

H. B. 4449

(By Delegates R. Phillips, Lynch, Tomblin,
Eldridge, Barker, Marcum, White, Caputo, Skaff,
Craig and Sumner)

[Introduced February 10, 2014; referred to the
Committee on Energy then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-13BB-3 of the Code of West
Virginia, 1931, as amended, relating to including proximity
detection systems and cameras used on continuous mining
machines and underground haulage equipment for tax credit
purposes under the West Virginia Innovative Mine Safety
Technology Tax Credit Act.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-3. Definitions.

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

(b) For purposes of this article, the term:

1 (1) "Certified eligible safety property" means eligible safety
2 property in which an eligible taxpayer has made qualified
3 investment for which credit has been certified under this article.

4 (2) "Coal mining company" means:

5 (A) A person subject to tax imposed on the severance of coal
6 by section three, article thirteen-a of this chapter; or

7 (B) A person working as a contract miner of coal, mining coal
8 in this state, under contract with a person subject to tax imposed
9 on the severance of coal by section three, article thirteen-a of
10 this chapter.

11 (3) "Director" means the Director of the Office of Miners'
12 Health, Safety and Training or West Virginia Office of Miners'
13 Health, Safety and Training established under article one, chapter
14 twenty two-a of this code.

15 (4) "Eligible safety property" means safety technology
16 equipment that, at the time of acquisition, is on the list of
17 approved innovative mine safety technology: *Provided*, That eligible
18 safety property includes proximity detection systems and cameras
19 used on continuous mining machines and underground haulage
20 equipment and machine mounted methane monitors required by section
21 forty-three, article two, chapter twenty-two-a of this code.

22 (5) "Eligible taxpayer" means a coal mining company that
23 purchases eligible safety property.

24 (6) "List of approved innovative mine safety technology" means

1 the list required to be compiled and maintained by the Mine Safety
2 Technology Task Force and approved and published by the director
3 under this article.

4 (7) "Office of Miners' Health, Safety and Training" or "West
5 Virginia Office of Miners' Health, Safety and Training" means the
6 Office of Miners' Health, Safety and Training established under
7 article one, chapter twenty two-a of this code.

8 (8) "Person" includes any corporation, limited liability
9 company or partnership.

10 (9) "Qualified investment" means the eligible taxpayer's
11 investment in eligible safety property pursuant to a qualified
12 purchase as qualified and limited by section six of this article.

13 (10) "Qualified purchase" means and includes only acquisitions
14 of eligible safety property for use in this state.

15 (A) A lease of eligible safety property may constitute a
16 qualified purchase if the lease was entered into and became
17 effective at a time when the equipment is on the list of approved
18 innovative mine safety technology and if the primary term of the
19 lease for the eligible safety property is five years or more.
20 Leases having a primary term of less than five years do not
21 qualify.

22 (B) "Qualified purchase" does not include:

23 (i) Purchases or leases of realty or any cost for, or related
24 to, the construction of a building, facility or structure attached

1 to realty;

2 (ii) Purchases or leases of property not exclusively used in
3 West Virginia;

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

7 (iv) Motor vehicles licensed by the Division of Motor
8 Vehicles;

9 (v) Clothing;

10 (vi) Airplanes;

11 (vii) Off-premises transportation equipment;

12 (viii) Leases of tangible personal property having a primary
13 term of less than five years;

14 (ix) Property that is used outside this state; and

15 (x) Property that is acquired incident to the purchase of the
16 stock or assets of an industrial taxpayer that was or had been used
17 by the seller in his or her industrial business in this state or in
18 which investment was previously the basis of a credit against tax
19 taken under any other article of this chapter.

20 (C) Acquisitions, including leases, of eligible safety
21 property may constitute qualified purchases for purposes of this
22 article only if:

23 (i) The property is not acquired from a person whose
24 relationship to the person acquiring it would result in the

1 disallowance of deductions under Section 267 or 707(b) of the
2 United States Internal Revenue Code of 1986, as amended;

3 (ii) The property is not acquired from a related person or by
4 one component member of a controlled group from another component
5 member of the same controlled group but the Tax Commissioner may
6 waive this requirement if the property was acquired from a related
7 party for its then fair market value; and

8 (iii) The basis of the property for federal income tax
9 purposes, in the hands of the person acquiring it, is not
10 determined, in whole or in part, by reference to the federal
11 adjusted basis of the property in the hands of the person from whom
12 it was acquired or under Section 1014(e) of the United States
13 Internal Revenue Code of 1986, as amended.

14 (11) "Safety technology" means depreciable tangible personal
15 property and equipment, other than clothing, principally designed
16 to directly minimize workplace injuries and fatalities in coal
17 mines.

18 (12) "Taxpayer" means a person subject to any of the taxes
19 imposed by article thirteen-a, twenty-three or twenty-four of this
20 chapter.

NOTE: The purpose of this bill is to include proximity
detection systems and cameras used on continuous mining machines
and underground haulage equipment for tax credit purposes under the
West Virginia Innovative Mine Safety Technology Credit Act.

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