

1 **H. B. 3040**

2
3 (By Delegates Skaff, T. Campbell, Walters,
4 Guthrie, Kominar, Poore and Brown)

5 [Introduced February 7, 2011; referred to the
6 Committee on Energy, Industry and Labor, Economic
7 Development and Small Business then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §11-6L-1, §11-6L-2,
12 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to
13 amend said code by adding thereto a new article, designated
14 §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5,
15 §11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10,
16 §11-13BB-11, §11-13BB-12, §11-13BB-13, §11-13BB-14, §11-13BB-
17 15, §11-13BB-16, §11-13BB-17 and §11-13BB-18, all relating
18 generally to the West Virginia Innovation Free Trade Act of
19 2011, consisting of the Twenty-First Century Business
20 Technologies Property Valuation Act and, as to such act,
21 specifying method for valuation of certain property; providing
22 for application to county assessors by specified date;
23 providing procedure for protest and appeal of determination by
24 county assessor; requiring the West Virginia Development

1 Office to report to the Joint Committee on Government and
2 Finance on the economic impact of such valuation beginning in
3 2016; and specifying effective date; and consisting of the
4 West Virginia Twenty-First Century Tax Credit Act and, as to
5 such act, providing short title, setting forth purpose and
6 legislative findings; defining terms; allowing credit and
7 exemption from certain taxes; providing for computation of
8 credit, application of credit and period for which credit is
9 allowed; requiring application to claim credit; requiring that
10 new jobs be good-paying jobs with health benefits; requiring
11 identification of investment credit property and recomputation
12 of credit in event of premature disposition of investment
13 property; providing for forfeiture of unused tax credits and
14 redetermination of credit allowed; imposing recapture tax
15 under specified circumstances to recover states taxes and
16 property taxes; allowing transfer of qualified investment to
17 successors; providing rules for interpretation and
18 construction of act; providing for tax credit review and
19 accountability; specifying effective date; and providing
20 severability clause.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new article, designated §11-6L-1, §11-6L-2,
24 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and that said

1 code be amended by adding thereto a new article, designated §11-
2 13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6,
3 §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-
4 13BB-12, §11-13BB-13, §11-13BB-14, §11-13BB-15, §11-13BB-16, §11-
5 13BB-17 and §11-13BB-18, all to read as follows:

6 **ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF TWENTY-FIRST CENTURY**
7 **BUSINESS TECHNOLOGY PROPERTY.**

8 **§11-6L-1. Short title.**

9 This article shall be known and cited as the "Twenty-First
10 Century Business Technologies Property Valuation Act".

11 **§11-6L-2. Definitions.**

12 For the purposes of this article:

13 (1) "Salvage value" means five percent of original cost; and

14 (2) "Twenty-first century business technologies" means

15 "twenty-first century business technologies" as defined in section

16 three, article thirteen-bb of this chapter when the owner of the

17 property qualifies or qualified for the tax credit allowed by that

18 article. Qualifications for that tax credit and the special

19 valuation methodology provided in this article include, but are not

20 limited to, a minimum capital investment requirement, a minimum new

21 jobs creation requirement and a requirement that the new jobs

22 created be good paying jobs with health insurance benefits, all as

23 defined in article thirteen-bb of this chapter.

1 **§11-6L-3. Valuation of certain twenty-first century business**
2 **technology property.**

3 Notwithstanding any other provision of this code to the
4 contrary, the value of tangible personal property directly used in
5 a twenty-first century business technology shall, for the purpose of
6 ad valorem property taxation under this chapter and under article
7 X of the Constitution of this state, be its salvage value.

8 **§11-6L-4. Initial determination by county assessor.**

9 (a) On or before September 1 of the assessment year, the owner
10 of tangible personal property directly used in a new business, or
11 in a new segment of an existing business, that utilizes twenty-
12 first century business technology and qualifies for the tax credit
13 allowed by article thirteen-bb of this chapter may file a report
14 with the county assessor of the county in which the property was
15 located on July 1 of that assessment year, listing the tangible
16 personal property that is qualified investment for purposes of the
17 credit allowed by article thirteen-bb of this chapter. A taxpayer
18 that fails to timely file the report required by this subsection
19 shall be deemed to have waived valuation of the property as
20 provided in this article for that assessment year.

21 (b) When the county assessor receives the report described in
22 subsection (a) of this section, the assessor shall review the
23 report and make such inquiries as he or she deems necessary to
24 determine whether the tangible personal property listed in the

1 report is eligible for valuation under this article. The county
2 assessor shall notify the taxpayer in writing of his or her
3 determination not later than January 15 of the assessment year.

4 (c) Upon making a determination that a taxpayer owns tangible
5 personal property directly used in a twenty-first century business
6 technology that is eligible for valuation under this article, the
7 county assessor shall notify the Tax Commissioner of that
8 determination and shall provide information to the Tax Commissioner
9 as he or she requires relating to that determination.

10 **§11-6L-5. Protest and appeal.**

11 (a) If the taxpayer disagrees with the county assessor's
12 determination under section four of this article or if the assessor
13 fails to notify the taxpayer of the assessor's determination on or
14 before the day specified in that section, the taxpayer may file
15 objections in writing with the county assessor. The county assessor
16 shall decide the matter by either sustaining the protest and making
17 proper corrections, or by stating, in writing if requested, the
18 reasons for the county assessor's refusal. The county assessor
19 may, and if the taxpayer requests, the county assessor shall,
20 before February 1 of the assessment year, certify the question to
21 the Tax Commissioner in a statement sworn to by both parties, or if
22 the parties are unable to agree, in separate sworn statements. The
23 sworn statement or statements shall contain a full description of
24 the property and any other information which the Tax Commissioner

1 may require.

2 (b) The Tax Commissioner shall, as soon as possible on receipt
3 of the question, but in no case later than February 28 of the
4 assessment year, instruct the county assessor as to how the
5 property shall be treated. The instructions issued and forwarded
6 by mail to the county assessor are binding upon the county
7 assessor, but either the county assessor or the taxpayer may apply
8 to the circuit court of the county for review of the question of
9 the applicability of this article to the property in the same
10 fashion as is provided for appeals from the county commission in
11 section twenty-five, article three of this chapter. The Tax
12 Commissioner shall prescribe forms on which the questions under
13 this section shall be certified and the Tax Commissioner has the
14 authority to pursue any inquiry and procure any information
15 necessary for disposition of the matter.

16 **§11-6L-6. Report on economic benefit.**

17 The West Virginia Development Office shall provide to the
18 Joint Committee on Government and Finance by March 1, 2016, and
19 again by March 1, 2019, a report detailing the economic benefit of
20 the valuation method specified in this article. The report shall
21 include the number of new jobs created due to the provisions of
22 this article and the ad valorem property tax impact.

23 **§11-6L-7. Effective date.**

24 This article shall be effective on and after July 1, 2011.

1 **ARTICLE 13BB. TWENTY-FIRST CENTURY TAX CREDIT.**

2 **§11-13BB-1. Short title.**

3 This article may be cited as the "West Virginia Twenty-First
4 Century Tax Credit Act."

5 **§11-13BB-2. Purpose and legislative findings.**

6 (a) Purpose. -- The purpose of this article is to encourage
7 economic opportunity, greater capital investment and development of
8 the use in this state of twenty-first century technologies by
9 enacting the twenty-first century tax credit.

10 (b) Legislative findings. --

11 (1) Future expansion and development of the West Virginia
12 economy, job creation potential, and the physical environment are
13 driven by the flow of energy and the nonstop emergence of new
14 technologies.

15 (2) State-of-the-art technologies are being developed,
16 demonstrated, and manufactured or used in manufacturing in other
17 states in order to support economic development by responding to
18 the emergence of new technologies and the rapidly expanding world-
19 wide export market for such technologies.

20 (3) West Virginia has been slow to recognize the potential
21 economic and technical benefits of these emerging technologies.

22 (4) The Legislature finds that it is in public interest of the
23 citizens of West Virginia to:

1 (A) Establish a foothold in the West Virginia economy for
2 manufacturers of advanced products and the development of
3 businesses employing other emerging technologies that are magnets
4 for capital investment and produce new jobs that are
5 characteristically knowledge-based;

6 (B) Encourage the application of nanotechnology and other
7 supporting technology to:

8 (i) Aeronautics and space;

9 (ii) Agriculture;

10 (iii) Biotechnology;

11 (iv) Environment;

12 (v) Manufacturing and materials science;

13 (vi) Medicine and health;

14 (vii) Nanoelectronics and computer technology;

15 (viii) National and homeland security;

16 (ix) Photonics; and

17 (C) Encourage the manufacture, sale and use of alternative
18 fuel vehicles fueled by natural gas, electricity, hydrogen or other
19 alternative fuel and development of the infrastructure necessary to
20 the convenient and efficient refueling of such vehicles.

21 **§11-13BB-3. Definitions.**

22 (a) General. -- When used in this article, or in the
23 administration of this article, terms defined in subsection (b)
24 have the meanings ascribed to them by this section, unless a

1 different meaning is clearly required by either the context in
2 which the term is used, or by specific definition, in this article.

3 (b) Terms defined. --

4 (1) "Advanced coal technology" includes, but is not limited
5 to, a technology that is used in a new or existing energy
6 generating facility to reduce airborne carbon emissions associated
7 with the combustion or use of coal and includes, but is not limited
8 to, carbon dioxide capture and sequestration technology,
9 supercritical technology, advanced supercritical technology as that
10 technology is determined by the West Virginia Public Service
11 Commission, ultrasupercritical technology and pressurized fluidized
12 bed technology and any other resource, method, project or
13 technology certified by the Public Service Commission as advanced
14 coal technology.

15 (2) "Advanced information technology" means the development,
16 installation and implementation of computer systems and
17 applications that utilize cloud computing, quantum computing or the
18 next evolution beyond cloud and quantum computing.

19 (3) "Advanced manufacturing" means the application of state-
20 of-the-art technologies, processes and methods to design and
21 manufacture tangible personal property for commercial or industrial
22 use or for use by consumers.

23 (4) "Bioinformatics" means the application of statistics and
24 computer science to the field of molecular biology and entails the

1 creation and advancement of databases, algorithms, computational
2 and statistical techniques and theory to solve formal and practical
3 problems arising from the management and analysis of biological
4 data. The primary goal of bioinformatics is to increase the
5 understanding of biological processes. What sets bioinformatics
6 apart from other approaches is its focus on developing and applying
7 computationally intensive techniques (e.g., pattern recognition,
8 data mining, machine learning algorithms, and visualization) to
9 achieve this goal.

10 (5) "Bioscience" means the use of compositions, methods and
11 organisms in cellular and molecular research, development and
12 manufacturing processes for such diverse areas as pharmaceuticals,
13 medical therapeutics, medical diagnostics, medical devices, medical
14 instruments, biochemistry, microbiology, veterinary medicine, plant
15 biology, agriculture and industrial, environmental, and homeland
16 security applications of bioscience, and future developments in the
17 biosciences. Bioscience includes biotechnology and life sciences.

18 (6) "Bioscience company" means a corporation, limited
19 liability company, S corporation, partnership, registered limited
20 liability partnership, foundation, association, nonprofit entity,
21 business trust, group, or other entity that is engaged in the
22 business of bioscience in this state and has business operations in
23 this state, including, without limitation, research, development,
24 or production directed towards developing or providing bioscience

1 products or processes for specific commercial or public purposes
2 and are identified by the following NAICS codes: 325411, 325412,
3 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111,
4 339112, 339113, 334510, 334517, 339115, 621511, 621512, 541710,
5 541380, 541940, 622110. "Bioscience company" does not include a
6 sole proprietorship.

7 (7) "Biotechnology" means those fields focusing on
8 technological developments in areas such as biocomputing,
9 biodefense, bioinformatics, genetic engineering, genomics,
10 molecular biology, nanotechnology, proteomics and physiomics.

11 (8) "Business" means any activity engaged in by any person in
12 this state that is taxable under article twenty-one, twenty-three
13 or twenty-four of this chapter (or any combination of those
14 articles of this chapter).

15 (9) "Business segment" means a component or subset of a
16 business enterprise that: (i) Provides a single product or service
17 or a group of related products and services; (ii) is subject to
18 risks and returns that are different from those of other business
19 segments; and (iii) earns revenue for the business enterprise.

20 (10) "Clean coal technology" means a technology first used
21 commercially in the United States after December 31, 2010, that
22 significantly reduces the environmental impact of coal usage
23 including but not limited to, coal gasification and carbon capture
24 and storage.

1 (11) "Clean natural gas technology" means a technology first
2 used commercially in the United States after December 31, 2010,
3 that significantly reduces the environmental impact of natural gas.

4 (12) "Commissioner" and "Tax Commissioner" are used
5 interchangeably herein and means the Tax Commissioner of the State
6 of West Virginia, or his or her designee.

7 (13) "Compensation" means wages, salaries, commissions, the
8 cost of health insurance benefits and any other form of
9 remuneration paid to employees for personal services.

10 (14) "Controlled group" means one or more chains of
11 corporations connected through stock ownership with a common parent
12 corporation if stock possessing at least fifty percent of the
13 voting power of all classes of stock of each of the corporations is
14 owned directly or indirectly by one or more of the corporations;
15 and the common parent owns directly stock possessing at least fifty
16 percent of the voting power of all classes of stock of at least one
17 of the other corporations.

18 (15) "Corporation" means any corporation, joint-stock company
19 or association, and any business conducted by a trustee or trustees
20 wherein interest or ownership is evidenced by a certificate of
21 interest or ownership or similar written instrument.

22 (16) "Designee" in the phrase "or his or her designee," when
23 used in reference to the Tax Commissioner, means any officer or
24 employee of the Tax Division of the Department of Revenue duly

1 authorized by the commissioner directly, or indirectly by one or
2 more redelegations of authority, to perform the functions mentioned
3 or described in this article.

4 (17) "Eligible taxpayer" means a new business or a new segment
5 of a business that is primarily engaged in an emerging technology
6 industry or that is primarily utilizing twenty-first century
7 business technologies, that makes at least the minimum required
8 qualified investment in a new or expanded business facility located
9 in this state and creates the required number of new jobs that pay
10 good salaries and provide health insurance benefits, and that is
11 subject to any of the taxes imposed by articles twenty-one, twenty-
12 three and twenty-four of this chapter (or any one or any
13 combination of those articles).

14 (18) "Eligible taxpayer" means a new business or a new segment
15 of a business that is primarily engaged in an emerging technology
16 industry or that is primarily utilizing twenty-first century
17 business technologies, that makes at least the minimum required
18 qualified investment in a new or expanded business facility located
19 in this state and creates the required number of new jobs that pay
20 good salaries and provided health insurance benefits, and that is
21 subject to any of the taxes imposed by articles twenty-one, twenty-
22 three and twenty-four of this chapter (or any one or any
23 combination of those articles).

24 (19) Emerging technologies are technologies that are currently

1 being developed or will be developed over the next five to ten
2 years, that are significant technological developments that broach
3 new territory in some significant way in their field and which will
4 substantially alter the business and social environment. Examples
5 of currently emerging technologies include, but are not limited to,
6 advanced coal technologies, alternative fuel vehicles, artificial
7 intelligence, biotechnology, clean coal and clean natural gas
8 technologies, cognitive science, cloud computing, quantum
9 computing, man-machine communications, nanotechnology, photonics,
10 photovoltaic devices, and advanced robotics. Whether a technology
11 is an emerging technology is determined as of the date the new
12 business or a new segment of an existing business is placed in
13 service or use in this state.

14 (20) "Expanded business facility" means any business facility
15 (other than a new or replacement facility) resulting from the
16 acquisition, construction, reconstruction, installation or erection
17 of improvements or additions to existing property in this state
18 when the improvements or additions are purchased on or after July
19 1, 2011, but only to the extent of the taxpayer's qualified
20 investment in the improvements or additions and the extent to which
21 the expansion of the business facility is directly used in a new
22 segment of the taxpayer that primarily employs an emerging business
23 technology or a twenty-first century business technology.

24 (21) "Health insurance benefits" means employer provided

1 coverage for medical expenses of the employee or the employee and
2 his or her family under a group accident or health plan, or
3 employer contributions to an Archer medical savings account, as
4 defined in Section 220 of the Internal Revenue Code of 1986, as
5 amended, or to a health savings account, as defined in Section 223
6 of the Internal Revenue Code, of the employee when the employer's
7 contribution to any such account is not less than fifty percent of
8 the maximum amount permitted for the year as employer-provided
9 coverage under Section 220 or 223 of the Internal Revenue Code,
10 whichever section is applicable.

11 (22) "Includes" and "including," when used in a definition
12 contained in this article, shall not be considered to exclude other
13 things otherwise within the meaning of the term defined.

14 (23) "Internal Revenue Code of 1986, as amended," or "Internal
15 Revenue Code," means the United States Internal Revenue Code of
16 1986 as codified in Title 26 of the United States Code, as amended,
17 and as defined in section three, article twenty-four of this
18 chapter as last updated by the Legislature.

19 (24) "Leased property" does not include property which the
20 taxpayer is required to show on its books and records as an asset
21 under generally accepted principles of financial accounting. If the
22 taxpayer is prohibited from expensing the lease payments for
23 federal income tax purposes, the property shall be treated as
24 purchased property under this section.

1 (25) "Life science" means any of several branches of science,
2 such as biology, medicine, anthropology, or ecology, that deal with
3 living organisms and their organization, life processes, and
4 relationships to each other and their environment.

5 (26) "Nanotechnology" means the branch of engineering that
6 deals with things smaller than one hundred nanometers.
7 Nanotechnology includes the materials and systems whose structures
8 and components exhibit novel and significantly improved physical,
9 chemical, and biological properties, phenomena, and processes due
10 to their nanoscale size.

11 (27) "New business" means any business primarily employing
12 emerging technology or a twenty-first century business technology
13 whose ownership and activities are not closely related to a
14 preexisting business. A mere change in the stock ownership of a
15 corporation, or the equity ownership of a partnership or other
16 entity treated as a partnership for federal income tax purposes,
17 shall not affect its status as an exiting business. Additionally,
18 a new business that acquires substantially all of the assets of a
19 corporation or other business entity or of a sole proprietorship
20 shall not be treated as a new business for purposes of this
21 article. In determining whether or not a new business is closely
22 related to a preexisting business, all facts and circumstances
23 shall be considered by the Tax Commissioner. The existence of a
24 majority of the following factors establish that a new business is

1 closely related to an existing business:

2 (A) The new business's products or services are very similar
3 to the products or services provided by the preexisting business;

4 (B) The new business markets products and services to the same
5 class of customers as that of the preexisting business;

6 (C) The new business is conducted in the same general location
7 as the preexisting business;

8 (D) The new business requires the use of the same or similar
9 operating assets as those used in the preexisting business;

10 (E) The new business's economic success builds on, or depends
11 on, the success of the preexisting business;

12 (F) The activity of the new business is of a type that would
13 normally be treated as a unit with the preexisting business in the
14 accounting records of the preexisting business;

15 (G) If the new business and the preexisting business are
16 regulated or licensed, they are regulated or licensed by the same
17 or similar governmental authority; and

18 (H) Twenty percent or more of the equity of the new business
19 is collectively owned by individuals and/or businesses that
20 collectively owned more than fifty percent of the equity of the
21 preexisting business.

22 These eight listed factors are not the only ones that may be
23 considered by the Tax Commissioner. Others may also be taken into
24 account, in the discretion of the Tax Commissioner. However, this

1 definition shall not exclude the categorization of a business as a
2 new business for the sole reason that the entity engaging in the
3 new business already does business in the State of West Virginia.

4 (28) "New business facility" means a business facility located
5 in this state which satisfies all the requirements of paragraphs
6 (A), (B), (C) and (D) of this subdivision.

7 (A) The facility is employed by the taxpayer in a new business
8 or in a new segment of an existing business the conduct of a
9 business the net income of which is or will be taxable under
10 article twenty-one or twenty-four of this chapter. The facility is
11 not considered a new business facility in the hands of the taxpayer
12 if the taxpayer's only activity with respect to the facility is to
13 lease it to another person or persons;

14 (B) The facility is purchased by, or leased to, the taxpayer
15 on or after July 1, 2011;

16 (C) The facility was not purchased or leased by the taxpayer
17 from a related person: *Provided*, That the Tax Commissioner may
18 waive this requirement if the facility was acquired from a related
19 person for its fair market value and the acquisition was not tax
20 motivated; and

21 (D) The facility was not in service or use during the ninety
22 days immediately prior to transfer of the title to the facility, or
23 prior to the commencement of the term of the lease of the facility:
24 *Provided*, That this ninety-day period may be waived by the Tax

1 Commissioner if the commissioner determines that persons employed
2 at the facility may be treated as "new employees" as that term is
3 defined in this subsection.

4 (29) "New employee" means:

5 (A) A person residing and domiciled in this state, hired by
6 the taxpayer to fill a position or a job in this state which
7 previously did not exist in the taxpayer's business enterprise in
8 this state prior to the date on which the taxpayer's qualified
9 investment is placed in service or use in this state. The term "new
10 employee" also includes a person employed by the taxpayer who works
11 outside this state who relocates in this state, becomes domiciled
12 in this state and is employed full-time at the new business
13 facility in this state. In no case may the number of new employees
14 directly attributable to the investment for purposes of this credit
15 exceed the total net increase in the taxpayer's employment in this
16 state: *Provided*, That the Tax Commissioner may require that the
17 net increase in the taxpayer's employment in this state be
18 determined and certified for the taxpayer's controlled group.

19 (B) A person is considered to be a "new employee" only if the
20 person's duties in connection with the operation of the business
21 facility are on:

22 (i) A regular, full-time and permanent basis:

23 (I) "Full-time" means employment for at least one hundred
24 forty hours per month at a wage not less than the prevailing state

1 or federal minimum wage, depending on which minimum wage provision
2 is applicable to the business;

3 (II) "Permanent" does not include employment that is temporary
4 or seasonal and therefore the wages, salaries and other
5 compensation paid to the temporary or seasonal employees may not be
6 considered for purposes of sections five and seven of this article;
7 or

8 (ii) A regular, part-time and permanent basis: Provided, That
9 the person is customarily performing the duties at least twenty
10 hours per week for at least six months during the taxable year.

11 (30) "New job" means a job which did not exist in the business
12 of the taxpayer in this state prior to the taxpayer's qualified
13 investment being made, and which is filled by a new employee.

14 (31) "New property" means:

15 (A) Property, the construction, reconstruction or erection of
16 which is completed on or after July 1, 2011, and placed in service
17 or use after that date; and

18 (B) Property leased or acquired by the taxpayer that is placed
19 in service or use in this state on or after July 1, 2011, if the
20 original use of the property commences with the taxpayer and
21 commences after that date.

22 (32) "NAICS" means the North American Industry Classification
23 System.

24 (33) "Original use" means the first use to which the property

1 is put, whether or not the use corresponds to the use of the
2 property by the taxpayer.

3 (34) "Partnership" includes a syndicate, group, pool, joint
4 venture or other unincorporated organization through or by means of
5 which any business or venture is carried on, and which is not a
6 trust or estate, a corporation or a sole proprietorship and which
7 is treated as a partnership for tax purposes under the laws of this
8 state. The term "partner" includes a member in such a syndicate,
9 group, pool, joint venture or other organization.

10 (35) "Person" includes any natural person, corporation or
11 partnership, and includes any entity that is treated like a
12 corporation or partnership for federal income tax purposes.

13 (36) "Photonics" includes the generation, emission,
14 transmission, modulation, signal processing, switching,
15 amplification, detection and sensing of light.

16 (37) "Photovoltaic devices" means those products designed,
17 manufactured, and produced to convert sunlight directly into
18 electricity.

19 (38) "Property purchased or leased for business expansion"
20 means:

21 (A) *Included property.* -- Except as provided in paragraph (B)
22 of this subdivision, the term "property purchased or leased for
23 business expansion" means real property and improvements thereto,
24 and tangible personal property, but only if the real or personal

1 property was constructed, purchased, or leased and placed in
2 service or use by the taxpayer, for use as a component part of a
3 new business facility or expanded business facility as defined in
4 this section, which is located within the State of West Virginia.

5 This term includes only:

6 (i) Real property and improvements thereto having a useful
7 life of four or more years, placed in service or use on or after
8 July 1, 2011, by the taxpayer;

9 (ii) Real property and improvements thereto, acquired by
10 written lease having a primary term of ten or more years and placed
11 in service or use by the taxpayer on or after July 1, 2011;

12 (iii) Tangible personal property placed in service or use by
13 the taxpayer on or after July 1, 2011, with respect to which
14 depreciation, or amortization in lieu of depreciation, is allowable
15 in determining the personal or corporation net income tax liability
16 of the business taxpayer under article twenty-one or twenty-four of
17 this chapter, and which has a useful life, at the time the property
18 is placed in service or use in the state, of four or more years;

19 (iv) Tangible personal property acquired by written lease
20 having a primary term of four years or longer, that commenced and
21 was executed by the parties thereto on or after July 1, 2011, if
22 used as a component part of a new or expanded business facility,
23 shall be included within this definition; and

24 (v) Tangible personal property owned or leased, and used by

1 the taxpayer at a business location outside the state which is
2 moved into the State of West Virginia on or after July 1, 2011, for
3 use as a component part of a new or expanded business facility
4 located in the state: *Provided*, That if the property is owned, it
5 must be depreciable or amortizable personal property for income tax
6 purposes, and have a useful life of four or more years remaining at
7 the time it is placed in service or use in the state, and if the
8 property is leased, the primary term of the lease remaining at the
9 time the leased property is placed in service or use in the state,
10 must be four or more years;

11 (B) *Excluded property*. -- The term "property purchased or
12 leased for business expansion" does not include:

13 (i) Property owned or leased by the taxpayer and for which the
14 taxpayer was previously allowed tax credit under article thirteen-
15 c, thirteen-d, thirteen-e, thirteen-h, thirteen-q, thirteen-r,
16 thirteen-s, thirteen-t, thirteen-u or thirteen-aa of this chapter,
17 or the tax credits allowed by this article;

18 (ii) Property owned or leased by the taxpayer and for which
19 the seller, lessor, or other transferor, was previously allowed tax
20 credit under article thirteen-c, thirteen-d, thirteen-e, thirteen-
21 h, thirteen-q, thirteen-r, thirteen-s, thirteen-t, thirteen-u or
22 thirteen-aa of this chapter, or the tax credits allowed by this
23 article;

24 (iii) Property owned or leased by the taxpayer that is used to

1 qualify for any other credit against state taxes allowed by this
2 code;

3 (iv) Repair costs, including materials used in the repair,
4 unless for federal income tax purposes the cost of the repair must
5 be capitalized and not expensed;

6 (v) Airplanes;

7 (vi) Property which is primarily used outside the state, with
8 use being determined based upon the amount of time the property is
9 actually used both within and outside the state;

10 (vii) Property which is acquired incident to the purchase of
11 the stock or assets of the seller, unless for good cause shown, the
12 commissioner consents to waiving this requirement;

13 (viii) Natural resources in place; or

14 (ix) Purchased or leased property the cost or consideration
15 for which cannot be quantified with any reasonable degree of
16 accuracy at the time the property is placed in service or use:

17 Provided, That when the contract of purchase or lease specifies a
18 minimum purchase price or minimum annual rent the amount thereof
19 shall be used to determine the qualified investment in the property
20 under section eight of this article if the property otherwise
21 qualifies as property purchased or leased for business expansion.

22 (39) "Purchase" means any acquisition of property, but only
23 if:

24 (A) The property is not acquired from a person whose

1 relationship to the person acquiring it would result in the
2 disallowance of deductions under Section 267 or 707 (b) of the
3 United States Internal Revenue Code of 1986, as amended;

4 (B) The property is not acquired by one component member of a
5 controlled group from another component member of the same
6 controlled group. The commissioner may waive this requirement if
7 the property was acquired from a related party for its then fair
8 market value; and

9 (C) The basis of the property for federal income tax purposes,
10 in the hands of the person acquiring it, is not determined:

11 (i) In whole or in part, by reference to the federal adjusted
12 basis of the property in the hands of the person from whom it was
13 acquired; or

14 (ii) Under Section 1014(e) of the United States Internal
15 Revenue Code of 1986, as amended.

16 (40) "Qualified activity" means any business or other activity
17 subject to any of the taxes imposed by article thirteen, twenty-
18 one, twenty-three or twenty-four of this chapter (or any
19 combination of those articles of this chapter), but does not
20 include the activity of severance or production of natural
21 resources.

22 (41) "Related person" means:

23 (A) A corporation, partnership, association or trust
24 controlled by the taxpayer;

1 (B) An individual, corporation, partnership, association or
2 trust that is in control of the taxpayer;

3 (C) A corporation, partnership, association or trust
4 controlled by an individual, corporation, partnership, association
5 or trust that is in control of the taxpayer; or

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

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

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

19 (42) "Replacement facility" means any property (other than an
20 expanded facility) that replaces or supersedes any other property
21 located within this state that:

22 (A) The taxpayer or a related person used in or in connection
23 with any activity for more than two years during the period of five
24 consecutive years ending on the date the replacement or superseding

1 property is placed in service by the taxpayer; or

2 (B) Is not used by the taxpayer or a related person in or in
3 connection with any qualified activity for a continuous period of
4 one year or more commencing with the date the replacement or
5 superseding property is placed in service by the taxpayer.

6 (43) "State-of-the-art technoloy" or "leading edge technology"
7 means the highest level of development, as of a device, technique,
8 or scientific field achieved at a particular time.

9 (44) "Taxpayer" means any person subject to any of the taxes
10 imposed by article twenty-one, twenty-three or twenty-four of this
11 chapter (or any combination of those articles of this chapter).

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

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

15 (47) "Twenty-first century business technologies" means and
16 includes, but is not limited to, emerging technologies and other
17 business technologies that primarily use state-of-the-art
18 methodologies, practices or techniques to manufacture, produce or
19 provide its primary goods or services.

20 (48) "Used property" means property acquired after June 30,
21 2011, that is not "new property."

22 **§11-13BB-4. Amount of credit allowed.**

23 (a) Credit allowed. -- Eligible taxpayers are allowed a credit
24 against the portion of taxes imposed by this state that are

1 attributable to and the consequence of the taxpayer's qualified
2 investment, as described in section six of this article, in a new
3 business, or in a new segment of an existing business, in this
4 state that utilized twenty-first century technologies, which
5 results in the creation of new jobs. The amount of this credit is
6 determined and applied as provided in this article.

7 (b) Amount of credit. -- When the eligible taxpayer creates
8 at least ten new jobs but less than fifteen new jobs in a new
9 business in this state that utilizes twenty-first century business
10 technologies and whose qualified investment in this state is at
11 least \$5 million but is less than \$10 million, the eligible
12 taxpayer shall for the tax year in which the ten employees are
13 first employed by the eligible taxpayer and for the next four tax
14 years thereafter be exempt from payment of the taxes imposed by
15 articles twenty-three and twenty-four of this chapter on the
16 taxable capital and West Virginia taxable income of the new
17 business utilizing twenty-first century business technologies in
18 this state: Provided, That the eligible taxpayer may elect to
19 defer for one tax year the start of this five-year period. When
20 the eligible business is a partnership or other entity treated as
21 a partnership for federal income tax purposes, the partners, S
22 corporation shareholders or members of the limited liability
23 company shall be exempt from paying the tax imposed by article
24 twenty-one of this chapter on his or her distributive share

1 attributable to the emerging technology business activity in this
2 state. The eligible business shall also be exempt from paying the
3 taxes imposed by article fifteen and fifteen-a of this chapter on
4 tangible personal property and services purchased for use or
5 consumption by the eligible taxpayer in the emerging technology
6 business activity during the same five-year period, except that
7 this exemption shall not apply to the purchase of motor fuel or
8 alternative fuels to power a vehicle or to the purchase or lease of
9 motor vehicles, unless the vehicle is an alternative fuel vehicle.
10 The exemption from paying the taxes imposed by articles fifteen and
11 fifteen-a of this chapter on purchases for use in business allowed
12 by this subsection is in addition to any exemption that might
13 otherwise be available to the taxpayer under articles fifteen and
14 fifteen-a of this chapter. When the taxpayer qualifies for tax
15 benefits under this subsection, these benefits are not forfeited if
16 during the applicable five-year period, the new business creates
17 additional new jobs or makes additional capital investment at the
18 new business facility or does both.

19 (c) Amount of credit. -- When the eligible taxpayer does not
20 qualify for credit under subsection (b) of this section, either
21 because the qualified investment exceeds \$10 million or the number
22 of new jobs created is fifteen or more, or for both reasons, the
23 amount of credit allowable is determined by multiplying the amount
24 of the taxpayer's "qualified investment" (determined under section

1 six of this article) in "property purchased or leased for business
2 expansion" (as defined in section three of this article) using
3 twenty-first century business technologies by the taxpayer's new
4 jobs percentage (determined under section seven of this article).
5 The product of this calculation establishes the maximum amount of
6 credit allowable under this article due to the qualified
7 investment.

8 **§11-13BB-5. Application of annual credit allowance.**

9 (a) In general. -- The aggregate annual credit allowance for
10 the current taxable year is an amount equal to the sum of the
11 following:

12 (1) The one-tenth part allowed under subsection (c), section
13 four of this article for qualified investment placed into service
14 or use during a prior taxable year; plus

15 (2) The one-tenth part allowed under subsection (c), section
16 four of this article for qualified investment placed into service
17 or use during the current taxable year.

18 (b) Application of current year annual credit allowance. --
19 The amount determined under subsection (a) of this section is
20 allowed as a credit against one hundred percent of that portion of
21 the taxpayer's state tax liability which is attributable to and the
22 direct result of the taxpayer's qualified investment, and applied
23 as provided in subsections (c) through (f), both inclusive, of this
24 section, and in that order.

1 (c) Business and occupation taxes. -- That portion of the
2 allowable credit attributable to qualified investment in a business
3 or other activity subject to the taxes imposed by article thirteen
4 of this chapter under section two-o of article thirteen must first
5 be applied to reduce the taxes imposed or payable under section
6 two-o, article thirteen of this chapter, for the taxable year
7 (determined before application of allowable credits against tax and
8 the annual exemption). In no case may the credit allowed under
9 this article be applied to reduce any tax imposed by under any
10 other section of article thirteen of this chapter except section
11 two-o.

12 (1) If the taxes due under section two-o, article thirteen of
13 this chapter are not solely attributable to and the direct result
14 of the taxpayer's qualified investment in a business or other
15 activity taxable under section two-o, article thirteen of this
16 chapter, the amount of those taxes that are attributable is
17 determined by multiplying the amount of taxes due under section
18 two-o, article thirteen of this chapter, for the taxable year
19 (determined before application of any allowable credits against tax
20 and the annual exemption), by a fraction, the numerator of which is
21 all wages, salaries and other compensation paid during the taxable
22 year to all employees of the taxpayer employed in this state, whose
23 positions are directly attributable to the qualified investment in
24 a business or other activity taxable under section two-o, article

1 thirteen of this chapter. The denominator of the fraction shall be
2 the wages, salaries and other compensation paid during the taxable
3 year to all employees of the taxpayer employed in this state, whose
4 positions are directly attributable to the business or other
5 activity of the taxpayer that is taxable under article thirteen of
6 this chapter.

7 (2) The annual exemption allowed by section three, article
8 thirteen of this chapter, plus any credits allowable under articles
9 thirteen-d, thirteen-e, thirteen-g, thirteen-r and thirteen-s of
10 this chapter, shall be applied against and reduce only the portion
11 of article thirteen taxes not apportioned to the qualified
12 investment under this article: *Provided*, That any excess exemption
13 or credits may be applied against the amount of article thirteen
14 taxes apportioned to the qualified investment under this article,
15 that is not offset by the amount of annual credit against the taxes
16 allowed under this article for the taxable year, unless their
17 application is otherwise prohibited by this chapter.

18 (d) *Business franchise tax.* --

19 (1) After application of subsection (c) of this section, any
20 unused allowable credit is next applied to reduce the taxes imposed
21 by article twenty-three of this chapter for the taxable year
22 (determined after application of the credits against tax provided
23 in section seventeen of article twenty-three of this chapter, but
24 before application of any other allowable credits against tax).

1 (2) If the taxes due under article twenty-three of this
2 chapter are not solely attributable to and the direct result of the
3 taxpayer's qualified investment in a business or other activity
4 taxable under article twenty-three of this chapter for the taxable
5 year, the amount of the taxes which are so attributable are
6 determined by multiplying the amount of taxes due (determined after
7 application of the credits against tax as provided in section
8 seventeen of article twenty-three of this chapter, but before
9 application of any other allowable credits), by a fraction, the
10 numerator of which is all wages, salaries and other compensation
11 paid during the taxable year to all employees of the taxpayer
12 employed in this state, whose positions are directly attributable
13 to the qualified investment in a business or other activity taxable
14 under article twenty-three of this chapter. The denominator of the
15 fraction is wages, salaries and other compensation paid during the
16 taxable year to all employees of the taxpayer employed in this
17 state, whose positions are directly attributable to the business or
18 other activity of the taxpayer that is taxable under article
19 twenty-three of this chapter.

20 (3) Any credits allowable under articles thirteen-d, thirteen-
21 e, thirteen-q, thirteen-r and thirteen-s of this chapter are
22 applied against and reduce only the portion of article twenty-three
23 taxes not apportioned to the qualified investment under this
24 article: *Provided*, That any excess exemption or credits may be

1 applied against the amount of article twenty-three taxes
2 apportioned to the qualified investment under this article that is
3 not offset by the amount of annual credit against those taxes
4 allowed under this article for the taxable year, unless their
5 application is otherwise prohibited by this chapter.

6 (e) Corporation net income taxes. --

7 (1) After application of subsections (c) and (d) of this
8 section, any unused credit is next applied to reduce the taxes
9 imposed by article twenty-four of this chapter for the taxable year
10 (determined before application of allowable credits against tax).

11 (2) If the taxes due under article twenty-four of this chapter
12 (determined before application of allowable credits against tax)
13 are not solely attributable to and the direct result of the
14 taxpayer's qualified investment, the amount of the taxes that is
15 attributable are determined by multiplying the amount of taxes due
16 under article twenty-four of this chapter for the taxable year
17 (determined before application of allowable credits against tax),
18 by a fraction, the numerator of which is all wages, salaries and
19 other compensation paid during the taxable year to all employees of
20 the taxpayer employed in this state whose positions are directly
21 attributable to the qualified investment. The denominator of the
22 fraction is the wages, salaries and other compensation paid during
23 the taxable year to all employees of the taxpayer employed in this
24 state.

1 (3) Any credits allowable under article twenty-four of this
2 chapter are applied against and reduce only the amount of article
3 twenty-four taxes not apportioned to the qualified investment under
4 this article: *Provided*, That any excess credits may be applied
5 against the amount of article twenty-four taxes apportioned to the
6 qualified investment under this article that is not offset by the
7 amount of annual credit against such taxes allowed under this
8 article for the taxable year, unless their application is otherwise
9 prohibited by this chapter.

10 (f) *Personal income taxes.* --

11 (1) If the person making the qualified investment is an
12 electing small business corporation (as defined in Section 1361 of
13 the United States Internal Revenue Code of 1986, as amended), a
14 partnership, or a limited liability company that is treated as a
15 partnership for federal income tax purposes, then any unused credit
16 (after application of subsections (c), (d) and (e) of this section)
17 is allowed as a credit against the taxes imposed by article twenty-
18 one of this chapter on the income from business or other activity
19 subject to tax under article thirteen or twenty-three of this
20 chapter that is attributable to the business activity for credit is
21 allowed under this article.

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

1 in the same manner as profits and losses are allocated for the
2 taxable year.

3 (3) If the amount of taxes due under article twenty-one of
4 this chapter (determined before application of allowable credits
5 against tax) that is attributable to business, is not solely
6 attributable to and the direct result of the qualified investment
7 of the electing small business corporation, limited liability
8 company, partnership, other unincorporated organization or sole
9 proprietorship, the amount of the taxes that are so attributable
10 are determined by multiplying the amount of taxes due under article
11 twenty-one of this chapter (determined before application of
12 allowable credits against tax), that is attributable to business by
13 a fraction, the numerator of which is all wages, salaries and other
14 compensation paid during the taxable year to all employees of the
15 electing small business corporation, limited liability company,
16 partnership, other unincorporated organization or sole
17 proprietorship employed in this state, whose positions are directly
18 attributable to the qualified investment. The denominator of the
19 fraction is the wages, salaries and other compensation paid during
20 the taxable year to all employees of the taxpayer.

21 (4) No credit is allowed under this section against any
22 employer withholding taxes imposed by article twenty-one of this
23 chapter.

24 (g) If the wages, salaries and other compensation fraction

1 formula provisions of subsections (c) through (f) of this section,
2 inclusive, do not fairly represent the taxes solely attributable to
3 and the direct result of qualified investment of the taxpayer the
4 commissioner may require, in respect to all, or any part of, the
5 taxpayer's businesses or activities, if reasonable:

6 (1) Separate accounting or identification;

7 (2) Adjustment to the wages, salaries and other compensation
8 fraction formula to reflect all components of the tax liability;

9 (3) The employment of any other method to effectuate an
10 equitable attribution of the taxes.

11 In order to effectuate the purposes of this subsection, the
12 commissioner may propose for promulgation rules, including
13 emergency rules, in accordance with article three, chapter twenty-
14 nine-a of this code.

15 (h) Unused credit. -- If any credit remains after application
16 of subsection (b) of this section, the amount thereof is carried
17 forward to each ensuing tax year until used or until the expiration
18 of the third taxable year subsequent to the end of the initial ten
19 year credit application period. If any unused credit remains after
20 the thirteenth year, the amount thereof is forfeited. No carryback
21 to a prior taxable year is allowed for the amount of any unused
22 portion of any annual credit allowance.

23 **§11-13BB-6. Qualified investment.**

24 (a) General. -- The qualified investment in property purchased

1 or leased for business expansion is the applicable percentage of
 2 the cost of each property purchased or leased for the purpose of
 3 business expansion which is placed in service or use in this state
 4 by the taxpayer during the taxable year.

5 (b) Applicable percentage. -- For the purpose of subsection
 6 (a), the applicable percentage of any property is determined under
 7 the following table:

<u>If useful life is:</u>	<u>The applicable percentage is:</u>
8 <u>Less than 4 years.....</u>	9 <u>.....0%</u>
10 <u>4 years or more but less than 6 years</u>	11 <u>.....33 1/3%</u>
12 <u>6 years or more but less than 8 years</u>	13 <u>.....66 2/3%</u>
14 <u>8 years or more</u>	15 <u>.....100%</u>

16 The useful life of any property, for purposes of this section, is
 17 determined as of the date the property is first placed in service
 18 or use in this state by the taxpayer, determined in accordance with
 19 such rules and requirements the Tax Commissioner may prescribe.

20 (c) Cost. -- For purposes of subsection (a), the cost of each
 21 property purchased for business expansion is determined under the
 22 following rules:

23 (1) Trade-ins. - Cost does not include the value of property
 24 given in trade or exchange for the property purchased for business
 25 expansion.

26 (2) Damaged, destroyed or stolen property. -- If property is
damaged or destroyed by fire, flood, storm or other casualty, or is
stolen, then the cost of replacement property does not include any
insurance proceeds received in compensation for the loss.

1 (3) Rental property. --

2 (A) The cost of real property acquired by written lease for a
3 primary term of ten years or longer is one hundred percent of the
4 rent reserved for the primary term of the lease, not to exceed
5 twenty years.

6 (B) The cost of tangible personal property acquired by written
7 lease for a primary term of:

8 (i) Four years, or longer, is one third of the rent reserved
9 for the primary term of the lease;

10 (ii) Six years, or longer, is two thirds of the rent reserved
11 for the primary term of the lease; or

12 (iii) Eight years, or longer, is one hundred percent of the
13 rent reserved for the primary term of the lease, not to exceed
14 twenty years: Provided, That in no event may rent reserved include
15 rent for any year subsequent to expiration of the book life of the
16 equipment, determined using the straight-line method of
17 depreciation.

18 (4) Self-constructed property. -- In the case of self-
19 constructed property, the cost thereof is the amount properly
20 charged to the capital account for depreciation in accordance with
21 federal income tax law.

22 (5) Transferred property. -- The cost of property used by the
23 taxpayer out-of-state and then brought into this state, is
24 determined based on the remaining useful life of the property at

1 the time it is placed in service or use in this state, and the cost
2 is the original cost of the property to the taxpayer less straight
3 line depreciation allowable for the tax years or portions thereof
4 the taxpayer used the property outside this state. In the case of
5 leased tangible personal property, cost is based on the period
6 remaining in the primary term of the lease after the property is
7 brought into this state for use in a new or expanded business
8 facility of the taxpayer, and is the rent reserved for the
9 remaining period of the primary term of the lease, not to exceed
10 twenty years, or the remaining useful life of the property
11 (determined as aforesaid), whichever is less.

12 **§11-13BB-7. New jobs; new jobs percentage.**

13 (a) In general. -- For purposes of this article, the new jobs
14 created by the taxpayer must be directly attributable to taxpayer's
15 qualified investment in this state, must be filled by new employees
16 as defined in section three of this article and the compensation of
17 new employees filling the new jobs must be equal to or exceed the
18 compensation and health insurance benefits set forth in section
19 eight of this article during the period for which the credit
20 allowed by this article may be taken.

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

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

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

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

6 (c) Applicable percentage. -- The taxpayer's new jobs
 7 percentage is determined under the following table:

<u>If number of new jobs</u>	<u>The applicable percentage is:</u>
<u>is at least:</u>	
<u>15</u>	<u>15%</u>
<u>20</u>	<u>20%</u>
<u>280</u>	<u>30%</u>
<u>520</u>	<u>40%</u>

14 (d) Certification of new jobs. -- With the annual return for
 15 the applicable taxes filed for the taxable year in which the
 16 qualified investment is first placed in service or use in this
 17 state, the taxpayer shall estimate and certify the number of new
 18 jobs reasonably projected to be created by it in this state within
 19 the period prescribed in subsection (f) of this section that are,
 20 or will be, directly attributable to the qualified investment of
 21 the taxpayer. For purposes of this section, "applicable taxes"
 22 means the taxes imposed by articles thirteen, twenty-one, twenty-
 23 three and twenty-four of this chapter against which this credit is
 24 applied.

25 (e) Equivalency of permanent employees. -- The hours of part-
 26 time employees shall be aggregated to determine the number of

1 equivalent full-time employees for the purpose of this section.

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

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

13 (2) If the actual number of jobs created would result in a
14 lower new jobs percentage, the credit previously allowed under this
15 article shall be redetermined and amended returns filed for the
16 first and second taxable years. In applying the amount of
17 redetermined credit allowable for the two preceding taxable years,
18 the redetermined credit shall first be applied to the extent it was
19 originally applied in the prior two years to personal income taxes,
20 then to corporation net income taxes, then to business franchise
21 taxes and, lastly, to business and occupation taxes. Any
22 additional taxes due under this chapter shall be remitted with the
23 amended returns filed with the commissioner, along with interest,
24 as provided in section seventeen, article ten of this chapter, and

1 a ten-percent penalty determined on the amount of taxes due with
2 the amended return, which may be waived by the commissioner if the
3 taxpayer shows that the over-claimed amount of the new jobs
4 percentage was due to reasonable cause and not due to willful
5 neglect.

6 **§11-13BB-8. New jobs compensation and benefits requirement.**

7 (a) Notwithstanding any provision of this article to the
8 contrary, no credit shall be allowed under this article unless the
9 following compensation requirements are met beginning with the tax
10 year when the new employee first begins working at the new or
11 expanded business facility and continuing through the period for
12 which credit is allowed under this article:

13 (1) The median compensation paid to the employees filling the
14 new jobs must be at least \$50,000 annually: *Provided, That*
15 beginning November 1, 2012, and on or before November 1
16 thereafter, the Tax Commissioner shall adjust this minimum annual
17 compensation requirement in the manner provided in subsection (b)
18 of this section, which adjustment shall apply to compensation paid
19 for employee services during the next calendar year;

20 (2) Health insurance benefits are provided to all full-time
21 permanent employees working at the new or expanded business
22 facility in this state; and

23 (3) Each new job is a full-time, permanent position, as those
24 terms are defined in section three, of this article.

1 Jobs that do not provide health insurance benefits do not
2 qualify as new jobs for purposes of the credit authorized by this
3 article. Additionally, jobs that are less than full-time,
4 permanent positions do not qualify as new jobs under this article.

5 (b) Adjustment of annual compensation for inflation. -- The
6 compensation requirements for credit under this article shall be
7 adjusted for inflation by application of a cost-of-living
8 adjustment. The annual compensation amount shall be applicable, as
9 adjusted, each year throughout the ten-year credit period. Failure
10 of a taxpayer entitled to credit under this article to meet the
11 annual compensation requirement for any year shall result in
12 forfeiture of the credit for that year. However, if in any
13 succeeding year within the original ten-year credit period, the
14 taxpayer pays annual compensation to its employees which exceeds
15 the inflation adjusted annual compensation amount for that year,
16 the taxpayer shall regain entitlement to take the credit for that
17 year only. No credit forfeited in a prior year may be taken, and
18 the tax year or years to which the forfeited credit would have been
19 applied shall be forfeited and deducted from the remainder of the
20 years over which the credit can be taken.

21 (1) Cost-of-living adjustment. -- For purposes of this
22 section, the cost-of-living adjustment for any calendar year is the
23 percentage, if any, by which the consumer price index for the
24 preceding calendar year exceeds the consumer price index for

1 calendar year 2011.

2 (2) Consumer price index for any calendar year. -- For
3 purposes of this section, the consumer price index for any calendar
4 year is the average of the federal consumer price index as of the
5 close of the twelve-month period ending on August 31 of such
6 calendar year.

7 (3) Consumer price index. -- For purposes of this section, the
8 term "Federal Consumer Price Index" means the last consumer price
9 index for all urban consumers published by the United States
10 Department of Labor.

11 (4) Rounding. -- If any increase in the annual compensation
12 amount under this section is not a multiple of \$50, such increase
13 shall be rounded to the next lowest multiple of \$50.

14 (c) Unused credit remaining in any tax year after application
15 against the taxes specified in section seven of this article is
16 forfeited and does not carry forward to any succeeding tax year and
17 does not carry back to a prior tax year.

18 (d) Reduction in number of employees credit forfeiture. -- If
19 during the year when a new job was created for which credit was
20 granted under this section or during any of the next succeeding
21 four tax years thereafter, net jobs that are attributable to and
22 the consequence of the taxpayer's business operations in this
23 state, decrease, counting both new jobs for which credit was
24 granted under this article and preexisting jobs, then the total

1 amount of credit to which the taxpayer is entitled under this
2 section shall be decreased and forfeited in the amount of \$3,000
3 for each net job lost.

4 **§11-13BB-9. Application for credit required; failure to make**
5 **timely application; burden of proof.**

6 (a) Application for credit required. -- Notwithstanding any
7 provision of this article to the contrary, no credit is allowed or
8 may be applied under this article for any qualified investment
9 property placed in service or use until the person asserting a
10 claim for the allowance of credit under this article makes written
11 application to the Tax Commissioner for allowance of credit as
12 provided in this subsection. An application for credit shall be
13 filed, in the form prescribed by the Tax Commissioner, no later
14 than the last day for filing the tax returns, 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 and all information required by
19 the form shall be provided.

20 (b) 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 under
23 this article. This penalty applies annually until the application
24 is filed.

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

4 **§11-13BB-10. Identification of investment credit property.**

5 Every taxpayer who claims credit under this article shall
6 maintain sufficient records to establish the following facts for
7 each item of qualified property:

8 (1) Its identity;

9 (2) Its actual or reasonably determined cost;

10 (3) Its straight-line depreciation life;

11 (4) The month and taxable year in which it was placed in
12 service;

13 (5) The amount of credit taken; and

14 (6) The date it was disposed of or otherwise ceased to be
15 qualified property.

16 **§11-13BB-11. Forfeiture of unused tax credits; redetermination of**
17 **credit allowed.**

18 (a) Disposition of property or cessation of use. -- If during
19 any taxable year, property with respect to which a tax credit has
20 been allowed under this article:

21 (1) Is disposed of prior to the end of its useful life, as
22 determined under section eight of this article; or

23 (2) Ceases to be used in an eligible business of the taxpayer

1 in this state prior to the end of its useful life, as determined
2 under section eight of this article, then the unused portion of the
3 credit allowed for the property is forfeited for the taxable year
4 and all ensuing years. Additionally, except when the property is
5 damaged or destroyed by fire, flood, storm or other casualty, or is
6 stolen, the taxpayer shall redetermine the amount of credit allowed
7 in all earlier years by reducing the applicable percentage of cost
8 of the property allowed under section eight of this article, to
9 correspond with the percentage of cost allowable for the period of
10 time that the property was actually used in this state in the new
11 or expanded business of the taxpayer. The taxpayer shall then file
12 a reconciliation statement for the year in which the forfeiture
13 occurs and pay any additional taxes owed due to reduction of the
14 amount of credit allowable for the earlier years, plus interest and
15 any applicable penalties. The reconciliation statement shall be
16 filed with the annual return for the primary tax for which the
17 taxpayer is liable under article twenty-three of this chapter, or
18 under article twenty-one or twenty-four of this chapter.

19 (b) Cessation of operation of business facility. -- If during
20 any taxable year the taxpayer ceases operation of a business
21 facility in this state for which credit was allowed under this
22 article, before expiration of the useful life of property with
23 respect to which tax credit has been allowed under this article,
24 then the unused portion of the allowed credit is forfeited for the

1 taxable year and for all ensuing years. Additionally, except when
2 the cessation is due to fire, flood, storm or other casualty, the
3 taxpayer shall redetermine the amount of credit allowed in earlier
4 years by reducing the applicable percentage of cost of the property
5 allowed under section eight of this article, to correspond with the
6 percentage of cost allowable for the period of time that the
7 property was actually used in this state in a business of the
8 taxpayer that is taxable under article twenty-three or twenty-four
9 of this chapter, or in the case of a partnership, the distributive
10 share of partnership items is taxable under article twenty-one of
11 this chapter. The taxpayer shall then file a reconciliation
12 statement with the annual return for the primary tax for which the
13 taxpayer is liable under article twenty-one, twenty-three or
14 twenty-four of this chapter, for the year in which the forfeiture
15 occurs, and pay any additional taxes owed due to the reduction of
16 the amount of credit allowable for the earlier years, plus interest
17 and any applicable penalties.

18 (c) Reduction in number of employees. -- If during any taxable
19 year subsequent to the taxable year in which the new jobs
20 percentage is redetermined as provided in section nine of this
21 article, the average number of employees of the taxpayer, for the
22 then current taxable year, employed in positions created because of
23 and directly attributable to the qualified investment falls below
24 the minimum number of new jobs created upon which the taxpayer's

1 annual credit allowance is based, the taxpayer shall calculate what
2 his or her annual credit allowance would have been had his or her
3 new jobs percentage been determined based upon the average number
4 of employees, for the then current taxable year, employed in
5 positions created because of and directly attributable to the
6 qualified investment. The difference between the result of this
7 calculation and the taxpayer's annual credit allowance for the
8 qualified investment as determined under section four of this
9 article, is forfeited for the then current taxable year, and for
10 each succeeding taxable year unless for a succeeding taxable year
11 the taxpayer's average employment in positions directly
12 attributable to the qualified investment once again meets the level
13 required to enable the taxpayer to utilize its full annual credit
14 allowance for that taxable year.

15 **§11-13BB-12. Recapture of credit; recapture tax imposed.**

16 (a) When recapture tax applies. --

17 (1) Any person who places qualified investment property in
18 service or use and who fails to use the qualified investment
19 property for at least the period of its useful life (determined as
20 of the time the property was placed in service or use), or the
21 period of time over which tax credits allowed under this article
22 with respect to the property are applied under this article,
23 whichever period is less, and who reduces the number of its
24 employees filling new jobs in its business in this state, which

1 were created and are directly attributable to the qualified
2 investment property, after the third taxable year in which the
3 qualified investment property was placed in service or use, or
4 fails to continue to employ individuals in all the new jobs created
5 as a direct result of the qualified investment property and used to
6 qualify for the credit allowed by this article, prior to the end of
7 the tenth taxable year after the qualified investment property was
8 placed in service or use, the person shall pay the recapture tax
9 imposed by subsection (b) of this section.

10 (2) This section does not apply when section thirteen of this
11 article applies. However, the successor, or the successors, and
12 the person, or persons, who previously claimed credit under this
13 article with respect to the qualified investment property and the
14 new jobs attributable thereto, are jointly and severally liable for
15 payment of any recapture tax subsequently imposed under this
16 section with respect to the qualified investment property and new
17 jobs.

18 (b) Recapture tax imposed. -- The recapture tax imposed by
19 this subsection is the amount determined as follows:

20 (1) Full recapture. -- If the taxpayer prematurely removes
21 qualified investment property placed in service (when considered as
22 a class) from economic service in the taxpayer's qualified
23 investment business activity in this state, and the number of
24 employees filling the new jobs created by the person falls below

1 the number of new jobs required to be created in order to qualify
2 for the amount of credit being claimed or the requirements of
3 section eight of this article are not satisfied, the taxpayer shall
4 recapture the amount of credit claimed under section seven of this
5 article for the taxable year, and all preceding taxable years, on
6 qualified investment property which has been prematurely removed
7 from service. Additionally, the property tax benefit allowed under
8 article six-1 of this chapter shall be recaptured for a like
9 period. The amount of tax due under this subdivision is an amount
10 equal to the amount of credit that is recaptured under this
11 subdivision plus the amount of the property tax benefit recaptured
12 under this section.

13 (2) *Partial recapture.* -- If the taxpayer prematurely removes
14 qualified investment property from economic service in the
15 taxpayer's qualified investment business activity in this state,
16 and the number of employees filling the new jobs created by the
17 person remains ten or more, but falls below the number necessary to
18 sustain continued application of credit determined by use of the
19 new job percentage upon which the taxpayer's one-tenth annual
20 credit allowance was determined under section four or section ten
21 of this article, taxpayer shall recapture an amount of credit equal
22 to the difference between: (A) The amount of credit claimed under
23 section seven of this article for the taxable year, and all
24 preceding taxable years; and (B) the amount of credit that would

1 have been claimed in those years if the amount of credit allowable
2 under section four or ten of this article had been determined based
3 on the qualified investment property which remains in service using
4 the average number of new jobs filled by employees in the taxable
5 year for which recapture occurs. The amount of tax due under this
6 subdivision is an amount equal to the amount of credit that is
7 recaptured under this subdivision.

8 (3) Additional recapture. -- If after a partial recapture
9 under subdivision (2) of this subsection, the taxpayer further
10 reduces the number of employees filling new jobs, the taxpayer
11 shall recapture an additional amount determined as provided under
12 subdivision (1) of this subsection. The amount of tax due under
13 this subdivision is an amount equal to the amount of credit that is
14 recaptured under this subdivision.

15 (d) Payment of recapture tax. -- The amount of tax recaptured
16 under this section is due and payable on the day the person's
17 annual return is due for the taxable year in which this section
18 applies, under article twenty-one or twenty-four of this chapter.
19 When the employer is a partnership, limited liability company or S
20 corporation for federal income tax purposes, the recapture tax
21 shall be paid by those persons who are partners in the partnership,
22 members in the company, or shareholders in the S corporation, in
23 the taxable year in which recapture occurs under this section.
24 The Tax Commissioner shall cause the property tax benefit

1 recaptured to be paid over to the sheriff of the county in which
2 the property is or was located within sixty days after the
3 recapture tax is paid to the Tax Commissioner.

4 (e) Rules. -- The Tax Commissioner may promulgate such rules
5 as may be useful or necessary to carry out the purpose of this
6 section and to implement the intent of the Legislature. Rules
7 shall be promulgated in accordance with the provisions of article
8 three, chapter twenty-nine-a of this code.

9 **§11-13BB-13. Transfer of qualified investment to successors.**

10 (a) Mere change in form of business. -- Property may not be
11 treated as disposed of under section eleven of this article, by
12 reason of a mere change in the form of conducting the business as
13 long as the property is retained in the successor business in this
14 state, and the transferor business retains a controlling interest
15 in the successor business. In this event, the successor business
16 is allowed to claim the amount of credit still available with
17 respect to the business facility or facilities transferred, and the
18 transferor business may not be required to redetermine the amount
19 of credit allowed in earlier years.

20 (b) Transfer or sale to successor. -- Property is not treated
21 as disposed of under section eleven of this article by reason of
22 any transfer or sale to a successor business which continues to
23 operate the business facility in this state. Upon transfer or
24 sale, the successor shall acquire the amount of credit that remains

1 available under this article for each subsequent taxable year and
2 the transferor business is not required to redetermine the amount
3 of credit allowed in earlier years.

4 **§11-13BB-14. Failure to keep records of investment credit**
5 **property.**

6 A taxpayer who does not keep the records required for
7 identification of investment credit property is subject to the
8 following rules:

9 (1) A taxpayer is treated as having disposed of, during the
10 taxable year, any investment credit property which the taxpayer
11 cannot establish was still on hand, in this state, at the end of
12 that year.

13 (2) If a taxpayer cannot establish when investment credit
14 property reported for purposes of claiming this credit returned
15 during the taxable year was placed in service, the taxpayer is
16 treated as having placed it in service in the most recent prior
17 year in which similar property was placed in service, unless the
18 taxpayer can establish that the property placed in service in the
19 most recent year is still on hand. In that event, the taxpayer
20 will be treated as having placed the returned property in service
21 in the next most recent year.

22 **§11-13BB-15. Interpretation and construction.**

23 (a) No inference, implication or presumption of legislative
24 construction or intent may be drawn or made by reason of the

1 location or grouping of any particular section, provision or
2 portion of this article; and no legal effect may be given to any
3 descriptive matter or heading relating to any section, subsection
4 or paragraph of this article.

5 (b) The provisions of this article shall be reasonably
6 construed in order to effectuate the legislative intent recited in
7 section two of this article.

8 (c) In no event may any property that is treated as qualified
9 investment property for purposes of this article be used to qualify
10 for credit under any other article of this chapter.

11 **§11-13BB-16. Tax credit review and accountability.**

12 (a) On or before February 1, 2016, and on or before February
13 1 of every third year thereafter, the Tax Commissioner shall submit
14 to the Governor, the President of the Senate and the Speaker of the
15 House of Delegates, a tax credit review and accountability report
16 evaluating the cost effectiveness of the credit allowed by this
17 article during the most recent three-year period for which
18 information is available. The criteria to be evaluated shall
19 include, but not be limited to, for each year of the three-year
20 period:

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

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

24 (3) The cost of the credit;

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

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

4 (b) Taxpayers claiming the credit shall provide any
5 information the Tax Commissioner may require to prepare the report:
6 Provided, That the information provided is subject to the
7 confidentiality and disclosure provisions of sections five-d and
8 five-s, article ten of this chapter.

9 **§11-13BB-17. Effective date; termination date.**

10 (a) Effective date. - The credit allowed by this article is
11 allowed for qualified investment placed in service or use on or
12 after July 1, 2011, subject to the rules contained in this section.

13 (b) Termination date. - Unless extended by the Legislature,
14 this credit shall not be allowed for any qualified investment
15 property placed in service or use after December 31, 2019:
16 Provided, That when the qualified investment property was placed in
17 service or use prior to January 1, 2020, taxpayers shall be allowed
18 the tax benefits allowed by section four of this article for the
19 remainder of the five-year period allowed by subsection (b) of that
20 section, or the remainder of the credit period allowed under
21 subsection (c) of that section, depending upon which is applicable
22 to the taxpayer.

23 **§11-13BB-18. Severability.**

1 (a) If any provision of this article or the application
2 thereof is for any reason adjudged by any court of competent
3 jurisdiction to be invalid, the judgment may not affect, impair or
4 invalidate the remainder of the article, but shall be confined in
5 its operation to the provision thereof directly involved in the
6 controversy in which the judgment shall have been rendered, and the
7 applicability of the provision to other persons or circumstances
8 may not be affected thereby.

9 (b) If any provision of this article or the application
10 thereof is made invalid or inapplicable by reason of the repeal or
11 any other invalidation of any statute therein addressed or referred
12 to, such invalidation or inapplicability may not affect, impair or
13 invalidate the remainder of the article, but shall be confined in
14 its operation to the provision thereof directly involved with,
15 pertaining to, addressing or referring to the statute, and the
16 application of the provision with regard to other statutes or in
17 other instances not affected by any such repealed or invalid
18 statute may not be abrogated or diminished in any way.

NOTE: The purpose of this bill is to enact the West Virginia Innovation Free Trade Act of 2011 consisting of the Twenty-First Century Business Technologies Property Valuation Act and the Twenty-First Century Tax Credit Act, the purpose of which is to encourage the development and use of emerging technologies to create good jobs and grow West Virginia's economy.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.