitive economic advantage among the
3 states attributable to the extraction of rare earth elements and critical minerals, of which studies
4 have shown possess great value previously unknown to many.

5 (b) As a consequence, companies that extract and process rare earth elements and critical
6 minerals have already located or intend to locate to the state, and will jobs for its citizens and an
7 increased tax base that contributes to the support of schools, other institutions, and programs that
8 benefit all West Virginians.

9 (c) As the result of competitive disadvantages emanating from outside the state, some
10 companies who use rare earth elements or critical minerals in their production could cease doing
11 business in the state, or could decide to open their production elsewhere, without considering
12 West Virginia as a viable option.

13 (d) Conversely, the extraction and processing of rare earth elements and critical minerals

14 in the state is relatively new, on the rise, and may create an economic surge in West Virginia,
15 particularly given the current supply shortage for microchips for the manufacturing of vehicles.

16 (e) It is in the public interest for the state to try and attract companies who use rare earth
17 elements and critical minerals in their production to locate, to remain in operation, or to resume
18 operation, in West Virginia on a long-term basis, by creating the Critical Mineral Reinvestment
19 Tax Credit Act.

20 (f) Because companies are already moving to West Virginia to extract and process rare
21 earth and critical minerals, it naturally follows that those companies who use these elements and
22 minerals in their production should be based in West Virginia and should use those elements and
23 minerals that came from West Virginia. This would cut down on supply chain issues, and would
24 increase output for those companies who use the rare earth elements and critical minerals in the
25 production of such things as microchips for automobile, touchscreens for cell phones, and other
26 similar products.

27 (g) For the purposes of this article “rare earth elements and other critical minerals” are
28 defined as scandium, yttrium, lanthanum, cerium, praseodymium, neodymium, promethium,
29 samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium,
30 lutetium and other resources that are essential to the economy, whose supply may be disrupted,
31 including, without limitation, metals such as lithium, cobalt, manganese, indium, tellurium, gallium,
32 and platinum group elements.

33 (h) For the purposes of this article, “rare earth elements” (also known as rare earth metals
34 or rare earth oxides) are only yttrium, lanthanum, cerium, praseodymium, neodymium,
35 promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium,
36 ytterbium, lutetium, and scandium, and “critical minerals” are only aluminum, antimony, arsenic,
37 barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite,
38 hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum,
39 rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, and

40 zirconium.

41 (i) For the purposes of this article, the term “qualified investment” means the taxpayer’s
42 investment into a manufacturing facility who uses rare earth elements and critical minerals as a
43 basis for their products. The qualified investment can also be into the corporate headquarters of
44 such a facility, plus the cost of the reasonable and necessary expenses it incurred to open a
45 manufacturing facility or headquarters in West Virginia, or to relocate its manufacturing facility or
46 headquarters at a location in this state from its present location outside this state.

§11-13MM-3. Amounts of credit; limitations.

1 (a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against the portion of
2 taxes imposed by this state that are attributable to and the consequence of the taxpayer’s qualified
3 investment in a new or expanded business who produces products that use rare earth elements
4 and critical minerals extracted and processed in this state, which results in the creation of new
5 jobs. The credit is only applicable to those manufacturing facilities, businesses, or corporate
6 headquarters who utilize rare earth elements or critical minerals that were extracted and/or
7 processed in West Virginia. The amount of this credit shall be determined and applied as
8 hereinafter provided in this article.

9 (b) Amount of credit. -- The amount of credit allowable is determined by multiplying the
10 amount of the taxpayer’s “qualified investment” in property purchased for business expansion by
11 the taxpayer’s new jobs percentage. The product of this calculation establishes the maximum
12 amount of credit allowable under this article, due to the qualified investment.

13 (c) Application of credit over 10 years. -- The amount of credit allowable must be taken
14 over a 10-year period, at the rate of one tenth of the amount thereof per taxable year, beginning
15 with the taxable year in which the taxpayer places the qualified investment in service or use in
16 this state, unless the taxpayer elected to delay the beginning of the 10-year period until the next
17 succeeding taxable year. This election shall be made in the annual income tax return filed for the
18 taxable year in which credit is first taken on the qualified investment placed into service or use by

19 the taxpayer. Once made, the election cannot be revoked. The annual credit allowance shall be
20 taken in the manner prescribed in section four of this article.

21 (d) Placed in service or use. -- For purposes of the credit allowed by this section, property
22 shall be considered placed in service or use in the earlier of the following taxable years:

23 (1) The taxable year in which, under the taxpayer's depreciation practice, the period for
24 depreciation with respect to such property begins; or

25 (2) The taxable year in which the property is placed in a condition or state of readiness
26 and availability for a specifically assigned function.

§11-13MM-4. Credit allowed for opening or relocating a manufacturing facility or corporate
headquarters in this state who utilize rare earth elements or critical minerals in their
production.

1 (a) Credit allowed – new. – A manufacturing facility, or a corporation that opens a new
2 manufacturing facility or corporate headquarters in this state and employs, on a full-time basis, at
3 at least fifty people, who are domiciled in this state, shall be allowed credit under this article, the
4 amount of which shall be determined as provided in subsection (c).

5 (b) Credit allowed – relocation . – A manufacturing facility, or a corporation that presently
6 has its corporate headquarters located outside this state that relocates its manufacturing facility
7 or corporate headquarters in this state and employs, on a full-time basis, at its new corporate
8 headquarters location, at least 50 people, who are domiciled in this state, shall be allowed credit
9 under this article, the amount of which shall be determined as provided in subsection (c).

10 (c) Determination of credit. -- The amount of credit allowed by subsection (a) shall be
11 determined at the election of the taxpayer:

12 (1) By multiplying its adjusted qualified investment by its new jobs percentage (as
13 determined under section seven of this article); or

14 (2) By multiplying its adjusted qualified investment by 10 percent.

15 (d) Application of credit. -- The credit allowed by this section shall be applied in the manner

16 prescribed in section five of this article: *Provided*, That the amount of corporation net income taxes
17 against which the credit allowed by this section may be applied shall be the sum of the corporation
18 net income tax due on adjusted federal taxable income allocated to this state in §11-24-7 of this
19 code, plus that portion of the corporation net income tax due on adjusted federal taxable income
20 apportioned to this state under §11-24-7 of this code, that is further apportioned to the qualified
21 investment using the payroll factor provided in paragraph (1), subsection (h) of said section five
22 or an alternative means of apportionment as prescribed by the Tax Commissioner under said
23 section five. For all other purposes, the credit allowed by this section shall be treated as credit
24 allowed by section four of this article.

25 (e) Definitions. -- For purposes of this section:

26 (1) Adjusted qualified investment. -- The term “adjusted qualified investment” means the
27 taxpayer’s qualified investment in the manufacturing facility or corporate headquarters as
28 determined under section six of this article and rules of the Tax Commissioner, plus the cost of
29 the reasonable and necessary expenses it incurred to open a new manufacturing facility or
30 corporate headquarters, or relocate its manufacturing facility or corporate headquarters at a
31 location in this state from its present location outside this state.

32 (2) Corporate headquarters. -- The term “corporate headquarters” means the place at
33 which the corporation has its commercial domicile and from which the business of the corporation
34 is primarily conducted, who uses rare earth elements or critical minerals in their production.

35 (3) Manufacturing facility. – The term “manufacturing facility’ means a facility who uses
36 rare earth elements or critical minerals in their production.

37 (3) Reasonable and necessary expenses incurred to relocate corporate headquarters. --
38 The phrase “reasonable and necessary expenses incurred to relocate corporate headquarters”
39 means only those expenses incurred and paid by the corporation, to unrelated third parties, to
40 move its corporate headquarters and its corporate headquarters employees to this state that are,
41 upon application by the corporation, determined by the Tax Commissioner to have been both

42 reasonable and necessary to effectuate the move.

43 (4) The corporation. -- For purposes of this section, the term “the corporation” means the
44 corporation for which the corporate headquarters is relocated.

45 (f) Manufacturing facilities, business, or corporate headquarters must use rare earth
46 elements and/or critical minerals that were extracted or processed in this state.

§11-13MM-5. Credit allowable for certified projects.

1 (a) In general. -- A project certified by the Tax Commissioner shall be eligible for the credit
2 allowable by this article. A project eligible for certification under this section is one where:

3 (1) The qualified investment under this article creates at least 50 new jobs but such
4 qualified investment is placed in service or use over a period of three successive tax years:
5 Provided, That such qualified investment is made pursuant to a written business facility
6 development plan of the taxpayer providing for an integrated project for investment at one or more
7 new or expanded business facilities, a copy of which must be attached to the taxpayer’s
8 application for project certification and approved by the Tax Commissioner, and the qualified
9 investment placed in service or use during the first tax year would not have been made without
10 the expectation of making the qualified investment placed in service or use during the next two
11 succeeding tax years;

12 (2) The qualified investment is made by one or more persons, but some or all of the new
13 jobs created at each new or expanded business facility as a result of the qualified investment are
14 created by one or more other persons: Provided, That at least 50 new jobs are created at the new
15 or expanded business facility or facilities in which the qualified investment is made, and such jobs
16 are, upon application, certified by the Tax Commissioner as new jobs created as a direct result of
17 the qualified investment, and that such qualified investment is made pursuant to a written
18 business facility development plan of the taxpayer providing for an integrated project for
19 investment at one or more new or expanded business facilities, a copy of which must be attached
20 to the taxpayer’s application for project certification and approved by the Tax Commissioner;

21 (3) The qualified investment is made by one or more persons but some or all of the new
22 jobs created as a direct result of the qualified investment are created by one or more other
23 persons: *Provided*, That at least 50 new jobs are created within a 50 mile radius of each new or
24 expanded business facility in which the qualified investment is made, and such jobs are, upon
25 application, certified by the Tax Commissioner as being new jobs created as a direct result of the
26 qualified investment, and that such qualified investment is made pursuant to a written business
27 facility development plan of the taxpayer providing for an integrated project for investment at one
28 or more new or expanded business facilities, a copy of which must be attached to the taxpayer's
29 application for project certification and approved by the Tax Commissioner.

30 (4) The investment must be into a manufacturing facility or corporate headquarters whose
31 products use rare earth elements and critical minerals, and who shall use those rare earth
32 elements and critical minerals extracted and processed in West Virginia.

33 (b) Application for certification. -- The application for certification of a project under this
34 section shall be filed with and approved by the Tax Commissioner prior to any credit being claimed
35 or allowed for the project's qualified investment and new jobs created as a direct result of the
36 qualified investment. This application shall be approved in writing by all the participants in the
37 project and shall contain such information as the Tax Commissioner may require to determine
38 whether the project should be certified as eligible for credit under this article.

39 (c) Taking of credit.

40 (1) If the certified project for which qualified investment is made involves one or more
41 persons making the capital investment and one or more persons, or a combination thereof,
42 creating at least 50 new jobs at the site of the new or expanded business facility or facilities, then
43 credit shall be allowed under this article for the certified project based upon the qualified
44 investment in the certified project multiplied by the project's new jobs percentage.

45 (2) If the certified project for which qualified investment is made involves one or more
46 persons making the capital investment and one or more persons, or a combination thereof,

47 creating at least 50 new jobs located within a 50 mile radius of each new or expanded business
48 facility in which the qualified investment is made, then credit shall be allowed under this article for
49 the certified project based upon the qualified investment in the certified project multiplied by 50
50 percent.

51 (3) The amount of credit allowable, as determined under subdivision (1) or (2), above,
52 shall be applied as provided in section five, and shall be claimed in the manner specified in the
53 project's application to the Tax Commissioner for certification under this section, by one
54 participant in the project or divided among the several participants in the project, and for this
55 purpose the numerator of the payroll factor shall be the total compensation paid in this state during
56 the taxable year by all project participants to all new employees filling the new jobs created and
57 the denominator shall be the total compensation paid in this state during the taxable year by all
58 project participants to their employees. Such allocation, if approved by the Tax Commissioner,
59 shall constitute a binding election by the participants in the project for the entire term during which
60 the credit attributable to the qualified investment in the certified project may be applied to reduce
61 tax liabilities. The participant or participants claiming the credit for qualified investments in a
62 certified project shall annually file with their income tax returns filed under this chapter:

63 (A) Certification that the participant's qualified investment property continues to be used
64 in the project and if disposed of during the tax year, was not disposed of prior to expiration of its
65 useful life;

66 (B) Certification that the new jobs created by the project's qualified investment continue to
67 exist and are filled by persons who are residents of this state; and

68 (C) Such other information as the Tax Commissioner requires to determine continuing
69 eligibility to claim the annual credit allowance for the project's qualified investment.

70 (d) Terms defined. -- For purposes of this section:

71 (1) New employee. -- The term "new employee" means a person residing and domiciled
72 in this state, hired by a participant to fill a position for a job which previously did not exist in this

73 state prior to the date on which the project's qualified investment is placed in service or use in this
 74 state. In no case shall the new employees allowed for purposes of this credit exceed the total
 75 increases in the number of persons employed by the project's participants (considered as a group)
 76 in this state. A person shall be deemed to be a "new employee" if such person's duties in
 77 connection with the operation of the certified project are on a regular, full-time and permanent
 78 basis.

79 (2) "Full-time employment" means employment for at least 120 hours per month at a wage
 80 not less than the prevailing state or federal minimum wage, depending on which minimum wage
 81 provision is applicable to the business.

82 (3) "Permanent employment" does not include employment that is temporary or seasonal.

83 (4) A part-time basis, provided such person is customarily performing such duties at least
 84 20 hours per week for at least six months during the taxable year.

85 (e) New job. -- The term "new job" means a job which did not exist in this state prior to the
 86 project's qualified investment being made, and which is filled by a new employee.

87 (f) Participant. -- The term "participant" means any person who directly makes a qualified
 88 investment in a certified project, or who employs persons filling the jobs certified by the Tax
 89 Commissioner as being new jobs created as a direct result of the project's qualified investment.

§11-13MM-6. Effective date.

1 The provisions of this article shall be effective for tax years beginning on or after January
 2 1, 2022.

NOTE: The purpose of this bill is to create the Critical Mineral Reinvestment Tax Credit. The bill establishes a short title. The bill provides for legislative findings, purpose, and definitions. The bill provides for the amount of credit and limitations. The bill defines the credit allowed for opening or relocating a manufacturing facility or corporate headquarters in this state who use rare earth elements and critical minerals in the manufacturing of their products. The bill clarifies the credit allowable for certified projects. Finally, the bill provides for an effective date.

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