

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 206**

4 (By Senators Kessler (Mr. President) and Hall,

5 By Request of the Executive)

6 \_\_\_\_\_  
7 [Originating in the Committee on Economic Development;  
8 reported January 23, 2012.]  
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12 A BILL to amend and reenact §11-6F-2 and §11-6F-4 of the Code of  
13 West Virginia, 1931, as amended, all relating to designating  
14 certain property as a qualified capital addition to a  
15 manufacturing facility; and extending that property special  
16 valuation to the twenty-fifth year succeeding the year in  
17 which the qualified capital addition is first placed in  
18 service.

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

20 That §11-6F-2 and §11-6F-4 of the Code of West Virginia, 1931,  
21 as amended, be amended and reenacted, all to read as follows:

22 **ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL**  
23 **ADDITIONS TO MANUFACTURING FACILITIES.**

24 **§11-6F-2. Definitions.**

25 As used in this article, the term:

26 (a) "Certified capital addition property" means all real

1 property and personal property included within or to be included  
2 within a qualified capital addition to a manufacturing facility  
3 that has been certified by the State Tax Commissioner in accordance  
4 with section four of this article: *Provided*, That airplanes and  
5 motor vehicles licensed by the Division of Motor Vehicles shall in  
6 no event constitute certified capital addition property.

7 (b) "Manufacturing" means any business activity classified as  
8 having a sector identifier, consisting of the first two digits of  
9 the six-digit North American Industry Classification System code  
10 number of thirty-one, thirty-two or thirty-three or the six digit  
11 code number 211112.

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

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

23 (e) "Qualified capital addition to a manufacturing facility"  
24 means either:

25 (1) All real property and personal property, the combined  
26 original cost of ~~all of the property~~ which exceeds \$50 million to

1 be constructed, located or installed at or within two miles of a  
2 manufacturing facility owned or operated by the person making the  
3 capital addition that has a total original cost before the capital  
4 addition of at least \$100 million. If the capital addition is made  
5 in a steel, chemical or polymer alliance zone as designated from  
6 time-to-time by executive order of the Governor, then the person  
7 making the capital addition may for purposes of satisfying the  
8 requirements of this subsection join in a multiparty project with  
9 a person owning or operating a manufacturing facility that has a  
10 total original cost before the capital addition of at least \$100  
11 million if the capital addition creates additional production  
12 capacity of existing or related products or feedstock or derivative  
13 products respecting the manufacturing facility, consists of a  
14 facility used to store, handle, process or produce raw materials  
15 for the manufacturing facility, consists of a facility used to  
16 store, handle or process natural gas to produce fuel for the  
17 generation of steam or electricity for the manufacturing facility  
18 or consists of a facility that generates steam or electricity for  
19 the manufacturing facility, including but not limited to a facility  
20 that converts coal to a gas or liquid for the manufacturing  
21 facility's use in heating, manufacturing or generation of  
22 electricity. Beginning on and after July 1, 2011, when the new  
23 capital addition is a facility that is or will be classified under  
24 the North American Industry Classification System with a six digit  
25 code number 211112, or is a manufacturing facility that uses  
26 product produced at a facility with code number 211112, then

1 wherever the term "100 million" is used in this subsection, the  
2 term "20 million" shall be substituted and where the term "50  
3 million" is used, the term "10 million" shall be substituted; or

4 (2) (A) All real property and personal property, the combined  
5 original cost of which exceeds \$2 billion to be constructed,  
6 located or installed at a facility, or a combination of facilities  
7 by a single entity or combination of entities engaged in a unitary  
8 business, that:

9 (I) Is or will be classified under the North American Industry  
10 Classification System with a six digit code number 211112; or

11 (ii) Is a manufacturing facility that uses one or more  
12 products produced at a facility with code number 211112; or

13 (iii) Is a manufacturing facility that uses one or more  
14 products produced at a facility described in subparagraph (ii) of  
15 this subdivision.

16 (B) No preexisting investment made, or in place before the  
17 capital addition shall be required for property specified in this  
18 subdivision (2). The requirements set forth in subdivision (1) of  
19 this subsection shall not apply to property specified in this  
20 subdivision (2) relating to:

21 (I) Location or installation of investment at or within two  
22 miles of a manufacturing facility owned or operated by the person  
23 making the capital addition;

24 (ii) Total original cost of preexisting investment before the  
25 capital addition of at least \$100 million or \$20 million; or

26 (iii) Multiparty projects.

1 (f) "Real property" means all property specified in  
2 subdivision (p), section ten, article two, chapter two of this code  
3 and includes, but is not limited to, lands, buildings and  
4 improvements on the land such as sewers, fences, roads, paving and  
5 leasehold improvements: Provided, That, for capital additions  
6 certified on or after July 1, 2011, the value of the land before  
7 any improvements shall be subtracted from the value of the capital  
8 addition and the unimproved land value shall not be given salvage  
9 value treatment.

10 **§11-6F-4. Application and certification.**

11 Any person seeking designation of property as certified  
12 capital addition property shall first make a sworn application to  
13 the State Tax Commissioner on forms prescribed by the State Tax  
14 Commissioner on or before the date the property is first required  
15 to be reported on an annual return for ad valorem property tax  
16 purposes. The State Tax Commissioner shall within ninety days of  
17 the application determine in writing whether the property is or  
18 will be part of a qualified capital addition to a manufacturing  
19 facility as defined in section two of this article and shall  
20 provide a copy of the written determination to the applicant and  
21 the assessor or assessors in the county or counties in which the  
22 manufacturing facility is located. The applicant may file an appeal  
23 with the State Tax Commissioner to have a formal hearing for a  
24 review and redetermination on qualified capital additions to a  
25 manufacturing facility which have been disallowed by the State Tax  
26 Commissioner within thirty days of the official written

1 notification from the State Tax Commissioner. After the State Tax  
2 Commissioner determines that property is or will be part of a  
3 qualified capital addition to a manufacturing facility, the  
4 property is and remains certified capital addition property for  
5 purposes of this article until the earlier of: (a) The disposition  
6 of the property to an unrelated third party other than a transferee  
7 who continues to operate the manufacturing facility; (b) the  
8 cessation of all business at the manufacturing facility; or (c)  
9 with regard to: (1) Property described in subdivision (1),  
10 subsection (e), section two of this article, the tenth year  
11 succeeding the year in which the qualified capital addition to a  
12 manufacturing facility to which the property relates is first  
13 placed in service; or (2) property described in subdivision (2),  
14 subsection (e), section two of this article, the twenty-fifth year  
15 succeeding the year in which the qualified capital addition to a  
16 manufacturing facility to which the property relates is first  
17 placed in service.

18 All applications and determinations under this section  
19 constitute return information and are subject to section twenty-  
20 three, article one-a of this chapter. The State Tax Commissioner  
21 shall report annually the number of applications filed, certified,  
22 denied and pending pursuant to this section for the preceding year  
23 along with recommendations regarding the structure, benefits and  
24 costs of the valuation method specified in this article to the  
25 Joint Committee on Government and Finance and to the Governor:

1 *Provided*, That identifying characteristics and facts about  
2 applicants may not in any event be disclosed under this section.

NOTE: The purpose of this bill is to extend the special valuation of certified capital addition property to include certain significant initial investment in certain manufacturing facilities, without the qualifying requirement of preexisting investment, and to enlarge the time over which that special valuation applies from 10 years to 25 years succeeding the year qualified investment is placed in service.

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