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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
2ND EXTRAORDINARY SESSION, 2002

ENROLLED

SENATE BILL NO. 2007

(By Senators Tomblin, Mr. President, AND *fr*
SPROUSE, BY REQUEST OF THE EXECUTIVE)

PASSED JUNE 11, 2002

In Effect From Passage

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SECRETARY OF STATE

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Senate Bill No. 2007

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed June 11, 2002; in effect from passage.]

AN ACT to amend and reenact section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, eighteen and twenty-one, article thirteen-q of said chapter; to amend and reenact sections six, nine and eleven, article thirteen-r of said chapter; and to amend and reenact sections four, eight and ten, article thirteen-s of said chapter, all relating generally to tax credits for particular business activity; providing five percentage point increase over allowable new jobs percentage under economic opportunity credit when new business facility or expansion of existing facility is constructed under specified circumstances; requiring persons who claim economic opportunity credit, strategic research and development credit or manufacturing investment credit to report additional information pertaining to new jobs created, including types of jobs created, duration of jobs created, average wages and benefits

paid to person filling new jobs; specifying transition rules for certain multiple-year business investment and jobs expansion tax credit projects; specifying notice requirements relating to claim of transition rule status; requiring that application for economic opportunity tax credit be filed with tax commissioner by prescribed date and specifying records' maintenance and retention requirements; requiring that application for strategic research and development tax credit be filed with tax commissioner by prescribed date and specifying records' maintenance and retention requirements; requiring that application for manufacturing investment tax credit be filed with tax commissioner by prescribed date; and specifying records' maintenance and retention requirements.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that sections nine, eighteen and twenty-one, article thirteen-q of said chapter be amended and reenacted; that sections six, nine and eleven, article thirteen-r of said chapter be amended and reenacted; and that sections four, eight and ten, article thirteen-s of said chapter be amended and reenacted, all to read as follows:

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-16. Termination of credit; effective date.

1 (a) Notwithstanding any other provision of this article to
2 the contrary, no entitlement to any tax credit under this
3 article may result from, and no credit is available to any
4 taxpayer for, investment placed in service or use after the
5 thirty-first day of December, two thousand two.

6 (b) Notwithstanding the provisions of subsection (a) of
7 this section, the provisions of sections one through fifteen,
8 inclusive, of this article continue to apply to taxpayers
9 that have gained entitlement to the credit pursuant to the
10 placement of qualified investment into service or use prior
11 to the first day of January, two thousand three.

12 (c) *Transition rules.* -- The general rule stated in subsec-
13 tion (a) of this section does not apply:

14 (1) To qualified investment property placed in service or
15 use prior to the first day of January, two thousand three.

16 (2) To property purchased or leased for business expan-
17 sion that is placed in service or use on or after the first day
18 of January, two thousand three, if at least one of the
19 following clauses applies to the property:

20 (A) The new or expanded business facility was con-
21 structed, reconstructed or erected, pursuant to a written
22 construction contract executed prior to the first day of
23 January, two thousand three, as limited to the provisions
24 of the contract as of that date then binding on the tax-
25 payer, but only to the extent the new or expanded business
26 facility is placed in service or use prior to the first day of
27 January, two thousand four;

28 (B) The new or expanded business facility is part of a
29 project described in subdivision (1), subsection (a), section
30 four-b of this article, for which the multiple year project
31 investment period had commenced, but had not yet closed
32 on or before the first day of January, two thousand three,
33 and the new or expanded business facility constitutes or
34 includes property placed in service or use prior to closure
35 of the multiple year project investment period allowed for
36 the project that is:

37 (i) Property constructed for a multiple year project
38 certified before the first day of January, two thousand
39 three, in accordance with section four-b of this article:
40 *Provided*, That only that portion of the contract price
41 attributable to that percentage of the construction con-
42 tract completed prior to the last day of the multiple year
43 project investment period (determined under principles set
44 forth in Section 460(b) of the Internal Revenue Code of
45 1986, as in effect before the first day of January, two
46 thousand three), which is placed in service or use prior to

47 the last day of the multiple year project investment period
48 allowed pursuant to subdivision (1), subsection (a), section
49 four-b of this article, may be treated as property pur-
50 chased for business expansion under section six of this
51 article;

52 (ii) A new or expanded business facility purchased or
53 leased for a multiple year project certified before the first
54 day of January, two thousand three, in accordance with
55 section four-b of this article; or

56 (iii) Machinery or equipment or other tangible personal
57 property purchased or leased for a multiple year project
58 certified before the first day of January, two thousand
59 three, in accordance with section four-b of this article.

60 For purposes of this paragraph, the multiple year project
61 investment period will be treated as having commenced if
62 the taxpayer has placed the qualified investment into
63 service or use in accordance with section four of this
64 article. A multiple year project period will not be treated
65 as having commenced merely as a result of the issuance of
66 certification of a project under section four-b of this
67 article. No entitlement to any tax credit under this
68 paragraph may result from, and no credit is available to
69 any taxpayer for, investment placed in service or use after
70 closure of the multiple year project investment period for
71 which certification has been issued.

72 (C) The new or expanded business facility was purchased
73 or leased pursuant to a written contract executed prior to
74 the first day of January, two thousand three, as limited to
75 the provisions then binding on the taxpayer as of that
76 date, but only to the extent the new or expanded business
77 facility is placed in service or use prior to the first day of
78 January, two thousand four; or

79 (D) The machinery or equipment or other tangible
80 personal property purchased or leased for business expan-
81 sion at a new or expanded business facility was purchased

82 or leased by the taxpayer pursuant to a written contract to
83 purchase or lease identifiable tangible personal property
84 executed before the first day of January, two thousand
85 three, as limited to the provisions of the written contract
86 then binding on the taxpayer, but only to the extent the
87 tangible personal property purchased or leased under the
88 contract is placed in service or use before the first day of
89 January, two thousand four.

90 (d) *Notice of election required.* – Any person intending
91 to claim credit under one or more of the transition rules
92 provided in subsection (c) of this section shall file written
93 notice of his or her intention with the tax commissioner on
94 or before the thirty-first day of December, two thousand
95 two. In the case of a multiparticipant project, this notice
96 may be filed by the managing project participant on behalf
97 of all participants in the project. Notice is to be in a form
98 prescribed by the tax commissioner and all information
99 required by the form is to be provided.

100 (e) *Failure to file notice.* – If any person fails to timely
101 file the notice required by subsection (d) of this section,
102 that person is precluded from claiming credit under article
103 thirteen-c for investment property placed in service or use
104 after the thirty-first day of December, two thousand two,
105 and may claim credit under article thirteen-q of this
106 chapter to the extent credit is allowable under that article.
107 For purposes of this section, notice, in proper and com-
108 plete form, timely filed under section twenty-one, article
109 thirteen-q of this chapter, fulfills the filing requirement of
110 this section if that filing addresses the same qualified
111 investment for which notice would be required under this
112 section.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-9. New jobs percentage.

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

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

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

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

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

13 (c) *Applicable percentage.* -- For the purpose of subsec-
14 tion (a) of this section, the applicable new jobs percentage
15 is determined under the following table:

16	If number of	The applicable
17	new jobs is at least:	percentage is:
18	20	20%
19	280	25%
20	520	30%

21 (d) *Certification of new jobs.* -- With the annual return
22 for the applicable taxes filed for the taxable year in which
23 the qualified investment is first placed in service or use in
24 this state, the taxpayer shall estimate and certify the
25 number of new jobs reasonably projected to be created by
26 it in this state within the period prescribed in subsection
27 (f) of this section that are, or will be, directly attributable
28 to the qualified investment of the taxpayer. For purposes
29 of this section, "applicable taxes" means the taxes im-
30 posed by articles thirteen, twenty-one, twenty-three and
31 twenty-four of this chapter against which this credit is
32 applied.

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

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

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

49 (2) If the actual number of jobs created would result in
50 a lower new jobs percentage, the credit previously allowed
51 under this article shall be redetermined and amended
52 returns filed for the first and second taxable years. In
53 applying the amount of redetermined credit allowable for
54 the two preceding taxable years, the redetermined credit
55 shall first be applied to the extent it was originally applied
56 in the prior two years to personal income taxes, then to
57 corporation net income taxes, then to business franchise
58 taxes and, lastly, to business and occupation taxes. Any
59 additional taxes due under this chapter shall be remitted
60 with the amended returns filed with the commissioner,
61 along with interest, as provided in section seventeen,
62 article ten of this chapter, and a ten-percent penalty
63 determined on the amount of taxes due with the amended
64 return, which may be waived by the commissioner if the
65 taxpayer shows that the overclaimed amount of the new
66 jobs percentage was due to reasonable cause and not due
67 to willful neglect.

68 (g) *Additional new jobs percentage.* -- When the quali-
69 fied investment is twenty million dollars or more and the
70 new or expanded business facility is constructed using
71 construction laborers and mechanics who are paid an
72 average wage equal to or greater than the prevailing wage
73 for their respective classes of work determined under

74 chapter twenty-one of this code, then, if the number of
75 full-time construction laborers and mechanics working at
76 the job site of the new or expanded business facility is
77 seventy-five or more, or if the number of hours of all
78 construction laborers and mechanics working at the job
79 site is equal to or greater than the number of hours
80 seventy-five full-time construction laborers and mechanics
81 would have worked at the job site during a twelve consec-
82 utive month period, a taxpayer that is allowed a new jobs
83 percentage determined under subsection (a) of this section
84 shall be allowed a new jobs percentage that is five percent-
85 age points higher than the new jobs percentage allowed
86 under subsection (a) of this section. In no event may
87 construction laborers and mechanics be used to attain or
88 retain a subsection (a) new jobs percentage. The number
89 of full-time construction laborers and mechanics working
90 at the job site shall be determined by dividing the total
91 number of hours worked by all construction laborers and
92 mechanics on a new or expanded business facility during
93 a twelve consecutive month period by two thousand eighty
94 hours per year. A taxpayer may not claim the additional
95 new jobs percentage allowed by this section unless the
96 taxpayer includes with the certification filed under
97 subsection (d) of this section a certification signed by the
98 general contractor or the construction manager certifying
99 that construction laborers employed at the job site during
100 a consecutive twelve month period aggregated the equiva-
101 lent of at least seventy-five full-time employees and the
102 taxpayer has received from the general contractor or
103 construction manager records substantiating the certifica-
104 tion, which records shall be retained by the taxpayer for
105 thirteen years after the day the expansion to an existing
106 business facility, or the new business facility, is first
107 placed in service or use by the taxpayer. For purposes of
108 subsection (g) of this section:

109 (1) The term "construction laborers and mechanics"
110 means those workers, utilized by a contractor or subcon-
111 tractor at any tier, whose duties are manual or physical in

112 nature, including those workers who use tools or are
 113 performing the work of a trade, as distinguished from
 114 mental or managerial and working foremen who devote
 115 more than twenty percent of their time during a workweek
 116 performing the duties of a laborer or mechanic; and

117 (2) The term "job site" is limited to the physical place or
 118 places where the construction called for in the contract
 119 will remain when the work on it is completed and nearby
 120 property, as described in subdivision (3) of this subsection,
 121 used by the contractor or subcontractor during construc-
 122 tion that, because of proximity, can reasonably be in-
 123 cluded in the "site".

124 (3) Except as provided in subdivision (4) of this subsec-
 125 tion, fabrication plants, mobile factories, batch plants,
 126 borrow pits, job headquarters and tool yards are part of
 127 the "job site" provided they are dedicated exclusively, or
 128 nearly so, to performance of the contract or project and are
 129 located in proximity to the actual construction location so
 130 that it would be reasonable to include them.

131 (4) The term "job site" does not include permanent home
 132 offices, branch offices, branch plant establishments,
 133 fabrication yards or tool yards of a contractor or subcon-
 134 tractor whose locations and continuance in operation are
 135 determined without regard to the contract or subcontract
 136 for construction of a new or expanded business facility.

**§11-13Q-18. Burden of proof; application required; failure to
 make timely application.**

1 (a) The burden of proof is on the taxpayer to establish by
 2 clear and convincing evidence that the taxpayer is entitled
 3 to the benefits allowed by this article.

4 (b) *Application for credit required.* –

5 (1) *Application required.* – Notwithstanding any provi-
 6 sion of this article to the contrary, no credit is allowed or
 7 may be applied under this article for any qualified invest-

8 ment property placed in service or use until the person
9 asserting a claim for the allowance of credit under this
10 article makes written application to the commissioner for
11 allowance of credit as provided in this subsection. An
12 application for credit shall be filed, in the form prescribed
13 by the tax commissioner, no later than the last day for
14 filing the tax returns, determined by including any autho-
15 rized extension of time for filing the return, required under
16 article twenty-one or twenty-four of this chapter for the
17 taxable year in which the property to which the credit
18 relates is placed in service or use and all information
19 required by the form shall be provided.

20 (2) *Failure to make timely application.* – The failure to
21 timely apply for the credit results in the forfeiture of fifty
22 percent of the annual credit allowance otherwise allowable
23 under this article. This penalty applies annually until the
24 application is filed.

**§11-13Q-21. Effective date; election; notice of claim or election
under transition rules.**

1 (a) The credit allowed by this article is allowed for
2 qualified investment placed in service or use on or after
3 the first day of January, two thousand three, subject to the
4 rules contained in this section.

5 (b) *Election.* – Notwithstanding the general rule stated
6 in subsection (a), the taxpayer may elect to apply the
7 credit allowed under article thirteen-c of this chapter in
8 lieu of the credit allowed by this article to property
9 purchased or leased for business expansion that is placed
10 in service or use on or after the first day of January, two
11 thousand three, if the property qualifies for credit under
12 the transition rules set forth in subdivision (2), subsection
13 (c), section sixteen, article thirteen-c of this chapter.

14 (c) *Notice of election required.* – Any person intending
15 to make the election allowed in subsection (b) of this
16 section shall file written notice of his or her intention with

17 the tax commissioner on or before the thirty-first day of
18 December, two thousand two. In the case of a
19 multiparticipant project, this notice may be filed by the
20 managing project participant on behalf of all participants
21 in the project. The notice shall be in a form prescribed by
22 the tax commissioner and all information required by the
23 form shall be provided.

24 (d) *Failure to file notice.* – If any person fails to timely
25 file the notice required by subsection (c) of this section,
26 that person is precluded from claiming credit under article
27 thirteen-c of this chapter for property placed in service or
28 use after the thirty-first day of December, two thousand
29 two, and may claim credit under this article to the extent
30 the credit is allowable under this article. For purposes of
31 this section, notice, in proper and complete form, timely
32 filed under section sixteen, article thirteen-c of this
33 chapter fulfills the filing requirement of this section if that
34 filing addresses the same qualified investment for which
35 notice would be required under this section.

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-6. Application of credit.

1 (a) *Credit allowed.* – Beginning in the year that the
2 annual combined qualified research and development
3 expenditure is paid or incurred, eligible taxpayers and
4 owners of eligible taxpayers described in subsections (d)
5 and (f) of this section are allowed a credit against the taxes
6 imposed by articles twenty-three, twenty-four and twenty-
7 one of this chapter, in that order, as specified in this
8 section.

9 (b) *Business franchise tax.* -- The credit is first applied
10 to reduce the taxes imposed by article twenty-three of this
11 chapter for the taxable year (determined after application
12 of the credits against tax provided in section seventeen of
13 said article, but before application of any other allowable
14 credits against tax).

15 (c) *Corporation net income taxes.* – After application of
16 subsection (b) of this section, any unused credit is next
17 applied to reduce the taxes imposed by article twenty-four
18 of this chapter for the taxable year (determined before
19 application of allowable credits against tax).

20 (d) If the eligible taxpayer is a limited liability company,
21 small business corporation or a partnership, then any
22 unused credit (after application of subsections (b) and (c)
23 of this section) is allowed as a credit against the taxes
24 imposed by article twenty-four of this chapter on owners
25 of the eligible taxpayer on the conduit income directly
26 derived from the eligible taxpayer by its owners. Only
27 those portions of the tax imposed by article twenty-four of
28 this chapter that are imposed on income directly derived
29 by the owner from the eligible taxpayer are subject to
30 offset by this credit.

31 (1) Small business corporations, limited liability compa-
32 nies, partnerships and other unincorporated organizations
33 shall allocate the credit allowed by this article among their
34 members in the same manner as profits and losses are
35 allocated for the taxable year.

36 (2) No credit is allowed under this article against any
37 withholding tax imposed by, or payable under, article
38 twenty-one of this chapter.

39 (e) *Personal income tax taxes.* – After application of
40 subsections (b), (c) and (d) of this section, any unused
41 credit is next applied to reduce the taxes imposed by
42 article twenty-one of this chapter for the taxable year
43 (determined before application of allowable credits
44 against tax) of the eligible taxpayer.

45 (f) If the eligible taxpayer is a limited liability company,
46 small business corporation or a partnership, then any
47 unused credit (after application of subsections (b), (c), (d)
48 and (e) of this section) is allowed as a credit against the
49 taxes imposed by article twenty-one of this chapter on
50 owners of the eligible taxpayer on the conduit income

51 directly derived from the eligible taxpayer by its owners.
52 Only those portions of the tax imposed by article twenty-
53 one of this chapter that are imposed on income directly
54 derived by the owner from the eligible taxpayer are
55 subject to offset by this credit.

56 (1) Small business corporations, limited liability compa-
57 nies, partnerships and other unincorporated organizations
58 shall allocate the credit allowed by this article among their
59 members in the same manner as profits and losses are
60 allocated for the taxable year.

61 (2) No credit is allowed under this article against any
62 withholding tax imposed by, or payable under, article
63 twenty-one of this chapter.

64 (g) The total amount of tax credit that may be used in
65 any taxable year by any eligible taxpayer in combination
66 with the owners of the eligible taxpayer under subsections
67 (d) and (f) of this section may not exceed two million
68 dollars.

69 (h) *Unused credit carry forward.* – If the credit allowed
70 under this article in any taxable year exceeds the sum of
71 the taxes enumerated in subsections (b), (c), (d), (e) and (f)
72 of this section for that taxable year, the eligible taxpayer
73 and owners of eligible taxpayers described in subsections
74 (d) and (f) of this section may apply the excess as a credit
75 against those taxes, in the order and manner stated in this
76 section, for succeeding taxable years until the earlier of
77 the following:

78 (1) The full amount of the excess credit is used; or

79 (2) The expiration of the tenth taxable year after the
80 taxable year in which the annual combined qualified
81 research and development expenditure was paid or
82 incurred. Credit remaining thereafter is forfeited.

83 (i) *Application for certification.* – No credit is allowed or
84 may be applied under this article until the person seeking
85 to claim the credit has filed a written application for

86 certification of the proposed research and development
87 program or project with the tax commissioner and has
88 received certification of the research and development
89 program or project from the tax commissioner pursuant to
90 that written application. The certification of the program
91 or project must be received by the eligible taxpayer from
92 the tax commissioner prior to any credit being claimed or
93 allowed for any annual combined qualified research and
94 development expenditure for any research activity or
95 project. This application shall be filed, in the form
96 prescribed by the tax commissioner, no later than the last
97 day for filing the tax returns, determined by including any
98 authorized extension of time for filing the return, required
99 under article twenty-one or twenty-four of this chapter for
100 the taxable year in which the property to which the credit
101 relates is placed in service or use, or the qualified research
102 and development expenses to which the credit relates are
103 incurred by the taxpayer, and all information required by
104 the form shall be provided by the taxpayer.

105 (1) In the case of owners of eligible taxpayers described
106 in subsection (d) or (f) of this section, the application for
107 certification filed under this section by the limited liability
108 company, small business corporation or partnership owned
109 by the person is considered to be filed on behalf of the
110 owner and no separate filing of the application is required
111 of the owner.

112 (2) *Form of application.* – The application for certifica-
113 tion must be filed in the form as the tax commissioner may
114 prescribe and shall contain the information as the tax
115 commissioner may require to determine whether the
116 project should be certified as eligible for credit under this
117 article.

118 (3) *Time period covered by certification.* – The applica-
119 tion may request certification of the research and develop-
120 ment program for one taxable year or multiple taxable
121 years, as applicable, based on the nature and character of

122 the program or project plan for the particular research and
123 development project or activity.

124 (4) *Requirements for application.* – The application shall
125 specifically set forth a written research and development
126 program plan generally describing the nature of the
127 research and development to be undertaken, the number
128 and types of jobs, if any, created by the applicant as a
129 direct result of the research and development program and
130 the average wages and benefits paid to those employees,
131 the projected time period over which the research and
132 development shall be carried out, the period of time for
133 which the applicant seeks certification of the program or
134 project and such other information as the tax commis-
135 sioner may require.

136 (5) *Certification.* – The tax commissioner may issue
137 certification of a research and development program or
138 project if it appears to the tax commissioner that the
139 applicant intends to engage in a bona fide research and
140 development activity, as described in this article, and will
141 otherwise comply with the requirements of this article and
142 all rules and requirements applicable thereto.

143 (6) *Time period covered by certification.* – The tax
144 commissioner may issue certification for the period of time
145 for which the eligible taxpayer seeks certification or a
146 different period of time, within the discretion of the tax
147 commissioner. In his or her discretion, the tax commis-
148 sioner may require that a separate application be filed for
149 each tax year in which qualified research and development
150 activity is to be undertaken or in which qualified research
151 and development property is to be placed in service or use.

152 (7) *Failure to file.* – The failure to timely file the appli-
153 cation for certification of a research and development
154 program or project under this section results in forfeiture
155 of one hundred percent of the annual credit otherwise
156 allowable under this article. This penalty applies annually
157 until such application is filed.

158 (8) *Research and development undertaken without*
159 *certification.* – If a person has filed an application for
160 certification of a research and development program or
161 project and has failed to receive certification of the plan or
162 program from the tax commissioner, no credit is allowed
163 under this article for the research and development
164 activity or investment relating thereto.

165 (9) *Failure to comply with terms of certification.* – If a
166 person has filed an application for certification of a
167 research and development program or project and has
168 received certification of the plan or program from the tax
169 commissioner, but fails to conform to the terms of the
170 certification, no credit is allowed under this article for the
171 research and development activity or for investment in the
172 research and development activity by the eligible tax-
173 payer. This restriction may be waived by the tax commis-
174 sioner upon a finding that the research and development
175 undertaken was within the requirements of this article and
176 that there was no intent to defraud the state or willful
177 neglect in the applicant's failure to conform to the terms
178 of the certification.

179 (10) *Failure to comply with certification time restric-*
180 *tions.* – If a person has filed an application for certifica-
181 tion of a research and development program or project and
182 has received certification of the plan or program from the
183 tax commissioner, but fails to conform to the time periods
184 specified therein for the certified research and develop-
185 ment program or project, or fails to renew the certification
186 so as to cover ongoing or subsequent research and develop-
187 ment activity, the research and development activity is out
188 of compliance with the terms of the certification and no
189 credit is allowed under this article for, or relating to, the
190 research and development activity by any person or
191 taxpayer. This restriction may be waived by the tax
192 commissioner upon a finding that the research and devel-
193 opment thus undertaken was within the requirements of
194 this article and that there was no intent to defraud the

195 state or willful neglect in the applicant's failure to con-
196 form to the terms of the certification.

§11-13R-9. Identification of investment credit property.

1 (a) Every taxpayer who claims credit under this article
2 shall maintain sufficient records to establish the following
3 facts for each item of qualified research and development
4 property:

5 (1) Its identity;

6 (2) Its actual or reasonably determined cost;

7 (3) Its straight-line depreciation life;

8 (4) The month and taxable year in which it was placed in
9 service;

10 (5) The amount of credit taken; and

11 (6) The date it was disposed of or otherwise ceased to be
12 qualified research and development property.

13 (b) Every taxpayer who claims credit under this article
14 shall also maintain sufficient records to establish the
15 number and types of new jobs, if any, created, the wages
16 and benefits paid to employees filling the new jobs and the
17 duration of each job.

§11-13R-11. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year
3 thereafter, the commissioner shall submit to the governor,
4 the president of the Senate and the speaker of the House
5 of Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the credit allowed
7 under this article during the most recent three-year period
8 for which information is available. The criteria to be
9 evaluated includes, but is not limited to, for each year of
10 the three-year period:

- 11 (1) The numbers of taxpayers claiming the credit;
- 12 (2) The net number, type and duration of new jobs
13 created by all taxpayers claiming the credit and wages and
14 benefits paid;
- 15 (3) The cost of the credit;
- 16 (4) The cost of the credit per new job created; and
- 17 (5) Comparison of employment trends for the industry
18 and for taxpayers within the industry that claim the
19 credit.
- 20 (b) Taxpayers claiming the credit shall provide such
21 information as the tax commissioner may require to
22 prepare the report: *Provided*, That such information shall
23 be subject to the confidentiality and disclosure provisions
24 of sections five-d and five-s, article ten of this chapter.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-4. Amount of credit allowed for manufacturing investment.

- 1 (a) *Credit allowed.* – There is allowed to eligible taxpay-
2 ers and to persons described in subdivision (5), subsection
3 (b) of this section a credit against the taxes imposed by
4 articles thirteen-a, twenty-three and twenty-four of this
5 chapter. The amount of credit shall be determined as
6 hereinafter provided in this section.
- 7 (b) *Amount of credit allowable.* – The amount of allow-
8 able credit under this article is equal to five percent of the
9 qualified manufacturing investment (as determined in
10 section five of this article), and shall reduce the severance
11 tax, imposed under article thirteen-a of this chapter, the
12 business franchise tax imposed under article twenty-three
13 of this chapter and the corporation net income tax im-
14 posed under article twenty-four of this chapter, in that
15 order, subject to the following conditions and limitations:

16 (1) The amount of credit allowable is applied over a ten-
17 year period, at the rate of one-tenth thereof per taxable
18 year, beginning with the taxable year in which the prop-
19 erty purchased for manufacturing investment is first
20 placed in service or use in this state;

21 (2) *Severance tax.* – The credit is applied to reduce the
22 severance tax imposed under article thirteen-a of this
23 chapter (determined before application of the credit
24 allowed by section three, article twelve-b of this chapter
25 and before any other allowable credits against tax and
26 before application of the annual exemption allowed by
27 section ten, article thirteen-a of this chapter). The amount
28 of annual credit allowed may not reduce the severance tax,
29 imposed under article thirteen-a of this chapter, below
30 fifty percent of the amount which would be imposed for
31 such taxable year in the absence of this credit against tax.
32 When in any taxable year the taxpayer is entitled to claim
33 credit under this article and article thirteen-d of this
34 chapter, the total amount of all credits allowable for the
35 taxable year may not reduce the amount of the severance
36 tax, imposed under article thirteen-a of this chapter,
37 below fifty percent of the amount which would be imposed
38 for such taxable year (determined before application of the
39 credit allowed by section three, article twelve-b of this
40 chapter and before any other allowable credits against tax
41 and before application of the annual exemption allowed by
42 section ten, article thirteen-a of this chapter);

43 (3) *Business franchise tax.* – After application of subdi-
44 vision (2) of this subsection, any unused credit is next
45 applied to reduce the business franchise tax imposed under
46 article twenty-three of this chapter (determined after
47 application of the credits against tax provided in section
48 seventeen, article twenty-three of this chapter, but before
49 application of any other allowable credits against tax).
50 The amount of annual credit allowed will not reduce the
51 business franchise tax, imposed under article twenty-three
52 of this chapter, below fifty percent of the amount which

53 would be imposed for such taxable year in the absence of
54 this credit against tax. When in any taxable year the
55 taxpayer is entitled to claim credit under this article and
56 article thirteen-d of this chapter, the total amount of all
57 credits allowable for the taxable year will not reduce the
58 amount of the business franchise tax, imposed under
59 article twenty-three of this chapter, below fifty percent of
60 the amount which would be imposed for the taxable year
61 (determined after application of the credits against tax
62 provided in section seventeen, article twenty-three of this
63 chapter, but before application of any other allowable
64 credits against tax);

65 (4) *Corporation net income tax.* – After application of
66 subdivision (3) of this subsection, any unused credit is next
67 applied to reduce the corporation net income tax imposed
68 under article twenty-four of this chapter (determined
69 before application of any other allowable credits against
70 tax). The amount of annual credit allowed will not reduce
71 corporation net income tax, imposed under article twenty-
72 four of this chapter, below fifty percent of the amount
73 which would be imposed for such taxable year in the
74 absence of this credit against tax. When in any taxable
75 year the taxpayer is entitled to claim credit under this
76 article and article thirteen-d of this chapter, the total
77 amount of all credits allowable for the taxable year may
78 not reduce the amount of the corporation net income tax,
79 imposed under article twenty-four of this chapter, below
80 fifty percent of the amount which would be imposed for
81 the taxable year (determined before application of any
82 other allowable credits against tax);

83 (5) *Pass-through entities.* –

84 (A) If the eligible taxpayer is a limited liability company,
85 small business corporation or a partnership, then any
86 unused credit (after application of subdivisions (2), (3) and
87 (4) of this subsection) is allowed as a credit against the
88 taxes imposed by article twenty-four of this chapter on
89 owners of the eligible taxpayer on the conduit income

90 directly derived from the eligible taxpayer by its owners.
91 Only those portions of the tax imposed by article twenty-
92 four of this chapter that are imposed on income directly
93 derived by the owner from the eligible taxpayer are
94 subject to offset by this credit.

95 (B) The amount of annual credit allowed will not reduce
96 corporation net income tax, imposed under article twenty-
97 four of this chapter, below fifty percent of the amount
98 which would be imposed on the conduit income directly
99 derived from the eligible taxpayer by each owner for such
100 taxable year in the absence of this credit against the taxes
101 (determined before application of any other allowable
102 credits against tax).

103 (C) When in any taxable year the taxpayer is entitled to
104 claim credit under this article and article thirteen-d of this
105 chapter, the total amount of all credits allowable for the
106 taxable year will not reduce the corporation net income
107 tax imposed on the conduit income directly derived from
108 the eligible taxpayer by each owner below fifty percent of
109 the amount that would be imposed for such taxable year
110 on the conduit income (determined before application of
111 any other allowable credits against tax);

112 (6) Small business corporations, limited liability compa-
113 nies, partnerships and other unincorporated organizations
114 shall allocate any unused credit (after application of
115 subdivisions (2), (3) and (4) of this subsection) among their
116 members in the same manner as profits and losses are
117 allocated for the taxable year; and

118 (7) No credit is allowed under this article against any tax
119 imposed by article twenty-one of this chapter.

120 (c) No carryover to a subsequent taxable year or
121 carryback to a prior taxable year is allowed for the
122 amount of any unused portion of any annual credit
123 allowance. Such unused credit is forfeited.

124 (d) *Application for credit required.* --

125 (1) *Application required.* – Notwithstanding any provi-
126 sion of this article to the contrary, no credit is allowed or
127 may be applied under this article for any qualified invest-
128 ment property placed in service or use until the person
129 claiming the credit makes written application to the tax
130 commissioner for allowance of credit as provided in this
131 section. This application shall be in the form prescribed
132 by the tax commissioner and shall provide the number and
133 type of jobs created, if any, by the manufacturing invest-
134 ment, the average wage rates and benefits paid to employ-
135 ees filling the new jobs and any other information the tax
136 commissioner may require. This application shall be filed
137 with the tax commissioner no later than the last day for
138 filing the annual return, determined by including any
139 authorized extension of time for filing the return, required
140 under article twenty-one or twenty-four of this chapter for
141 the taxable year in which the property to which the credit
142 relates is placed in service or use.

143 (2) *Failure to file.* – The failure to timely apply the
144 application for credit under this section results in forfei-
145 ture of fifty percent of the annual credit allowance other-
146 wise allowable under this article. This penalty applies
147 annually until such application is filed.

§11-13S-8. Identification of investment credit property.

1 (a) Every taxpayer who claims credit under this article
2 shall maintain sufficient records to establish the following
3 facts for each item of property purchased for manufactur-
4 ing investment:

5 (1) Its identity;

6 (2) Its actual or reasonably determined cost;

7 (3) Its straight-line depreciation life;

8 (4) The month and taxable year in which it was placed in
9 service;

10 (5) The amount of credit taken; and

11 (6) The date it was disposed of or otherwise ceased to be
12 property purchased for manufacturing investment.

13 (b) Every taxpayer who claims credit under this article
14 shall also maintain sufficient records to establish the
15 number and types of new jobs, if any, created, the wages
16 and benefits paid to employees filling the new jobs and the
17 duration of each job.

§11-13S-10. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand
2 six, and on the first day of February every third year
3 thereafter, the commissioner shall submit to the governor,
4 the president of the Senate and the speaker of the House
5 of Delegates a tax credit review and accountability report
6 evaluating the cost effectiveness of the credit allowed
7 under this article during the most recent three-year period
8 for which information is available. The criteria to be
9 evaluated includes, but is not limited to, for each year of
10 the three-year period:

11 (1) The numbers of taxpayers claiming the credit;

12 (2) The net number, type and duration of new jobs
13 created by all taxpayers claiming the credit and the wages
14 and benefits paid;

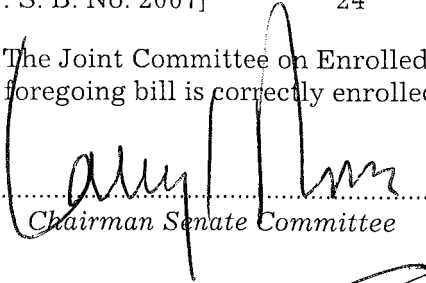
15 (3) The cost of the credit;


16 (4) The cost of the credit per new job created; and

17 (5) Comparison of employment trends for the industry
18 and for taxpayers within the industry that claim the
19 credit.

20 (b) Taxpayers claiming the credit shall provide the
21 information as the tax commissioner may require to
22 prepare the report: *Provided*, That the information is
23 subject to the confidentiality and disclosure provisions of
24 sections five-d and five-s, article ten of this chapter.

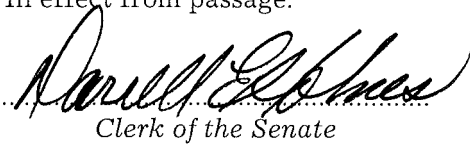
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

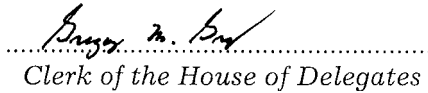

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Chairman Senate Committee

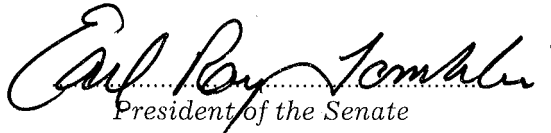

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Chairman House Committee

Originated in the Senate.

In effect from passage.


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Clerk of the Senate

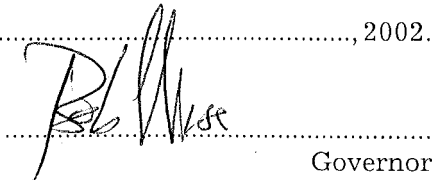

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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 21st

Day of June, 2002.


.....
Governor

PRESENTED TO THE
GOVERNOR
DATE 6/19/02
TIME 11:30 am