

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 465**

7 (SENATORS McCABE, KESSLER (ACTING PRESIDENT),

8 BROWNING, UNGER, SNYDER, STOLLINGS, PLYMALE, WELLS, PALUMBO, BEACH, KLEMPA,

9 YOST AND FOSTER, *original sponsors*)

10 \_\_\_\_\_  
11 [Passed March 12, 2011; to take effect July 1, 2011.]  
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14  
15 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
16 adding thereto a new article, designated §5B-2H-1 and §5B-2H-  
17 2; to amend said code by adding thereto a new section,  
18 designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-  
19 2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-  
20 6D-8 of said code; to amend said code by adding thereto a new  
21 section, designated §11-6D-9; to amend and reenact §11-6F-2  
22 and §11-6F-3 of said code; to amend and reenact §11-13Q-20 of  
23 said code; to amend and reenact §11-13R-3 of said code; to  
24 amend and reenact §11-13S-3 and §11-13S-4 of said code; to  
25 amend and reenact §11-15-8d of said code; and to amend and  
26 reenact §24-2F-3 of said code, all relating generally to the

1 Marcellus Gas and Manufacturing Development Act of 2011;  
2 providing short title; making legislative findings and  
3 declarations; providing guideline for valuation of drilling  
4 rigs for property tax purposes; authorizing the Tax  
5 Commissioner to promulgate rules; amending and reinstating  
6 alternative fuel motor vehicle tax credit; providing credit  
7 for alternative fuel refueling facilities; making legislative  
8 findings; stating legislative purpose; defining terms;  
9 allowing credit for purchase of alternative fuel motor  
10 vehicles, conversion of vehicles to alternative fuel motor  
11 vehicles and for commercial and residential alternative fuel  
12 refueling facilities; providing for expiration of credits;  
13 requiring Tax Commissioner to promulgate rules and design  
14 forms; providing for carryover of unused credits and for  
15 recapture of credits; amending definition of "manufacturing"  
16 for purposes of special method for appraising qualified  
17 capital additions to manufacturing facilities for property tax  
18 purposes; providing new rules for treatment of certified  
19 capital addition property; adding additional requirements for  
20 reports to Governor and Legislature; amending definition of  
21 "research and development" for purposes of strategic research  
22 and development tax credit; amending definition of  
23 "manufacturing" for purposes of manufacturing investment tax  
24 credit; requiring certain business activities comply with  
25 certain hiring requirements in order to be eligible for the  
26 manufacturing investment tax credit and sales tax exemption;

1 providing additional exception to limitation on right to  
2 assert sales and use tax exemptions; and clarifying meaning of  
3 "natural gas" for purposes of Alternative and Renewable Energy  
4 Portfolio Standard Act.

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

6 That the Code of West Virginia, 1931, as amended, be amended  
7 by adding thereto a new article, designated §5B-2H-1 and §5B-2H-2;  
8 that said code be amended by adding thereto a new section,  
9 designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4,  
10 §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be amended  
11 and reenacted; that said code be amended by adding thereto a new  
12 section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of said  
13 code be amended and reenacted; that §11-13Q-20 of said code be  
14 amended and reenacted; that §11-13R-3 of said code be amended and  
15 reenacted; that §11-13S-3 and §11-13S-4 of said code be amended and  
16 reenacted; that §11-15-8d of said code be amended and reenacted;  
17 and that §24-2F-3 of said code be amended and reenacted, all to  
18 read as follows:

19 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

20 **ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.**

21 **§5B-2H-1. Short Title.**

22 This article shall be known and cited as the "Marcellus Gas  
23 and Manufacturing Development Act."

24 **§5B-2H-2. Legislative findings; declaration of public policy.**

25 (a) The Legislature finds that:

1           (1) The advent and advancement of new and existing  
2 technologies and drilling practices have created the opportunity  
3 for the efficient development of natural gas contained in  
4 underground shales and other geological formations.

5           (2) With development of the Marcellus shale comes the  
6 opportunity for economic development in related areas of the  
7 economy including, but not limited to, manufacturing, transmission  
8 of natural gas and related products and the transportation of  
9 manufactured products.

10          (3) It is in the interest of national security to encourage  
11 post-production uses of natural gas and its various components as  
12 a replacement for oil imported from other countries.

13          (4) Producers of natural gas, transporters of natural gas and  
14 manufacturers of products using natural gas face a significant  
15 number of regulatory requirements, some of which may be redundant,  
16 inconsistent, or overlapping. Agencies should work together, where  
17 practical, to avoid duplication, promote better coordination and  
18 reduce these requirements, thus reducing costs, simplifying and  
19 harmonizing rules and streamlining regulatory oversight.

20          (5) In developing regulatory actions and identifying  
21 appropriate approaches, agencies should attempt to promote  
22 coordination, simplification, and harmonization.

23          (6) Agencies should also seek to identify, as appropriate,  
24 means to achieve regulatory goals that are designed to promote  
25 innovation.

26          (7) Agencies should review their existing significant

1 legislative, interpretive and procedural rules to determine whether  
2 any such rules should be modified, streamlined, expanded or  
3 repealed so as to make the agency's regulatory program more  
4 effective or less burdensome in achieving the regulatory  
5 objectives.

6 (8) The West Virginia Economic Development Authority  
7 established in article fifteen, chapter thirty-one of this code and  
8 the West Virginia Infrastructure and Jobs Development Council  
9 created in article fifteen-a, chapter thirty-one of this code,  
10 should, where appropriate, provide assistance that grows or  
11 sustains this segment of the economy.

12 (b) The Legislature declares that facilitating the development  
13 of business activity directly and indirectly related to development  
14 of the Marcellus shale serves the public interest of the citizens  
15 of this state by promoting economic development and improving  
16 economic opportunities for the citizens of this state.

17 **CHAPTER 11. TAXATION.**

18 **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

19 **§11-1C-11c. Valuation of oil and gas drilling rigs.**

20 Notwithstanding any provision of this code to the contrary and  
21 to facilitate the equal and uniform taxation of oil and natural gas  
22 drilling rigs throughout the state, the State Tax Commissioner  
23 shall annually compile a schedule of oil and natural gas drilling  
24 rig values based on the values shown in a nationally recognized  
25 guide or bulletin published during the calendar year that includes

1 the assessment date, using the appropriate depth rating assigned to  
2 the drawworks by its manufacturer and the actual condition of the  
3 drilling rig. The State Tax Commissioner shall furnish the  
4 schedule to each assessor and it shall be used by him or her as a  
5 guide in placing the assessed values on all oil and natural gas  
6 drilling rigs in his or her county. This section applies to  
7 assessment years beginning on and after July 1, 2011.

8 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.**

9 **§11-6D-1. Legislative findings and purpose.**

10 Consistent with the public policy as stated in section one,  
11 article two-d, chapter twenty-four of this code, the Legislature  
12 hereby finds that the use of alternative fuels is in the public  
13 interest and promotes the general welfare of the people of this  
14 state insofar as it addresses serious concerns for our environment  
15 and our state's and nation's dependence on foreign oil as a source  
16 of energy. The Legislature further finds that this state has an  
17 abundant supply of alternative fuels and an extensive supply  
18 network and that, by encouraging the use of alternatively-fueled  
19 motor vehicles, the state will be reducing its dependence on  
20 foreign oil and attempting to improve its air quality. The  
21 Legislature further finds that the wholesale cost of fuel for  
22 certain alternatively-fueled motor vehicles is significantly lower  
23 than the cost of fueling traditional motor vehicles with oil based  
24 fuels.

25 However, because the cost of motor vehicles which utilize  
26 alternative-fuel technologies remains high in relation to motor

1 vehicles that employ more traditional technologies, citizens of  
2 this state who might otherwise choose an alternatively-fueled motor  
3 vehicle are forced by economic necessity to continue using motor  
4 vehicles that are fueled by more conventional means. Additionally,  
5 the availability of commercial and residential infrastructure to  
6 support alternatively fueled vehicles available to the public is  
7 inadequate to encourage the use of alternatively-fueled motor  
8 vehicles. It is the intent of the Legislature that the alternative  
9 fuel motor vehicle tax credit previously expired in 2006 be hereby  
10 reinstated with changes and amendments as set forth herein.  
11 Therefore, in order to encourage the use of alternatively-fueled  
12 motor vehicles and possibly reduce unnecessary pollution of our  
13 environment and reduce our dependence on foreign sources of energy,  
14 there is hereby created an alternative-fuel motor vehicles tax  
15 credit and an alternative-fuel infrastructure tax credit.

16 **§11-6D-2. Definitions.**

17 As used in this article, the following terms have the meanings  
18 ascribed to them in this section:

19 (a) "Alternative fuel" includes:

20 (1) Compressed natural gas;

21 (2) Liquified natural gas;

22 (3) Liquified petroleum gas;

23 (4) Ethanol;

24 (5) Fuel mixtures that contain eighty-five percent or more by  
25 volume, when combined with gasoline or other fuels, of the  
26 following:

- 1 (A) Methanol;
- 2 (B) Ethanol; or
- 3 (C) Other alcohols;
- 4 (6) Natural gas hydrocarbons and derivatives;
- 5 (7) Hydrogen;
- 6 (8) Coal-derived liquid fuels; and
- 7 (9) Electricity, including electricity from solar energy.

8 (b) "Alternative-fuel motor vehicle" means a motor vehicle  
9 that as a new or retrofitted or converted fuel vehicle:

- 10 (1) Operates solely on one alternative fuel;
- 11 (2) Is capable of operating on one or more alternative fuels,  
12 singly or in combination; or
- 13 (3) Is capable of operating on an alternative fuel and is also  
14 capable of operating on gasoline or diesel fuel.

15 (c) "Bi-fueled" means the ability of an alternative-fuel motor  
16 vehicle to operate on an alternative fuel and another form of fuel.

17 (d) "Plug-in hybrid electric vehicle" means:

18 (1) A plug-in hybrid electric vehicle manufactured by an  
19 established motor vehicle manufacturer of plug-in hybrid electric  
20 vehicles that can operate solely on electric power and that is  
21 capable of recharging its battery from an on-board generation  
22 source and an off-board electricity source; and

23 (2) A plug-in hybrid electric vehicle conversion that provides  
24 an increase in city fuel economy of seventy-five percent or more as  
25 compared to a comparable nonhybrid version vehicle for a minimum of  
26 twenty miles and that is capable of recharging its battery from an



1 on-board generation source and an off-board electricity source. A  
2 vehicle is comparable if it is the same model year and the same  
3 vehicle class as established by the United States Environmental  
4 Protection Agency and is comparable in weight, size and use. Fuel  
5 economy comparisons shall be made using city fuel economy standards  
6 in a manner that is substantially similar to the manner in which  
7 city fuel economy is measured in accordance with procedures set  
8 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

9 (e) "Qualified alternative fuel vehicle refueling  
10 infrastructure" means property owned by the applicant for the tax  
11 credit and used for storing alternative fuels and for dispensing  
12 such alternative fuels into fuel tanks of motor vehicles,  
13 including, but not limited to, compression equipment, storage tanks  
14 and dispensing units for alternative fuel at the point where the  
15 fuel is delivered: *Provided*, That the property is installed and  
16 located in this state and is not located on a private residence or  
17 private home.

18 (f) "Qualified alternative fuel vehicle home refueling  
19 infrastructure" means property owned by the applicant for the tax  
20 credit located on a private residence or private home and used for  
21 storing alternative fuels and for dispensing such alternative fuels  
22 into fuel tanks of motor vehicles, including, but not limited to,  
23 compression equipment, storage tanks and dispensing units for  
24 alternative fuel at the point where the fuel is delivered or for  
25 providing electricity to plug-in hybrid electric vehicles or  
26 electric vehicles: *Provided*, That the property is installed and

1 located in this state.

2 (g) "Taxpayer" means any natural person, corporation, limited  
3 liability company or partnership subject to the tax imposed under  
4 article twenty-one, article twenty-three or article twenty-four of  
5 this chapter or any combination thereof.

6 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**  
7 **qualified alternative fuel vehicle refueling**  
8 **infrastructure; application against personal income**  
9 **tax, business franchise tax or corporate net income**  
10 **tax; effective date.**

11 The tax credits for the purchase of alternative-fuel motor  
12 vehicles or conversion to alternative-fuel motor vehicles,  
13 qualified alternative fuel vehicle refueling infrastructure and  
14 qualified alternative fuel vehicle home refueling infrastructure  
15 provided in this article may be applied against the tax liability  
16 of a taxpayer imposed by the provisions of either article twenty-  
17 one, article twenty-three or article twenty-four of this chapter  
18 but in no case may more than one credit be granted for the same  
19 alternative-fuel motor vehicle as defined in subdivision (b),  
20 section two of this article. This credit shall be available for  
21 those tax years beginning on or after January 1, 2011.

22 **§11-6D-4. Eligibility for credit.**

23 A taxpayer is eligible to claim the credit against tax  
24 provided in this article if he or she:

25 (a) Converts a motor vehicle that is presently registered in

1 West Virginia to operate exclusively on an alternative fuel as  
2 defined in subdivision (a), section two of this article; or

3 (b) Purchases from an original equipment manufacturer or an  
4 after-market conversion facility or any other automobile retailer,  
5 a new dedicated or bi-fueled alternative-fuel motor vehicle for  
6 which the taxpayer then obtains a valid West Virginia registration;  
7 or

8 (c) Constructs or purchases and installs qualified alternative  
9 fuel vehicle refueling infrastructure or qualified alternative fuel  
10 vehicle home refueling infrastructure that is capable of dispensing  
11 alternative fuel for alternative-fuel motor vehicles.

12 (d) The credit provided in this article is not available to  
13 and may not be claimed by any taxpayer under any obligation  
14 pursuant to any federal or state law, policy or regulation to  
15 convert to the use of alternative fuels for any motor vehicle.

16 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

17 (a) For taxable years beginning on and after January 1, 2011,  
18 the amount of the credit allowed under this article for an  
19 alternative-fuel motor vehicle that weighs less than twenty-six  
20 thousand pounds is thirty-five percent of the purchase price of the  
21 alternative-fuel motor vehicle up to a maximum amount of \$7,500 or  
22 fifty percent of the actual cost of converting from a traditionally  
23 fueled motor vehicle to an alternative fuel motor vehicle up to a  
24 maximum amount of \$7,500.

25 (b) For taxable years beginning on and after January 1, 2011,  
26 the amount of the credit allowed under this article for an

1 alternative-fuel motor vehicle that weighs more than twenty-six  
2 thousand pounds is thirty-five percent of the purchase price of the  
3 alternative-fuel motor vehicle up to a maximum amount of \$25,000 or  
4 fifty percent of the actual cost of converting from a traditionally  
5 fueled motor vehicle to an alternative fuel motor vehicle up to a  
6 maximum amount of \$25,000.

7 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**  
8 **refueling infrastructure and qualified alternative**  
9 **fuel vehicle home refueling infrastructure.**

10 (a) For taxable years beginning on and after January 1, 2011,  
11 but prior to January 1, 2014, the amount of the credit allowed  
12 under this article for qualified alternative fuel vehicle refueling  
13 infrastructure is equal to an amount of fifty percent of the total  
14 costs directly associated with the construction or purchase and  
15 installation of the alternative fuel vehicle refueling  
16 infrastructure up to a maximum of \$250,000: *Provided*, That if the  
17 qualified alternative fuel vehicle refueling infrastructure is  
18 generally accessible for public use, the amount of the credit  
19 allowed will be multiplied by 1.25 and the maximum amount allowable  
20 will be \$312,500. The amount of credit allowed may not exceed the  
21 cost of construction of the alternative fuel vehicle refueling  
22 infrastructure.

23 (b) For taxable years beginning on and after January 1, 2014,  
24 but prior to January 1, 2016, the amount of the credit allowed  
25 under this article for qualified alternative fuel vehicle refueling

1 infrastructure is equal to an amount of fifty percent of the total  
2 costs directly associated with the construction or purchase and  
3 installation of the alternative fuel vehicle refueling  
4 infrastructure up to a maximum of \$200,000: *Provided*, That if the  
5 qualified alternative fuel vehicle refueling infrastructure is  
6 generally accessible for public use, the amount of the credit  
7 allowed will be multiplied by 1.25 and the maximum amount allowable  
8 will be \$250,000. The amount of credit allowed may not exceed the  
9 cost of construction of the alternative fuel vehicle refueling  
10 infrastructure.

11 (c) For taxable years beginning on and after January 1, 2016,  
12 but prior to January 1, 2022, the amount of the credit allowed  
13 under this article for qualified alternative fuel vehicle refueling  
14 infrastructure is equal to an amount of fifty percent of the total  
15 costs directly associated with the construction or purchase and  
16 installation of the alternative fuel vehicle refueling  
17 infrastructure up to a maximum of \$150,000: *Provided*, That if the  
18 qualified alternative fuel vehicle refueling infrastructure is  
19 generally accessible for public use, the amount of the credit  
20 allowed will be multiplied by 1.25 and the maximum amount allowable  
21 will be \$187,500. The amount of credit allowed may not exceed the  
22 cost of construction of the alternative fuel vehicle refueling  
23 infrastructure.

24 (d) For taxable years beginning on and after January 1, 2011,  
25 the amount of the credit allowed under this article for qualified  
26 alternative fuel vehicle home refueling infrastructure is equal to

1 an amount of fifty percent of the total costs directly associated  
2 with the construction or purchase and installation of the  
3 alternative fuel vehicle home refueling infrastructure up to a  
4 maximum of \$10,000.

5 (e) The cost of construction of the alternative fuel vehicle  
6 refueling infrastructure or alternative fuel vehicle home refueling  
7 infrastructure eligible for a tax credit under this section does  
8 not include costs associated with exploration, development or  
9 production activities necessary for severing natural resources from  
10 the soil or ground. (f) When the taxpayer is a pass-through entity  
11 treated like a partnership for federal and state income tax  
12 purposes, the credit allowed under this article for the year shall  
13 flow through to the equity owners of the pass-through entity in the  
14 same manner that distributive share flows through to the equity  
15 owners and in accordance with any legislative rule the Tax  
16 Commissioner may propose for legislative approval in accordance  
17 with article three, chapter twenty-nine-a of this code to  
18 administer this section.

19 (g) No credit allowed by this article may be applied against  
20 employer withholding taxes imposed by article twenty-one of this  
21 chapter.

22 **§11-6D-7. Duration of availability of credit.**

23 No person is eligible to receive a tax credit under this  
24 article for: (1) An alternative-fuel motor vehicle purchased after  
25 December 31, 2021; (2) a vehicle converted to an alternative-fuel  
26 motor vehicle after December 31, 2021; or (3) the construction or

1 purchase and installation of qualified alternative fuel vehicle  
2 refueling infrastructure or qualified alternative fuel vehicle home  
3 refueling infrastructure occurring after December 31, 2021.

4 **§11-6D-8. Commissioner to design forms and schedules; promulgation**  
5 **of rules.**

6 (a) The Tax Commissioner shall design and provide to the  
7 public simplified forms and schedules to implement and effectuate  
8 the provisions of this article.

9 (b) The Tax Commissioner shall promulgate new rules for the  
10 administration of this article consistent with its provisions and  
11 in accordance with article three, chapter twenty-nine-a of this  
12 code as the Commissioner deems necessary after the effective date  
13 of the amendments to this article. Such rules shall include rules  
14 relating to the necessary documentation required to be filed in  
15 order to take the tax credits allowed in this article.

16 (c) Within one year prior to the expiration of the credit  
17 established in this article, the State Tax Commissioner shall  
18 provide a written report to the Legislature setting forth the  
19 utilization of the credit, the benefit of the credit and the  
20 overall cost of the credit.

21 **§11-6D-9. Carryover credit allowed; recapture of credit.**

22 (a) If the tax credit allowed under this article in any  
23 taxable year exceeds the taxpayer's tax liability as determined in  
24 accordance with article twenty-one, article twenty-three or article  
25 twenty-four of this chapter for that taxable year, the excess may

1 be applied for succeeding taxable years until the full amount of  
2 the excess tax credit is used.

3 (b) No carry back to a prior taxable year is allowed for the  
4 amount of any unused credit in any taxable year.

5 (c) A tax credit is subject to recapture, elimination or  
6 reduction if it is determined by the State Tax Commissioner that a  
7 taxpayer was not entitled to the credit, in whole or in part, in  
8 the tax year in which it was claimed by the taxpayer. The amount  
9 of credit that flows through to equity owners of a passthrough  
10 entity may be recaptured or recovered from either the taxpayer or  
11 the equity owners in the discretion of the Tax Commissioner.

12 **ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL**

13 **ADDITIONS TO MANUFACTURING FACILITIES.**

14 **§11-6F-2. Definitions.**

15 As used in this article, the term:

16 (a) "Certified capital addition property" means all real  
17 property and personal property included within or to be included  
18 within a qualified capital addition to a manufacturing facility  
19 that has been certified by the State Tax Commissioner in accordance  
20 with section four of this article: *Provided*, That airplanes and  
21 motor vehicles licensed by the Division of Motor Vehicles shall in  
22 no event constitute certified capital addition property.

23 (b) "Manufacturing" means any business activity classified as  
24 having a sector identifier, consisting of the first two digits of  
25 the six-digit North American Industry Classification System code



1 number of thirty-one, thirty-two or thirty-three or the six digit  
2 code number 211112.

3 (c) "Manufacturing facility" means any factory, mill, chemical  
4 plant, refinery, warehouse, building or complex of buildings,  
5 including land on which it is located, and all machinery,  
6 equipment, improvements and other real property and personal  
7 property located at or within the facility used in connection with  
8 the operation of the facility in a manufacturing business.

9 (d) "Personal property" means all property specified in  
10 subdivision (q), section ten, article two, chapter two of this code  
11 and includes, but is not limited to, furniture, fixtures, machinery  
12 and equipment, pollution control equipment, computers and related  
13 data processing equipment, spare parts and supplies.

14 (e) "Qualified capital addition to a manufacturing facility"  
15 means all real property and personal property, the combined  
16 original cost of all of the property which exceeds \$50 million to  
17 be constructed, located or installed at or within two miles of a  
18 manufacturing facility owned or operated by the person making the  
19 capital addition that has a total original cost before the capital  
20 addition of at least \$100 million. If the capital addition is made  
21 in a steel, chemical or polymer alliance zone as designated from  
22 time-to-time by executive order of the Governor, then the person  
23 making the capital addition may for purposes of satisfying the  
24 requirements of this subsection join in a multiparty project with  
25 a person owning or operating a manufacturing facility that has a  
26 total original cost before the capital addition of at least \$100

1 million if the capital addition creates additional production  
2 capacity of existing or related products or feedstock or derivative  
3 products respecting the manufacturing facility, consists of a  
4 facility used to store, handle, process or produce raw materials  
5 for the manufacturing facility, consists of a facility used to  
6 store, handle or process natural gas to produce fuel for the  
7 generation of steam or electricity for the manufacturing facility  
8 or consists of a facility that generates steam or electricity for  
9 the manufacturing facility, including but not limited to a facility  
10 that converts coal to a gas or liquid for the manufacturing  
11 facility's use in heating, manufacturing or generation of  
12 electricity. Beginning on and after July 1, 2011, when the new  
13 capital addition is a facility that is or will be classified under  
14 the North American Industry Classification System with a six digit  
15 code number 211112, or is a manufacturing facility that uses  
16 product produced at a facility with code number 211112, then  
17 wherever the term "100 million" is used in this subsection, the  
18 term "20 million" shall be substituted and where the term "50  
19 million" is used, the term "10 million" shall be substituted.

20 (f) "Real property" means all property specified in  
21 subdivision (p), section ten, article two, chapter two of this code  
22 and includes, but is not limited to, lands, buildings and  
23 improvements on the land such as sewers, fences, roads, paving and  
24 leasehold improvements.

25 **§11-6F-3. Tax treatment of certified capital addition property.**

26 Notwithstanding any other provisions of law, the value of

1 certified capital addition property, for purposes of ad valorem  
2 property taxation under this chapter, is its salvage value, which  
3 for purposes of this article is five percent of the certified  
4 capital addition property's original cost. For capital additions  
5 certified on or after July 1, 2011, the value of the land before  
6 any improvements shall be subtracted from the value of the capital  
7 addition and the unimproved land value shall not be given salvage  
8 value treatment.

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

10 **§11-13Q-20. Tax credit review and accountability.**

11 (a) Beginning on February 1, 2006, and every third year  
12 thereafter, the commissioner shall submit to the Governor, the  
13 President of the Senate and the Speaker of the House of Delegates  
14 a tax credit review and accountability report evaluating the cost  
15 effectiveness of the economic opportunity credit during the most  
16 recent three-year period for which information is available. The  
17 criteria to be evaluated shall include, but not be limited to, for  
18 each year of the three-year period:

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

20 (2) The net number of new jobs created by all taxpayers  
21 claiming the credit;

22 (3) The cost of the credit;

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

24 (5) Comparison of employment trends for an industry and for  
25 taxpayers within the industry that claim the credit.

26 (b) Taxpayers claiming the credit shall provide any

1 information the Tax Commissioner may require to prepare the report:  
2 *Provided*, That the information provided is subject to the  
3 confidentiality and disclosure provisions of sections five-d and  
4 five-s, article ten of this chapter.

5 (c) On or before February 1, 2013, the Department of Commerce,  
6 in consultation with the Tax Commissioner, the Department of  
7 Transportation and the Department of Environmental Protection shall  
8 submit to the Governor, the President of the Senate and the Speaker  
9 of the House of Delegates a report of the impact of all the tax  
10 credits and other economic incentives provided in the act of the  
11 Legislature which amended and reenacted this section during 2011  
12 upon economic development in this state, including but not limited  
13 to the creation of jobs in this state, upon the state's  
14 infrastructure, including but not limited to the need for  
15 construction or maintenance of the roads and highways of the state,  
16 upon the natural resources of the state, and upon public and  
17 private property interests in the state.

18 **ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.**

19 **§11-13R-3. Definitions.**

20 (a) *General.* -- When used in this article or in the  
21 administration of this article, terms defined in subsection (b) of  
22 this section have the meanings ascribed to them by this section  
23 unless a different meaning is clearly required by either the  
24 context in which the term is used or by specific definition in this  
25 article.

1 (b) *Terms defined.* --

2 (1) "Base amount" means:

3 (A) The average annual combined qualified research and  
4 development expenditure for the three taxable years immediately  
5 preceding the taxable year for which a credit is claimed under this  
6 article;

7 (B) For a taxpayer that has filed a tax return under article  
8 twenty-three of this chapter for fewer than three but at least one  
9 prior taxable year, determined on the basis of all filings by the  
10 taxpayer's controlled group, the base amount is the average annual  
11 combined qualified research and development expenditure for the  
12 number of immediately preceding taxable years, other than short  
13 taxable years, during which the taxpayer has filed a tax return  
14 under article twenty-three of this chapter; or

15 (C) For a taxpayer that has not filed a tax return under  
16 article twenty-three of this chapter for at least one taxable year,  
17 determined on the basis of all filings by the taxpayer's controlled  
18 group, the base amount is zero.

19 (2) "Commissioner" and "Tax Commissioner" are used  
20 interchangeably herein and mean the Tax Commissioner of the State  
21 of West Virginia or his or her delegate.

22 (3) "Controlled group" means a controlled group as defined by  
23 section 1563 of the Internal Revenue Code of 1986, as amended.

24 (4) "Corporation" means any corporation, limited liability  
25 company, joint-stock company or association and any business  
26 conducted by a trustee or trustees wherein interest or ownership is

1 evidenced by a certificate of interest or ownership or similar  
2 written instrument.

3 (5) "Delegate" in the phrase "or his or her delegate," when  
4 used in reference to the Tax Commissioner, means any officer or  
5 employee of the State Tax Division of the Department of Tax and  
6 Revenue duly authorized by the Tax Commissioner directly, or  
7 indirectly by one or more redelegations of authority, to perform  
8 the functions mentioned or described in this article.

9 (6) "Eligible taxpayer" means any person that is subject to  
10 the tax imposed by article twenty-three or article twenty-four of  
11 this chapter that is engaged in qualified research and development  
12 that has paid or incurred investment in qualified research and  
13 development credit property or that has paid or incurred qualified  
14 research and development expenses as defined in section four of  
15 this article. In the case of a sole proprietorship subject to  
16 neither the tax imposed by article twenty-three nor the tax imposed  
17 by article twenty-four, the term "eligible taxpayer" means any sole  
18 proprietor who is subject to the tax imposed by article twenty-one  
19 of this chapter and who is engaged in qualified research and  
20 development that has paid or incurred investment in qualified  
21 research and development credit property or that has paid or  
22 incurred qualified research and development expenses as defined in  
23 section four of this article.

24 (7) "Partnership" includes a syndicate, group, pool, joint  
25 venture or other unincorporated organization through or by means of  
26 which any business, financial operation or venture is carried on,

1 and which is not a trust or estate, a corporation or a sole  
2 proprietorship. The term "partner" includes a member in such a  
3 syndicate, group, pool, joint venture or other organization.

4 (8) "Person" includes any natural person, corporation, limited  
5 liability company or partnership.

6 (9) "Qualified research and development credit property" means  
7 depreciable property purchased for the conduct of qualified  
8 research and development.

9 (10) "Research and development" means systematic scientific,  
10 engineering or technological study and investigation in a field of  
11 knowledge in the physical, computer or software sciences often  
12 involving the formulation of hypotheses and experimentation for the  
13 purpose of revealing new facts, theories or principles or  
14 increasing scientific knowledge which may reveal the basis for new  
15 or enhanced products, equipment or manufacturing processes.

16 (A) Research and development includes, but is not limited to,  
17 design, refinement and testing of prototypes of new or improved  
18 products or equipment or the design, refinement and testing of  
19 manufacturing processes before commercial sales relating thereto  
20 have begun. For purposes of this section, commercial sales  
21 includes, but is not limited to, sales of prototypes or sales for  
22 market testing.

23 (B) Research and development does not include:

24 (i) Market research;

25 (ii) Sales research;

26 (iii) Efficiency surveys;

- 1 (iv) Consumer surveys;
- 2 (v) Product market testing;
- 3 (vi) Product testing by product consumers or through consumer  
4 surveys for evaluation of consumer product performance or consumer  
5 product usability;
- 6 (vii) The ordinary testing or inspection of materials or  
7 products for quality control;
- 8 (viii) Management studies;
- 9 (ix) Advertising;
- 10 (x) Promotions;
- 11 (xi) The acquisition of another's patent, model, production or  
12 process or investigation or evaluation of the value or investment  
13 potential related thereto;
- 14 (xii) Research in connection with literary, historical or  
15 similar activities;
- 16 (xiii) Research in the social sciences, economics, humanities  
17 or psychology and other nontechnical activities; and
- 18 (xiv) The providing of sales services or any other service,  
19 whether technical service or nontechnical service.
- 20 (11) "Related person" means:
- 21 (A) A corporation, limited liability company, partnership,  
22 association or trust controlled by the taxpayer;
- 23 (B) An individual, corporation, limited liability company,  
24 partnership, association or trust that is in control of the  
25 taxpayer;
- 26 (C) A corporation, limited liability company, partnership,



1 association or trust controlled by an individual, corporation,  
2 partnership, association or trust that is in control of the  
3 taxpayer; or

4 (D) A member of the same controlled group as the taxpayer.

5 For purposes of this article, "control", with respect to a  
6 corporation, means ownership, directly or indirectly, of stock  
7 possessing fifty percent or more of the total combined voting power  
8 of all classes of the stock of the corporation entitled to vote.

9 "Control", with respect to a trust, means ownership, directly or  
10 indirectly, of fifty percent or more of the beneficial interest in  
11 the principal or income of the trust. The ownership of stock in a  
12 corporation, of a capital or profits interest in a partnership or  
13 association or of a beneficial interest in a trust is determined in  
14 accordance with the rules for constructive ownership of stock  
15 provided in section 267(c) of the United States Internal Revenue  
16 Code of 1986, as amended, other than paragraph (3) of that section.

17 (12) "Taxpayer" means any person subject to the tax imposed by  
18 article twenty-three or twenty-four of this chapter or both. In  
19 the case of a sole proprietorship subject to neither the tax  
20 imposed by article twenty-three nor the tax imposed by article  
21 twenty-four, the term "taxpayer" means any sole proprietor who is  
22 subject to the tax imposed by article twenty-one of this chapter.

23 (13) "This code" means the Code of West Virginia, 1931, as  
24 amended.

25 (14) "This state" means the State of West Virginia.

26 **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

1 **§11-13S-3. Definitions.**

2 (a) Any term used in this article has the meaning ascribed by  
3 this section unless a different meaning is clearly required by the  
4 context of its use or by definition in this article.

5 (b) For purpose of this article, the term:

6 (1) "Eligible taxpayer" means an industrial taxpayer who  
7 purchases new property for the purpose of industrial expansion or  
8 for the purpose of industrial revitalization of an existing  
9 industrial facility in this state.

10 (2) "Industrial expansion" means capital investment in a new  
11 or expanded industrial facility in this state.

12 (3) "Industrial facility" means any factory, mill, plant,  
13 refinery, warehouse, building or complex of buildings located  
14 within this state, including the land on which it is located, and  
15 all machinery, equipment and other real and tangible personal  
16 property located at or within the facility primarily used in  
17 connection with the operation of the manufacturing business.

18 (4) "Industrial revitalization" or "revitalization" means  
19 capital investment in an industrial facility located in this state  
20 to replace or modernize buildings, equipment, machinery and other  
21 tangible personal property used in connection with the operation of  
22 the facility in an industrial business of the taxpayer including  
23 the acquisition of any real property necessary to the industrial  
24 revitalization.

25 (5) "Industrial taxpayer" means any taxpayer who is primarily  
26 engaged in a manufacturing business.

1           (6) "Manufacturing" means any business activity classified as  
2 having a sector identifier, consisting of the first two digits of  
3 the six-digit North American Industry Classification System code  
4 number, of thirty-one, thirty-two or thirty-three or the six digit  
5 code number 211112.

6           (7) "Property purchased for manufacturing investment" means  
7 real property, and improvements thereto, and tangible personal  
8 property but only if the property was constructed or purchased on  
9 or after January 1, 2003, for use as a component part of a new,  
10 expanded or revitalized industrial facility. This term includes  
11 only that tangible personal property with respect to which  
12 depreciation, or amortization in lieu of depreciation, is allowable  
13 in determining the federal income tax liability of the industrial  
14 taxpayer, that has a useful life, at the time the property is  
15 placed in service or use in this state, of four years or more.  
16 Property acquired by written lease for a primary term of ten years  
17 or longer, if used as a component part of a new or expanded  
18 industrial facility, is included within this definition.

19           (A) "Property purchased for manufacturing investment" does not  
20 include:

21           (i) Repair costs, including materials used in the repair,  
22 unless for federal income tax purposes, the cost of the repair must  
23 be capitalized and not expensed;

24           (ii) Motor vehicles licensed by the Department of Motor  
25 Vehicles;

26           (iii) Airplanes;

1 (iv) Off-premises transportation equipment;

2 (v) Property which is primarily used outside this state; and

3 (vi) Property which is acquired incident to the purchase of

4 the stock or assets of an industrial taxpayer which property was or

5 had been used by the seller in his or her industrial business in

6 this state or in which investment was previously the basis of a

7 credit against tax taken under any other article of this chapter.

8 (B) Purchases or acquisitions of land or depreciable property

9 qualify as purchases of property purchased for manufacturing

10 investment for purposes of this article only if:

11 (i) The property is not acquired from a person whose

12 relationship to the person acquiring it would result in the

13 disallowance of deductions under section 267 or 707(b) of the

14 United States Internal Revenue Code of 1986, as amended;

15 (ii) The property is not acquired from a related person or by

16 one component member of a controlled group from another component

17 member of the same controlled group. The Tax Commissioner may

18 waive this requirement if the property was acquired from a related

19 party for its then fair market value; and

20 (iii) The basis of the property for federal income tax

21 purposes, in the hands of the person acquiring it, is not

22 determined, in whole or in part, by reference to the federal

23 adjusted basis of the property in the hands of the person from whom

24 it was acquired or under Section 1014(e) of the United States

25 Internal Revenue Code of 1986, as amended.

26 (8) "Qualified manufacturing investment" means that amount

1 determined under section five of this article as qualified  
2 manufacturing investment.

3 (9) "Taxpayer" means any person subject to any of the taxes  
4 imposed by article thirteen-a, twenty-three or twenty-four of this  
5 chapter or any combination of those articles of this chapter.

6 **§11-13S-4. Amount of credit allowed for manufacturing investment.**

7 (a) *Credit allowed.* -- There is allowed to eligible taxpayers  
8 and to persons described in subdivision (5), subsection (b) of this  
9 section a credit against the taxes imposed by articles thirteen-a,  
10 twenty-three and twenty-four of this chapter: *Provided,* That a tax  
11 credit for any eligible taxpayer operating a business activity  
12 classified as having a sector identifier, consisting of the six  
13 digit code number 211112 such eligible taxpayer must comply with  
14 the provisions of subsection (e) of this section for all  
15 construction related thereto in order to be eligible for any credit  
16 under this article. The amount of credit shall be determined as  
17 hereinafter provided in this section.

18 (b) *Amount of credit allowable.* -- The amount of allowable  
19 credit under this article is equal to five percent of the qualified  
20 manufacturing investment (as determined in section five of this  
21 article) and shall reduce the severance tax, imposed under article  
22 thirteen-a of this chapter, the business franchise tax imposed  
23 under article twenty-three of this chapter and the corporation net  
24 income tax imposed under article twenty-four of this chapter, in  
25 that order, subject to the following conditions and limitations:

26 (1) The amount of credit allowable is applied over a ten-year

1 period, at the rate of one-tenth thereof per taxable year,  
2 beginning with the taxable year in which the property purchased for  
3 manufacturing investment is first placed in service or use in this  
4 state;

5       (2) *Severance tax.* -- The credit is applied to reduce the  
6 severance tax imposed under article thirteen-a of this chapter  
7 (determined before application of the credit allowed by section  
8 three, article twelve-b of this chapter and before any other  
9 allowable credits against tax and before application of the annual  
10 exemption allowed by section ten, article thirteen-a of this  
11 chapter). The amount of annual credit allowed may not reduce the  
12 severance tax, imposed under article thirteen-a of this chapter,  
13 below fifty percent of the amount which would be imposed for such  
14 taxable year in the absence of this credit against tax: *Provided,*  
15 That for tax years beginning on and after January 1, 2009, the  
16 amount of annual credit allowed may not reduce the severance tax,  
17 imposed under article thirteen-a of this chapter, below forty  
18 percent of the amount which would be imposed for such taxable year  
19 in the absence of this credit against tax. When in any taxable  
20 year the taxpayer is entitled to claim credit under this article  
21 and article thirteen-d of this chapter, the total amount of all  
22 credits allowable for the taxable year may not reduce the amount of  
23 the severance tax, imposed under article thirteen-a of this  
24 chapter, below fifty percent of the amount which would be imposed  
25 for such taxable year (determined before application of the credit  
26 allowed by section three, article twelve-b of this chapter and

1 before any other allowable credits against tax and before  
2 application of the annual exemption allowed by section ten, article  
3 thirteen-a of this chapter): *Provided, however,* That when in any  
4 taxable year beginning on and after January 1, 2009, the taxpayer  
5 is entitled to claim credit under this article and article  
6 thirteen-d of this chapter, the total amount of all credits  
7 allowable for the taxable year may not reduce the amount of the  
8 severance tax imposed under article thirteen-a of this chapter,  
9 below forty percent of the amount which would be imposed for such  
10 taxable year as determined before application of the credit allowed  
11 by section three, article twelve-b of this chapter and before any  
12 other allowable credits against tax and before application of the  
13 annual exemption allowed by section ten, article thirteen-a of this  
14 chapter;

15 (3) *Business franchise tax.* --

16 After application of subdivision (2) of this subsection, any  
17 unused credit is next applied to reduce the business franchise tax  
18 imposed under article twenty-three of this chapter (determined  
19 after application of the credits against tax provided in section  
20 seventeen, article twenty-three of this chapter, but before  
21 application of any other allowable credits against tax). The  
22 amount of annual credit allowed will not reduce the business  
23 franchise tax, imposed under article twenty-three of this chapter,  
24 below fifty percent of the amount which would be imposed for such  
25 taxable year in the absence of this credit against tax: *Provided,*  
26 That for tax years beginning on and after January 1, 2009, the

1 amount of annual credit allowed will not reduce the business  
2 franchise tax, imposed under article twenty-three of this chapter,  
3 below forty percent of the amount which would be imposed for such  
4 taxable year in the absence of this credit against tax. When in  
5 any taxable year the taxpayer is entitled to claim credit under  
6 this article and article thirteen-d of this chapter, the total  
7 amount of all credits allowable for the taxable year will not  
8 reduce the amount of the business franchise tax, imposed under  
9 article twenty-three of this chapter, below fifty percent of the  
10 amount which would be imposed for the taxable year (determined  
11 after application of the credits against tax provided in section  
12 seventeen, article twenty-three of this chapter, but before  
13 application of any other allowable credits against tax): *Provided,*  
14 *however,* That when in any taxable year beginning on and after  
15 January 1, 2009, the taxpayer is entitled to claim credit under  
16 this article and article thirteen-d of this chapter, the total  
17 amount of all credits allowable for the taxable year will not  
18 reduce the amount of the business franchise tax, imposed under  
19 article twenty-three of this chapter, below forty percent of the  
20 amount which would be imposed for the taxable year as determined  
21 after application of the credits against tax provided in section  
22 seventeen, article twenty-three of this chapter, but before  
23 application of any other allowable credits against tax;

24 (4) *Corporation net income tax.* --

25 After application of subdivision (3) of this subsection, any  
26 unused credit is next applied to reduce the corporation net income



1 tax imposed under article twenty-four of this chapter (determined  
2 before application of any other allowable credits against tax).  
3 The amount of annual credit allowed will not reduce corporation net  
4 income tax, imposed under article twenty-four of this chapter,  
5 below fifty percent of the amount which would be imposed for such  
6 taxable year in the absence of this credit against tax: *Provided,*  
7 That for tax years beginning on and after January 1, 2009, the  
8 amount of annual credit allowed will not reduce corporation net  
9 income tax, imposed under article twenty-four of this chapter,  
10 below forty percent of the amount which would be imposed for such  
11 taxable year in the absence of this credit against tax. When in  
12 any taxable year the taxpayer is entitled to claim credit under  
13 this article and article thirteen-d of this chapter, the total  
14 amount of all credits allowable for the taxable year may not reduce  
15 the amount of the corporation net income tax, imposed under article  
16 twenty-four of this chapter, below fifty percent of the amount  
17 which would be imposed for the taxable year (determined before  
18 application of any other allowable credits against tax): *Provided,*  
19 *however,* That when in any taxable year beginning on and after  
20 January 1, 2009, the taxpayer is entitled to claim credit under  
21 this article and article thirteen-d of this chapter, the total  
22 amount of all credits allowable for the taxable year may not reduce  
23 the amount of the corporation net income tax, imposed under article  
24 twenty-four of this chapter, below forty percent of the amount  
25 which would be imposed for the taxable year as determined before  
26 application of any other allowable credits against tax;

1           (5) *Pass-through entities.* --

2           (A) If the eligible taxpayer is a limited liability company,  
3 small business corporation or a partnership, then any unused credit  
4 (after application of subdivisions (2), (3) and (4) of this  
5 subsection) is allowed as a credit against the taxes imposed by  
6 article twenty-four of this chapter on owners of the eligible  
7 taxpayer on the conduit income directly derived from the eligible  
8 taxpayer by its owners. Only those portions of the tax imposed by  
9 article twenty-four of this chapter that are imposed on income  
10 directly derived by the owner from the eligible taxpayer are  
11 subject to offset by this credit.

12           (B) The amount of annual credit allowed will not reduce  
13 corporation net income tax, imposed under article twenty-four of  
14 this chapter, below fifty percent of the amount which would be  
15 imposed on the conduit income directly derived from the eligible  
16 taxpayer by each owner for such taxable year in the absence of this  
17 credit against the taxes (determined before application of any  
18 other allowable credits against tax): *Provided*, That for tax years  
19 beginning on and after January 1, 2009, the amount of annual credit  
20 allowed will not reduce corporation net income tax, imposed under  
21 article twenty-four of this chapter, below forty percent of the  
22 amount which would be imposed on the conduit income directly  
23 derived from the eligible taxpayer by each owner for such taxable  
24 year in the absence of this credit against the taxes as determined  
25 before application of any other allowable credits against tax.

26           (C) When in any taxable year the taxpayer is entitled to claim

1 credit under this article and article thirteen-d of this chapter,  
2 the total amount of all credits allowable for the taxable year will  
3 not reduce the corporation net income tax imposed on the conduit  
4 income directly derived from the eligible taxpayer by each owner  
5 below fifty percent of the amount that would be imposed for such  
6 taxable year on the conduit income (determined before application  
7 of any other allowable credits against tax): *Provided*, That when in  
8 any taxable year beginning on and after January 1, 2009, the  
9 taxpayer is entitled to claim credit under this article and article  
10 thirteen-d of this chapter, the total amount of all credits  
11 allowable for the taxable year will not reduce the corporation net  
12 income tax imposed on the conduit income directly derived from the  
13 eligible taxpayer by each owner below forty percent of the amount  
14 that would be imposed for such taxable year on the conduit income  
15 as determined before application of any other allowable credits  
16 against tax;

17       (6) Small business corporations, limited liability companies,  
18 partnerships and other unincorporated organizations shall allocate  
19 any unused credit after application of subdivisions (2), (3) and  
20 (4) of this subsection among their members in the same manner as  
21 profits and losses are allocated for the taxable year; and

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

24       (c) No carryover to a subsequent taxable year or carryback to  
25 a prior taxable year is allowed for the amount of any unused  
26 portion of any annual credit allowance. Any unused credit is

1 forfeited.

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

3 (1) *Application required.* -- Notwithstanding any provision of  
4 this article to the contrary, no credit is allowed or may be  
5 applied under this article for any qualified investment property  
6 placed in service or use until the person claiming the credit makes  
7 written application to the Tax Commissioner for allowance of credit  
8 as provided in this section. This application shall be in the form  
9 prescribed by the Tax Commissioner and shall provide the number and  
10 type of jobs created, if any, by the manufacturing investment, the  
11 average wage rates and benefits paid to employees filling the new  
12 jobs and any other information the Tax Commissioner may require.  
13 This application shall be filed with the Tax Commissioner no later  
14 than the last day for filing the annual return, determined by  
15 including any authorized extension of time for filing the return,  
16 required under article twenty-one or twenty-four of this chapter  
17 for the taxable year in which the property to which the credit  
18 relates is placed in service or use.

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

24 (e) (1) Any person or entity undertaking any construction  
25 related to any business activity included within North American  
26 Industrial Code six-digit code number 211112, the value of which is

1 an amount equal to or greater than \$500,000, shall hire at least  
2 seventy-five percent of employees for said construction from the  
3 local labor market, to be rounded off, with at least two employees  
4 from outside the local labor market permissible for each employer  
5 per project, "the local labor market" being defined as every county  
6 in West Virginia and any county outside of West Virginia if any  
7 portion of that county is within fifty miles of the border of West  
8 Virginia.

9       (2) Any person or entity unable to employ the minimum number  
10 of employees from the local labor market shall inform the nearest  
11 office of the bureau of employment programs' division of employment  
12 services of the number of qualified employees needed and provide a  
13 job description of the positions to be filled.

14       (3) If, within three business days following the placing of a  
15 job order, the division is unable to refer any qualified job  
16 applicants to the person or entity engaged in said construction or  
17 refers less qualified job applicants than the number requested,  
18 then the division shall issue a waiver to the person or entity  
19 engaged in said construction stating the unavailability of  
20 applicants and shall permit the person or entity engaged in said  
21 construction to fill any positions covered by the waiver from  
22 outside the local labor market. The waiver shall be either oral or  
23 in writing and shall be issued within the prescribed three days.  
24 A waiver certificate shall be sent to the person or entity engaged  
25 in said construction for its permanent project records.

26 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

1 **§11-15-8d. Limitations on right to assert exemptions.**

2 (a) Persons who perform "contracting" as defined in section  
3 two of this article or persons acting in an agency capacity may not  
4 assert any exemption to which the purchaser of such contracting  
5 services or the principal is entitled. Any statutory exemption to  
6 which a taxpayer may be entitled is invalid unless the tangible  
7 personal property or taxable service is actually purchased by such  
8 taxpayer and is directly invoiced to and paid by such taxpayer.  
9 This section does not apply to purchases by an employee for his or  
10 her employer, purchases by a partner for his or her partnership or  
11 purchases by a duly authorized officer of a corporation, or  
12 unincorporated organization, for his or her corporation or  
13 unincorporated organization so long as the purchase is invoiced to  
14 and paid by the employer, partnership, corporation or  
15 unincorporated organization.

16 (b) *Transition rule.* -- This section does not apply to  
17 purchases of tangible personal property or taxable services in  
18 fulfillment of a purchasing agent or procurement agent contract  
19 executed and legally binding on the parties thereto prior to  
20 September 15, 1999. This transition rule does not apply to any  
21 purchases of tangible personal property or taxable services made  
22 under such a contract after August 31, 1991 and this transition  
23 rule does not apply if the primary purpose of the purchasing agent  
24 or procurement agent contract was to avoid payment of consumers  
25 sales and use taxes. Effective July 1, 2007, this section does not  
26 apply to purchases of services, machinery, supplies or materials,

1 except gasoline and special fuel, to be directly used or consumed  
2 in the construction, alteration, repair or improvement of a new or  
3 existing building or structure by a person performing  
4 "contracting", as defined in section two of this article, if the  
5 purchaser of the "contracting" services would be entitled to claim  
6 the refundable exemption under subdivision (2), subsection (b),  
7 section nine of this article had it purchased the services,  
8 machinery, supplies or materials. Effective July 1, 2009, this  
9 section does not apply to purchases of services, computers,  
10 servers, building materials and tangible personal property, except  
11 purchases of gasoline and special fuel, to be installed into a  
12 building or facility or directly used or consumed in the  
13 construction, alteration, repair or improvement of a new or  
14 existing building or structure by a person performing  
15 "contracting", as defined in section two of this article, if the  
16 purchaser of the "contracting" services would be entitled to claim  
17 the exemption under subdivision (7), subsection (a), section nine-h  
18 of this article. This section shall not apply to qualified  
19 purchases of computers and computer software, primary material  
20 handling equipment, racking and racking systems, and their  
21 components, or to qualified purchases of building materials and  
22 certain tangible personal property, as those terms are defined in  
23 section nine-n of this article, by a person performing  
24 "contracting," as defined in section two of this article, if the  
25 purchaser of the "contracting" services would be entitled to claim  
26 the refundable exemption under section nine-n of this article.

1 Purchases of gasoline and special fuel shall not be treated as  
2 exempt pursuant to this section.

3 (c) Effective July 1, 2011, notwithstanding any other  
4 provision of this code to the contrary, this section shall apply as  
5 to purchases of services, machinery, supplies or materials, except  
6 gasoline and special fuel, to be directly used or consumed in the  
7 construction, alteration, repair or improvement of a new or  
8 existing natural gas compressor station or gas transmission line  
9 having a diameter of twenty inches or more by a person performing  
10 "contracting", as defined in section two of this article, even  
11 though the purchaser of the "contracting" services would be  
12 entitled to claim the refundable exemption under subdivision (2),  
13 subsection (b), section nine of this article had it purchased the  
14 services, machinery, supplies or materials, unless the person or  
15 entity performing "contracting" under this subsection, as the term  
16 "contracting" is defined in section two of this article, complies  
17 with subsection (e), section four, article thirteen-s of this  
18 chapter.

19 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

20 **ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.**

21 **§24-2F-3. Definitions.**

22 Unless the context clearly requires a different meaning, as  
23 used in this article:

24 (1) "Advanced coal technology" means a technology that is used  
25 in a new or existing energy generating facility to reduce airborne



1 carbon emissions associated with the combustion or use of coal and  
2 includes, but is not limited to, carbon dioxide capture and  
3 sequestration technology, supercritical technology, advanced  
4 supercritical technology as that technology is determined by the  
5 Public Service Commission, ultrasupercritical technology and  
6 pressurized fluidized bed technology and any other resource,  
7 method, project or technology certified by the commission as  
8 advanced coal technology.

9 (2) "Alternative and renewable energy portfolio standard" or  
10 "portfolio standard" means a requirement in any given year that  
11 requires an electric utility to own credits in an amount equal to  
12 a certain percentage of electric energy sold in the preceding  
13 calendar year by the electric utility to retail customers in this  
14 state.

15 (3) "Alternative energy resources" means any of the following  
16 resources, methods or technologies for the production or generation  
17 of electricity:

18 (A) Advanced coal technology;

19 (B) Coal bed methane;

20 (C) Natural gas, including any component of raw natural gas;

21 (D) Fuel produced by a coal gasification or liquefaction  
22 facility;

23 (E) Synthetic gas;

24 (F) Integrated gasification combined cycle technologies;

25 (G) Waste coal;

26 (H) Tire derived fuel;

1 (I) Pumped storage hydroelectric projects; and

2 (J) Any other resource, method, project or technology  
3 certified as an alternative energy resource by the Public Service  
4 Commission.

5 (4) "Alternative and renewable energy resource credit" or  
6 "credit" means a tradable instrument that is used to establish,  
7 verify and monitor the generation of electricity from alternative  
8 and renewable energy resource facilities, energy efficiency or  
9 demand-side energy initiative projects or greenhouse gas emission  
10 reduction or offset projects.

11 (5) "Alternative energy resource facility" means a facility or  
12 equipment that generates electricity from alternative energy  
13 resources.

14 (6) "Commission" or "Public Service Commission" means the  
15 Public Service Commission of West Virginia as continued pursuant to  
16 section three, article one of this chapter.

17 (7) "Customer-generator" means an electric retail customer who  
18 owns and operates a customer-sited generation project utilizing an  
19 alternative or renewable energy resource or a net metering system  
20 in this state.

21 (8) "Electric utility" means any electric distribution company  
22 or electric generation supplier that sells electricity to retail  
23 customers in this state. Unless specifically provided for  
24 otherwise, for the purposes of this article, the term "electric  
25 utility" may not include rural electric cooperatives, municipally-  
26 owned electric facilities or utilities serving less than thirty

1 thousand residential electric customers in West Virginia.

2 (9) "Energy efficiency or demand-side energy initiative  
3 project" means a project in this state that promotes customer  
4 energy efficiency or the management of customer consumption of  
5 electricity through the implementation of:

6 (A) Energy efficiency technologies, equipment, management  
7 practices or other strategies utilized by residential, commercial,  
8 industrial, institutional or government customers that reduce  
9 electricity consumption by those customers;

10 (B) Load management or demand response technologies,  
11 equipment, management practices, interruptible or curtailable  
12 tariffs, energy storage devices or other strategies in residential,  
13 commercial, industrial, institutional and government customers that  
14 shift electric load from periods of higher demand to periods of  
15 lower demand;

16 (C) Industrial by-product technologies consisting of the use  
17 of a by-product from an industrial process, including, but not  
18 limited to, the reuse of energy from exhaust gases or other  
19 manufacturing by-products that can be used in the direct production  
20 of electricity at the customer's facility;

21 (D) Customer-sited generation, demand-response, energy  
22 efficiency or peak demand reduction capabilities, whether new or  
23 existing, that the customer commits for integration into the  
24 electric utility's demand-response, energy efficiency or peak  
25 demand reduction programs; or

26 (E) Infrastructure and modernization projects that help

1 promote energy efficiency, reduce energy losses or shift load from  
2 periods of higher demand to periods of lower demand, including the  
3 modernization of metering and communications, (also known as "smart  
4 grid"), distribution automation, energy storage, distributed energy  
5 resources and investments to promote the electrification of  
6 transportation.

7 (10) "Greenhouse gas emission reduction or offset project"  
8 means a project to reduce or offset greenhouse gas emissions from  
9 sources in this state other than the electric utility's own  
10 generating and energy delivery operations. Greenhouse gas emission  
11 reduction or offset projects include, but are not limited to:

12 (A) Methane capture and destruction from landfills, coal mines  
13 or farms;

14 (B) Forestation, afforestation or reforestation; and

15 (C) Nitrous oxide or carbon dioxide sequestration through  
16 reduced fertilizer use or no-till farming.

17 (11) "Net metering" means measuring the difference between  
18 electricity supplied by an electric utility and electricity  
19 generated from an alternative or renewable energy resource facility  
20 owned or operated by an electric retail customer when any portion  
21 of the electricity generated from the alternative or renewable  
22 energy resource facility is used to offset part or all of the  
23 electric retail customer's requirements for electricity.

24 (12) "Reclaimed surface mine" means a surface mine, as that  
25 term is defined in section three, article three, chapter twenty-two  
26 of this code, that is reclaimed or is being reclaimed in accordance

1 with state or federal law.

2 (13) "Renewable energy resource" means any of the following  
3 resources, methods, projects or technologies for the production or  
4 generation of electricity:

5 (A) Solar photovoltaic or other solar electric energy;

6 (B) Solar thermal energy;

7 (C) Wind power;

8 (D) Run of river hydropower;

9 (E) Geothermal energy, which means a technology by which  
10 electricity is produced by extracting hot water or steam from  
11 geothermal reserves in the earth's crust to power steam turbines  
12 that drive generators to produce electricity;

13 (F) Biomass energy, which means a technology by which  
14 electricity is produced from a nonhazardous organic material that  
15 is available on a renewable or recurring basis, including pulp mill  
16 sludge;

17 (G) Biologically derived fuel including methane gas, ethanol  
18 or biodiesel fuel;

19 (H) Fuel cell technology, which means any electrochemical  
20 device that converts chemical energy in a hydrogen-rich fuel  
21 directly into electricity, heat and water without combustion;

22 (I) Recycled energy, which means useful thermal, mechanical or  
23 electrical energy produced from: (i) Exhaust heat from any  
24 commercial or industrial process; (ii) waste gas, waste fuel or  
25 other forms of energy that would otherwise be flared, incinerated,  
26 disposed of or vented; and (iii) electricity or equivalent

1 mechanical energy extracted from a pressure drop in any gas,  
2 excluding any pressure drop to a condenser that subsequently vents  
3 the resulting heat; and

4 (J) Any other resource, method, project or technology  
5 certified by the commission as a renewable energy resource.

6 (14) "Renewable energy resource facility" means a facility or  
7 equipment that generates electricity from renewable energy  
8 resources.

9 (15) "Waste coal" means a technology by which electricity is  
10 produced by the combustion of the by-product, waste or residue  
11 created from processing coal, such as gob.