

Senate Bill No. 312

(By Senators Cann, Williams, Wells, McCabe, Stollings and
Palumbo)

[Introduced January 9, 2014; referred to the Committee on
Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
§5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8,
§5B-2I-9, §5B-2I-10, §5B-2I-11, §5B-2I-12, §5B-2I-13,
§5B-2I-14, §5B-2I-15, §5B-2I-16, §5B-2I-17, §5B-2I-18,
§5B-2I-19, §5B-2I-20, §5B-2I-21, §5B-2I-22, §5B-2I-23,
§5B-2I-24, §5B-2I-25, §5B-2I-26, §5B-2I-27, §5B-2I-28,
§5B-2I-29, §5B-2I-30, §5B-2I-31, §5B-2I-32, §5B-2I-33,
§5B-2I-34, §5B-2I-35, §5B-2I-36, §5B-2I-37, §5B-2I-38,
§5B-2I-39, §5B-2I-40 and §5B-2I-41; to amend said code by
adding thereto a new article, designated §11-6L-1, §11-6L-2,
§11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to

1 amend said code by adding thereto a new article, designated
2 §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5,
3 §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10,
4 §11-21A-11, §11-21A-12, §11-21A-13, §11-21A-14, §11-21A-15,
5 §11-21A-16, §11-21A-17 and §11-21A-18, all relating generally
6 to economic development and job creation; creating the West
7 Virginia Project Launchpad Act; providing short title;
8 providing legislative purpose and finding; defining certain
9 terms; providing criteria for establishment of West Virginia
10 project launchpads by Governor; allowing county commissions
11 and county councils to apply for launchpad designations;
12 providing for form and content of applications; specifying
13 process for review of applications and criteria for
14 designating geographic areas as launchpads and for expansion
15 and decertification of launchpads; providing economic benefits
16 for businesses locating or expanding in launchpads including
17 state and local tax relief and other economic benefits;
18 prohibiting qualified businesses in a launchpad from employing
19 illegal aliens, engaging in illegal activity or being
20 delinquent in payment of state and local taxes; permitting
21 transfer of economic benefits to successor businesses;
22 requiring qualified business to comply with applicable zoning

1 laws and state and local building and other codes; providing
2 for recapture of taxes and other economic benefits under
3 specified circumstances; promulgation of rules; imposing civil
4 and criminal penalties for noncompliance; providing rules of
5 application and construction; requiring periodic reports to
6 Governor and Legislature; providing for severability and
7 expiration; providing a special method for appraising property
8 in launchpad for economic development; providing short title;
9 defining certain terms; providing method of valuation of
10 launchpad property; providing for initial determination of
11 value by assessor and for protest and appeals; requiring
12 periodic reports to Governor and Legislature and specifying
13 effective dates; creating the Promoting West Virginia
14 Employment Act; providing short title and scope of article;
15 defining certain terms; providing qualification for benefits;
16 specifying benefits upon application and review; specifying
17 annual cap on benefits; providing for recapture of benefits;
18 providing for administration and enforcement of article
19 including issuance of regulations; requiring periodic reports
20 to Governor and Legislature; and specifying effective dates.

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

22 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
 2 §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8,
 3 §5B-2I-9, §5B-2I-10, §5B-2I-11, §5B-2I-12, §5B-2I-13, §5B-2I-14,
 4 §5B-2I-15, §5B-2I-16, §5B-2I-17, §5B-2I-18, §5B-2I-19, §5B-2I-20,
 5 §5B-2I-21, §5B-2I-22, §5B-2I-23, §5B-2I-24, §5B-2I-25, §5B-2I-26,
 6 §5B-2I-27, §5B-2I-28, §5B-2I-29, §5B-2I-30, §5B-2I-31, §5B-2I-32,
 7 §5B-2I-33, §5B-2I-34, §5B-2I-35, §5B-2I-36, §5B-2I-37, §5B-2I-38,
 8 §5B-2I-39, §5B-2I-40 and §5B-2I-41; to amend said code by adding
 9 thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3,
 10 §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to amend said code
 11 by adding thereto a new article, designated §11-21A-1, §11-21A-2,
 12 §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8,
 13 §11-21A-9, §11-21A-10, §11-21A-11, §11-21A-12, §11-21A-13,
 14 §11-21A-14, §11-21A-15, §11-21A-16, §11-21A-17 and §11-21A-18, all
 15 to read as follows:

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

17 **ARTICLE 2I. WEST VIRGINIA PROJECT LAUNCHPAD ACT.**

18 **§5B-2I-1. Short title.**

19 This article shall be known and may be cited as the "West
 20 Virginia Project Launchpad Act."

21 **§5B-2I-2. Purpose and legislative findings.**

22 (a) *Purpose.* -- The purpose of this article is to encourage

1 economic opportunity, greater capital investment and development of
2 the use in this state of new state-of-the-art technologies by
3 enacting the West Virginia Project Launchpad Act.

4 (b) *Legislative findings.* --

5 (1) West Virginia's economy is under siege from actions and
6 inactions of the federal government, which has declared war on coal
7 but has no comprehensive energy policy, federal policies that
8 stifle economic development and expansion and by a federal debt
9 that now equals or exceeds the country's annual gross domestic
10 product.

11 (2) The economy of the past that West Virginia has relied upon
12 for employment, business activity, taxes and other items is rapidly
13 shrinking and West Virginia has not done a good job to position
14 itself for economic development in the new economy, which largely
15 can be located anywhere in the United States or for that matter, in
16 many instances, the world.

17 (3) Future expansion and development of the West Virginia
18 economy, job creation potential and the physical environment are
19 driven by the flow of energy and the nonstop emergence of new
20 technologies.

21 (4) State-of-the-art technologies are being developed,
22 demonstrated and manufactured or used in manufacturing in other

1 states in order to support economic development by responding to
2 the emergence of new technologies and the rapidly expanding
3 worldwide export market for such technologies.

4 (5) In order to retain college and university graduates
5 trained in use of new technologies and to encourage graduates of
6 out-of-state colleges and universities trained in use of new
7 technologies to be located in this state, employers are encouraged
8 to assist their employees in paying their student loans.

9 (6) West Virginia has been slow to recognize the potential
10 economic and technical benefits of these emerging technologies.

11 (7) The Legislature finds that it is in the public interest
12 and the general welfare of the citizens of West Virginia to:

13 (A) Establish a foothold in the West Virginia economy for
14 manufacturers of advanced products and the development of
15 businesses employing other emerging technologies that are magnets
16 for capital investment and produce new jobs that are
17 characteristically knowledge-based;

18 (B) Encourage the application of nanotechnology and other
19 supporting technology to:

20 (I) Aeronautics and space;

21 (ii) Agriculture;

22 (iii) Biotechnology;

1 (iv) Environment;

2 (v) Manufacturing and materials science;

3 (vi) Medicine and health;

4 (vii) Nanoelectronics and computer technology;

5 (viii) National and homeland security; and

6 (ix) Photonics; and

7 (C) Encourage the manufacture, sale and use of alternative
8 fuel vehicles fueled by natural gas, electricity, hydrogen or other
9 alternative fuel and development of the infrastructure necessary to
10 the convenient and efficient refueling of such vehicles.

11 (8) There exist in this state areas of economic distress
12 characterized by high unemployment, low investment of new capital,
13 inadequate dwelling conditions, blighted conditions, underutilized,
14 obsolete or abandoned industrial, commercial and residential
15 structures and deteriorating tax bases.

16 (9) These areas require coordinated efforts by private and
17 public entities to restore prosperity and enable these areas to
18 make significant contributions to the economic and social life of
19 this state.

20 (10) Long-term economic viability of these areas requires the
21 cooperative involvement of residents, businesses, state and local
22 elected officials and community organizations.

1 (11) It is in the public interest and general welfare of the
2 people of this state for state and local governments to assist and
3 encourage the creation of West Virginia project launchpads for
4 economic development and to provide temporary relief from certain
5 taxes within the West Virginia launchpad to accomplish the purposes
6 of this article.

7 **§5B-2I-3. Definitions.**

8 (a) *General.* -- When used in this article, or in the
9 administration of this article, terms defined in subsection (b) of
10 this section have the meanings ascribed to them by this section,
11 unless a different meaning is clearly required by either the
12 context in which the term is used, or by specific definition, in
13 this article.

14 (b) *Terms defined.* --

15 (1) "Advanced coal technology" includes, but is not limited
16 to, a technology that is used in a new or existing
17 energy-generating facility to reduce airborne carbon emissions
18 associated with the combustion or use of coal and includes, but is
19 not limited to, carbon dioxide capture and sequestration
20 technology, supercritical technology, advanced supercritical
21 technology as that technology is determined by the Public Service
22 Commission of West Virginia, ultra supercritical technology and

1 pressurized fluidized bed technology and any other resource,
2 method, project or technology certified by the Public Service
3 Commission of West Virginia as advanced coal technology: *Provided,*
4 That the technology was not in commercial use anywhere in the
5 United States before July 1, 2014.

6 (2) "Advanced information technology" means the development,
7 installation and implementation of computer systems and
8 applications that utilize cloud computing, quantum computing or the
9 next evolution beyond cloud and quantum computing: *Provided,* That
10 the technology was not in commercial use anywhere in the United
11 States before July 1, 2014.

12 (3) "Advanced manufacturing" means the application of
13 state-of-the-art technologies, processes and methods to design and
14 manufacture tangible personal property for commercial or industrial
15 use or for use by consumers: *Provided,* That the technology was not
16 in commercial use anywhere in the United States before July 1,
17 2014.

18 (4) "Bioinformatics" means the application of statistics and
19 computer science to the field of molecular biology and entails the
20 creation and advancement of databases, algorithms, computational
21 and statistical techniques and theory to solve formal and practical
22 problems arising from the management and analysis of biological

1 data. The primary goal of bioinformatics is to increase the
2 understanding of biological processes. What sets bioinformatics
3 apart from other approaches is its focus on developing and applying
4 computationally intensive techniques (e.g., pattern recognition,
5 data mining, machine learning algorithms and visualization) to
6 achieve this goal: *Provided*, That the technology was not in
7 commercial use anywhere in the United States before July 1, 2014.

8 (5) "Bioscience" means the use of compositions, methods and
9 organisms in cellular and molecular research, development and
10 manufacturing processes for such diverse areas as pharmaceuticals,
11 medical therapeutics, medical diagnostics, medical devices, medical
12 instruments, biochemistry, microbiology, veterinary medicine, plant
13 biology, agriculture and industrial, environmental, and homeland
14 security applications of bioscience, and future developments in the
15 biosciences. Bioscience includes biotechnology and life sciences:
16 *Provided*, That the technology was not in commercial use anywhere in
17 the United States before July 1, 2014.

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

1 this state, including, without limitation, research, development,
2 or production directed towards developing or providing bioscience
3 products or processes for specific commercial or public purposes
4 and are identified by the following NAICS codes: 325193, 325199,
5 325311, 325320, 325411, 325412, 325413, 325414, 334510, 334516,
6 334517, 339112, 339113, 339115, 541380, 541712, 541940, 621511,
7 621512 and 622110. "Bioscience company" does not include a sole
8 proprietorship.

9 (7) "Biotechnology" means those fields focusing on
10 technological developments in areas such as biocomputing,
11 biodefense, bioinformatics, genetic engineering, genomics,
12 molecular biology, nanotechnology, proteomics and physiomics:
13 *Provided*, That the technology was not in commercial use anywhere in
14 the United States before July 1, 2014.

15 (8) "Business" means any activity engaged in by any person in
16 this state that is taxable under article twenty-one, twenty-three
17 or twenty-four of chapter eleven of this code (or any combination
18 of those articles of that chapter).

19 (9) "Business segment" means a component or subset of a
20 business enterprise that: (A) Provides a single product or service
21 or a group of related products and services; (B) is subject to
22 risks and returns that are different from those of other business

1 segments; and (C) earns revenue for the business enterprise.

2 (10) "Clean coal technology" means a technology first used
3 commercially in the United States on or after July 1, 2014, that
4 significantly reduces the environmental impact of coal usage
5 including, but not limited to, coal gasification and carbon capture
6 and storage.

7 (11) "Clean natural gas technology" means a technology first
8 used commercially in the United States on or after July 1, 2014,
9 that significantly reduces the environmental impact of natural gas.

10 (12) "Compensation" means wages, salaries, commissions, the
11 cost of health insurance benefits and any other form of
12 remuneration paid to employees for personal services.

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

21 (14) "Corporation" means any corporation, joint-stock company
22 or association, and any business conducted by a trustee or trustees

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

3 (15) "County" or "county of this state" means a county of this
4 state listed in article one, chapter one of this code.

5 (16) "Department of Commerce" means the Department of Commerce
6 established in article two, chapter five-f of this code.

7 (17) "Department of Revenue" means the Department of Revenue
8 established in article two, chapter five-f of this code.

9 (18) "Designee" in the phrase "or his or her designee", when
10 used in reference to:

11 (A) The Secretary of Commerce, means any officer or employee
12 of the Department of Commerce or any agency of that department as
13 specified in article two, chapter five-f of this code, duly
14 authorized by the Secretary of Commerce directly, or indirectly by
15 one or more redelegations of authority, to perform the functions
16 mentioned or described in this article for the Secretary of
17 Commerce;

18 (B) The Secretary of Revenue, means any officer or employee of
19 the Department of Revenue or any agency of that department as
20 specified in article two, chapter five-f of this code, duly
21 authorized by the Secretary of Revenue directly, or indirectly by
22 one or more redelegations of authority, to perform the functions

1 mentioned or described in this article for the Secretary of
2 Revenue; and

3 (C) The State Tax Commissioner, means any officer or employee
4 of the Tax Division of the Department of Revenue established in
5 article one, chapter eleven of this code, duly authorized by the
6 Tax Commissioner directly, or indirectly by one or more
7 redelegations of authority, to perform the functions mentioned or
8 described in this article for the Tax Commissioner;

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

19 (20) "Emerging technologies" are technologies that are
20 currently being developed or will be developed over the next five
21 to ten years, that represent significant technological developments
22 that broach new territory in some significant way in their field

1 and which will substantially alter the business and social
2 environment. Examples of currently emerging technologies include,
3 but are not limited to, advanced coal technologies, alternative
4 fuel vehicles, artificial intelligence, biotechnology, clean coal
5 and clean natural gas technologies, cognitive science, cloud
6 computing, quantum computing, man-machine communications,
7 nanotechnology, photonics, photovoltaic devices and advanced
8 robotics. Whether a technology is an emerging technology is
9 determined as of the date the new business or a new segment of an
10 existing business is placed in service or use in this state.
11 Emerging technologies do not include any technology that was in
12 commercial use anywhere in the United States before July 1, 2014.

13 (21) "Employer" means an association, corporation,
14 partnership, limited partnership, limited liability company, joint
15 venture, or any other business entity that is an employer.

16 (22) "Expanded business facility" means any business facility
17 (other than a new or replacement facility) resulting from the
18 acquisition, construction, reconstruction, installation or erection
19 of improvements or additions to existing property in this state
20 when the improvements or additions are purchased on or after July
21 1, 2014, but only to the extent of the taxpayer's qualified
22 investment in the improvements or additions and the extent to which

1 the expansion of the business facility is directly used in a new
2 segment of the taxpayer that primarily employs an emerging
3 innovative business technology.

4 (23) "Governing body of a municipal corporation" means the
5 "governing body" as defined in article one, chapter eight of this
6 code.

7 (24) "Governor" means the duly elected Governor of this state.

8 (25) "Health insurance benefits" means employer-provided
9 coverage for medical expenses of the employee or the employee and
10 his or her family under a group accident or health plan, or
11 employer contributions to an Archer medical savings account, as
12 defined in Section 220 of the Internal Revenue Code of 1986, as
13 amended, or to a health savings account, as defined in Section 223
14 of the Internal Revenue Code, of the employee when the employer's
15 contribution to any such account is not less than fifty percent of
16 the maximum amount permitted for the year as employer-provided
17 coverage under Section 220 or 223 of the Internal Revenue Code,
18 whichever section is applicable.

19 (26) "Includes" and "including", when used in a definition or
20 sentence contained in this article, shall not be considered to
21 exclude other things otherwise within the meaning of the term being
22 defined or the sentence in which the word is used.

1 (27) "Innovative business technologies" means and includes,
2 but is not limited to, emerging technologies and other business
3 technologies that primarily use state-of-the-art methodologies,
4 practices or techniques to manufacture, produce or provide its
5 primary goods or services. Innovative business technologies do not
6 include any technology that was in commercial use anywhere in the
7 United States prior to July 1, 2014.

8 (28) "Internal Revenue Code of 1986, as amended", or "Internal
9 Revenue Code", means the United States Internal Revenue Code of
10 1986 as codified in Title 26 of the United States Code, as amended,
11 and as defined in section three, article twenty-four, chapter
12 eleven of this code.

13 (29) "Leased property" does not include property which the
14 taxpayer is required to show on its books and records as an asset
15 under generally accepted principles of financial accounting. If the
16 taxpayer is prohibited from expensing the lease payments for
17 federal income tax purposes, the property shall be treated as
18 purchased property under this section.

19 (30) "Life science" means any of several branches of science,
20 such as biology, medicine, anthropology or ecology, that deal with
21 living organisms and their organization, life processes and
22 relationships to each other and their environment.

1 (31) "Mayor" means "mayor" as defined in article one, chapter
2 eight of this code.

3 (32) "Municipal corporation" or "municipality" means a
4 "municipal corporation" of this state as defined in article one,
5 chapter eight of this code.

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

12 (34) "New business" means any business primarily employing
13 emerging technology or innovative business technology whose
14 ownership and activities are not closely related to a preexisting
15 business. A mere change in the stock ownership of a corporation, or
16 the equity ownership of a partnership or other entity treated as a
17 partnership for federal income tax purposes, shall not affect its
18 status as an existing business. Additionally, a new business that
19 acquires substantially all of the assets of a corporation or other
20 business entity or of a sole proprietorship shall not be treated as
21 a new business for purposes of this article. In determining whether
22 or not a new business is closely related to a preexisting business,

1 all facts and circumstances shall be considered by the Tax
2 Commissioner. The existence of a majority of the following factors
3 establish that a new business is closely related to an existing
4 business:

5 (A) The new business' products or services are very similar to
6 the products or services provided by the preexisting business;

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

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

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

13 (E) The new business' economic success builds on, or depends
14 on, the success of the preexisting business;

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

18 (G) If the new business and the preexisting business are
19 regulated or licensed, they are regulated or licensed by the same
20 or similar governmental authority; and

21 (H) Twenty percent or more of the equity of the new business
22 is collectively owned by individuals and/or businesses that

1 collectively owned more than fifty percent of the equity of the
2 preexisting business.

3 These eight listed factors are not the only ones that may be
4 considered by the Tax Commissioner. Others factors may also be
5 taken into account, in the discretion of the Tax Commissioner.
6 However, this definition does not exclude the categorization of a
7 business as a new business for the sole reason that the entity
8 engaging in the new business already does business in this state.

9 (35) "New business facility" means a business facility located
10 in this state which satisfies each of the following requirements:

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

19 (B) The facility is purchased by, or leased to, the taxpayer
20 on or after July 1, 2014;

21 (C) The facility was not purchased or leased by the taxpayer
22 from a related person: *Provided*, That the Tax Commissioner may

1 waive this requirement if the facility was acquired from a related
2 person for its fair market value and the acquisition was not tax
3 motivated; and

4 (D) The facility was not in service or use during the ninety
5 days immediately prior to transfer of the title to the facility, or
6 prior to the commencement of the term of the lease of the facility:
7 *Provided*, That this ninety-day period may be waived by the Tax
8 Commissioner if the commissioner determines that persons employed
9 at the facility may be treated as "new employees" as that term is
10 defined in this subsection.

11 (36) "New employee" means:

12 (A) A person residing and domiciled in this state, hired by
13 the taxpayer to fill a position or a job in this state which
14 previously did not exist in the taxpayer's business enterprise in
15 this state prior to the date on which the taxpayer's qualified
16 investment is placed in service or use in this state. The term "new
17 employee" also includes a person employed by the taxpayer who works
18 outside this state who relocates in this state, becomes domiciled
19 in this state and is employed full-time at the new business
20 facility in this state. In no case may the number of new employees
21 directly attributable to the investment for purposes of this credit
22 exceed the total net increase in the taxpayer's employment in this

1 state: *Provided*, That the Tax Commissioner may require that the net
2 increase in the taxpayer's employment in this state be determined
3 and certified for the taxpayer's controlled group.

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

7 (I) A regular, full-time and permanent basis:

8 (I) "Full-time" means employment for at least one hundred
9 forty hours per month at a wage not less than the prevailing state
10 or federal minimum wage, depending on which minimum wage provision
11 is applicable to the business;

12 (II) "Permanent" does not include employment that is temporary
13 or seasonal and therefore the wages, salaries and other
14 compensation paid to the temporary or seasonal employees may not be
15 considered for purposes of sections five and seven of this article;
16 or

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

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

1 (38) "New property" means:

2 (A) Property, the construction, reconstruction or erection of
3 which is completed on or after July 1, 2014, and placed in service
4 or use after that date; and

5 (B) Property leased or acquired by the taxpayer that is placed
6 in service or use in this state on or after July 1, 2014, if the
7 original use of the property commences with the taxpayer and
8 commences after that date.

9 (39) "NAICS" means the 2012 United States North American
10 Industry Classification System issued by the Census Bureau of the
11 United States Department of Commerce.

12 (40) "Opportunity plan" means a written plan that addresses
13 the criteria and meets the requirements of section six of this
14 article.

15 (41) "Order" means an order entered by a county commission or
16 county council.

17 (42) "Ordinance" means an "ordinance" as defined in article
18 one of chapter eight of this code.

19 (43) "Original use" means the first use to which the property
20 is put, whether or not the use corresponds to the use of the
21 property by the taxpayer.

22 (44) "Partnership" includes a syndicate, group, pool, joint

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

7 (45) "Person" includes any natural person, corporation or
8 partnership, and includes any entity that is treated like a
9 corporation or partnership for federal income tax purposes.

10 (46) "Photonics" includes the generation, emission,
11 transmission, modulation, signal processing, switching,
12 amplification, detection and sensing of light: *Provided*, That the
13 technology was not in commercial use anywhere in the United States
14 before July 1, 2014.

15 (47) "Photovoltaic devices" means those products designed,
16 manufactured and produced to convert sunlight directly into
17 electricity: *Provided*, That the technology was not in commercial
18 use anywhere in the United States before July 1, 2014.

19 (48) "Political subdivision" means a county or municipal
20 corporation in this state.

21 (49) "Property purchased or leased for business expansion"
22 means:

1 (A) *Included property*. -- Except as provided in paragraph (B)
2 of this subdivision, the term "property purchased or leased for
3 business expansion" means real property and improvements thereto,
4 and tangible personal property, but only if the real or personal
5 property was constructed, purchased, or leased and placed in
6 service or use by the taxpayer, for use as a component part of a
7 new business facility or expanded business facility as defined in
8 this section, which is located within the State of West Virginia.
9 This term includes only:

10 (i) Real property and improvements thereto having a useful
11 life of four or more years, placed in service or use on or after
12 July 1, 2014, by the taxpayer;

13 (ii) Real property and improvements thereto, acquired by
14 written lease having a primary term of ten or more years and placed
15 in service or use by the taxpayer on or after July 1, 2014;

16 (iii) Tangible personal property placed in service or use by
17 the taxpayer on or after July 1, 2014, with respect to which
18 depreciation, or amortization in lieu of depreciation, is allowable
19 in determining the personal or corporation net income tax liability
20 of the business taxpayer under article twenty-one, twenty-three or
21 twenty-four of chapter eleven of this code, and which has a useful
22 life, at the time the property is placed in service or use in the

1 state, of four or more years;

2 (iv) Tangible personal property acquired by written lease
3 having a primary term of four years or longer, that commenced and
4 was executed by the parties thereto on or after July 1, 2014, shall
5 be included within this definition if the leased tangible personal
6 property is used as a component part of a new or expanded business
7 facility; and

8 (v) Tangible personal property owned or leased, and used by
9 the taxpayer at a business location outside the state which is
10 moved into the State of West Virginia on or after July 1, 2014, for
11 use as a component part of a new or expanded business facility
12 located in the state: *Provided*, That if the property is owned, it
13 must be depreciable or amortizable personal property for income tax
14 purposes, and have a useful life of four or more years remaining at
15 the time it is placed in service or use in the state, and if the
16 property is leased, the primary term of the lease remaining at the
17 time the leased property is placed in service or use in the state,
18 must be four or more years;

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

21 (I) Property owned or leased by the taxpayer and for which the
22 taxpayer was previously allowed tax credit under article 13C, 13D,

1 13E, 13H, 13Q, 13R, 13S, 13T, 13U, 13AA or 13BB, chapter 11 of this
2 code;

3 (ii) Property owned or leased by the taxpayer and for which
4 the seller, lessor, or other transferor, was previously allowed tax
5 credit under article 13C, 13D, 13E, 13H, 13Q, 13R, 13S, 13T, 13U,
6 13AA or 13BB, chapter 11 of this code, or the tax credits allowed
7 by this article;

8 (iii) Property owned or leased by the taxpayer that is used to
9 qualify for any other credit against state taxes allowed by this
10 code;

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

14 (v) Airplanes;

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

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

21 (viii) Natural resources in place; or

22 (ix) Purchased or leased property the cost or consideration

1 for which cannot be quantified with any reasonable degree of
2 accuracy at the time the property is placed in service or use:
3 *Provided*, That when the contract of purchase or lease specifies a
4 minimum purchase price or minimum annual rent the amount thereof
5 shall be used to determine the qualified investment in the property
6 under section eight of this article if the property otherwise
7 qualifies as property purchased or leased for business expansion.

8 (50) "Purchase" means any acquisition of property, but only
9 if:

10 (A) The property is not acquired from a person whose
11 relationship to the person acquiring it would result in the
12 disallowance of deductions under Section 267 or 707(b) of the
13 United States Internal Revenue Code of 1986, as amended;

14 (B) The property is not acquired by one component member of a
15 controlled group from another component member of the same
16 controlled group. The commissioner may waive this requirement if
17 the property was acquired from a related party for its then fair
18 market value; and

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

21 (I) In whole or in part, by reference to the federal adjusted
22 basis of the property in the hands of the person from whom it was

1 acquired; or

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

4 (51) "Qualified activity" means any business or other activity
5 subject to any of the taxes imposed by article 13, 21, 23 or 24,
6 chapter 11 of this code (or any combination of those articles), but
7 does not include the activity of severance or production of natural
8 resources.

9 (52) "Qualified business" means a business authorized to do
10 business in this state which is physically located or partially
11 located within an authorized West Virginia project launchpad and is
12 engaged in the active conduct of a trade or business in accordance
13 with the requirements of section twelve of this article for the
14 taxable year. Physical presence in an authorized West Virginia
15 project launchpad of an agent, broker, employee or representative
16 of a business physically located outside the geographic boundaries
17 of an authorized West Virginia project launchpad does not, for
18 purposes of this article, result in the business being engaged in
19 the active conduct of trade or business within the project
20 launchpad for purposes of this article.

21 (53) "Qualified political subdivision" means a county
22 commission, county council or municipal corporation that has real

1 property within its jurisdiction that has been designated by the
2 Governor pursuant to this article as a West Virginia project
3 launchpad for economic development, including an extension thereof.

4 (54) "Resident" means an individual who is domiciled and
5 resides in an area that is designated as an authorized West
6 Virginia project launchpad for economic development pursuant to
7 this article and who meets the residency requirements of section
8 eleven of this article.

9 (55) "Related person" means:

10 (A) A corporation, partnership, association or trust
11 controlled by the taxpayer;

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

14 (C) A corporation, partnership, association or trust
15 controlled by an individual, corporation, partnership, association
16 or trust that is in control of the taxpayer; or

17 (D) A member of the same controlled group as the taxpayer.
18 For purposes of this definition, "control", with respect to a
19 corporation, means ownership, directly or indirectly, of stock
20 possessing more than fifty percent of the total combined voting
21 power of all classes of the stock of the corporation entitled to
22 vote. "Control", with respect to a trust, means ownership, directly

1 or indirectly, of fifty percent or more of the beneficial interest
2 in the principal or income of the trust. The ownership of stock in
3 a corporation, of a capital or profits interest in a partnership or
4 association or of a beneficial interest in a trust is determined in
5 accordance with the rules for constructive ownership of stock
6 provided in Section 267(c) of the United States Internal Revenue
7 Code of 1986, as amended, other than paragraph (3) of that section.

8 (56) "Replacement facility" means any property (other than an
9 expanded facility) that replaces or supersedes any other property
10 located within this state that:

11 (A) The taxpayer or a related person used in or in connection
12 with any activity for more than two years during the period of five
13 consecutive years ending on the date the replacement or superseding
14 property is placed in service by the taxpayer; or

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

19 (57) "Secretary of Commerce" means the chief executive officer
20 of the Department of Commerce established in article one, chapter
21 five-f of this code, or his or her designee.

22 (58) "Secretary of Revenue" means the chief executive officer

1 of the Department of Revenue established in article one, chapter
2 five-f of this code, or his or her designee.

3 (59) "State-of-the-art technology" includes emerging
4 technologies and innovative business technologies and means the
5 highest level of development, as of a device, technique, or
6 scientific field achieved at a particular time: *Provided*, That the
7 technology was not in commercial use anywhere in the United States
8 before July 1, 2014.

9 (60) "Tax benefit" means and includes a tax exemption, tax
10 deduction, tax abatement, tax credit, special valuation methodology
11 or other tax benefit pursuant to this article.

12 (61) "Tax Commissioner" or "Commissioner" means the chief
13 executive officer of the Tax Division of the Department of Revenue
14 provided in article one, chapter eleven of this code, or his or her
15 designee.

16 (62) "Taxpayer" means any person subject to any of the taxes
17 imposed by article twenty-one, twenty-three or twenty-four of
18 chapter eleven of this code (or any combination of those articles).

19 (63) "This code" means the Code of West Virginia, 1931, as
20 amended.

21 (64) "This state" means the State of West Virginia.

22 (65) "Unoccupied parcel" means a parcel on which there is no

1 commercial activity on the date an application for extension of an
2 authorized West Virginia project launchpad for economic
3 development, in which the parcel is included, is submitted to the
4 Secretary of Commerce. Construction activity on a parcel shall not
5 be deemed to be commercial business activity for purposes of this
6 definition.

7 (66) "Used property" means property acquired after June 30,
8 2014, that is not "new property".

9 (67) "West Virginia project launchpad for economic
10 development" or "economic development launchpad" means a defined
11 geographic area comprised of one or more political subdivisions or
12 portions of political subdivisions of this state authorized by the
13 Governor under this article as a West Virginia project launchpad
14 for economic development.

15 **§5B-2I-4. West Virginia project launchpad.**

16 (a) *Establishment.* - There is hereby established within the
17 Department of Commerce, established pursuant to article two,
18 chapter five-f of this code, the Project Launchpad program
19 providing for West Virginia launchpads for economic development
20 authorized by the Governor pursuant to this article.

21 (b) *Authorization of launchpads.* - The Governor may authorize
22 not more than ten West Virginia project launchpads for economic

1 development. Businesses that locate in a West Virginia launchpad
2 for economic development and utilize as a primary component of
3 their business at that location an "emerging technology", an
4 "innovative business technology" or a "state-of-the-art technology"
5 as those terms are defined in section two of this article, and
6 businesses already located in a geographic area that is designated
7 as a West Virginia project launchpad for economic development, that
8 expand their business after the designation of the geographic area
9 as a West Virginia project launchpad for economic development that
10 expand their current facility and increase the number of employees
11 at the facility and employ as a primary component of the expansion
12 an "emerging technology", an "innovative business technology" or a
13 "state-of-the-art technology" as those terms are defined in section
14 two of this article shall be entitled to the benefits authorized in
15 this article.

16 (c) *Size of launchpad.* - A West Virginia project launchpad for
17 economic development may not be less than ten contiguous acres nor
18 more than two thousand five hundred contiguous acres per launchpad
19 for economic development.

20 (d) *Geographic limitation.* - No West Virginia project
21 launchpad for economic development may encompass the entire
22 geographic area of the municipal corporation, or of the county, in

1 which the proposed project launchpad for economic development would
2 be located.

3 (e) *Municipality may have one launchpad; exception.* - A
4 municipal corporation may not be part of more than one West
5 Virginia project launchpad for economic development, except that a
6 municipal corporation may join with another municipal corporation
7 or with the county commission or county council in proposing a
8 project launchpad for economic development that includes land
9 located within two municipalities, or land within and outside a
10 municipal corporation, when the application required by this
11 article is also approved by the county commission of the county in
12 which the property is located.

13 (f) *No overlap of boundaries of launchpads.* - The boundaries
14 of two or more West Virginia project launchpads for economic
15 development may not overlap.

16 (g) *Duration of launchpad designation.* - The designation of a
17 geographic area as a West Virginia project launchpad for economic
18 development is for a period not to exceed sixteen years, beginning
19 January 1, 2014 and ending December 31, 2029, unless the launchpad
20 is sooner decertified as provided in this article, or the ending
21 date is extended by the Legislature.

22 (h) *Authorization for local tax exemption.* - Every county

1 commission, county council and municipal corporation within which
2 a proposed West Virginia project launchpad for economic development
3 would be located, whether in whole or in part, is hereby authorized
4 to provided tax exemptions, deductions, abatements or credits to
5 persons or businesses qualified under this article. The county
6 commission, county council and municipal corporation shall agree to
7 provide tax exemptions, deductions, abatements or credits from all
8 local taxes as set forth in this article in order to qualify to
9 have a geographic area within the county or municipal corporation
10 designated as a West Virginia project launchpad for economic
11 development. The tax benefit shall be effective on or before July
12 1, 2014, except that the ordinance or order providing for the tax
13 benefit may be made contingent upon the area being authorized by
14 the Governor of West Virginia project launchpad for economic
15 development as provided in this article. The tax benefit shall be
16 binding upon the county commission, county council and municipal
17 corporation for the duration of the West Virginia project launchpad
18 designation.

19 **§5B-2I-5. Application for designation.**

20 (a) *Counties.* - On or before January 1, 2014, the president of
21 a county commission or county council may apply to the Secretary of
22 Commerce to have one or more geographic areas in his or her county

1 designated by the Governor as a West Virginia project launchpad for
2 economic development.

3 (b) *Municipalities.* - On or before October 1, 2014, the mayor
4 of a municipal corporation may apply to the county commission or
5 county council of his or her county to have one geographic area
6 within the municipal corporation included in the county's
7 application under subsection (a) of this section to have one or
8 more geographic areas of the county designated by the Governor as
9 a West Virginia project launchpad for economic development.

10 **§5B-2I-6. Form and content of application.**

11 (a) In general. -- The application shall be in a form
12 prescribed by the Secretary of Commerce. The application shall
13 provide the information required by the form and shall include the
14 following:

15 (1) A true copy of the order entered or resolution adopted by
16 the county commission or county council of the county authorizing
17 submission of the application.

18 (2) A true copy of the ordinance adopted by the governing body
19 of the municipality, or the county commission or county council of
20 a county in which the West Virginia project launchpad for economic
21 development would be located, which provides for the tax benefits
22 and other benefits required by this article. This ordinance may be

1 adopted contingent upon the geographic area being designated a West
2 Virginia launchpad for economic development.

3 (3) A true copy of the opportunity plan for the proposed West
4 Virginia project launchpad for economic development adopted by the
5 county commission or county council of the county in which the
6 project launchpad will be located or, if the launchpad is located,
7 in whole or in part, within a municipal corporation, a true copy of
8 the opportunity plan adopted by the governing body of the municipal
9 corporation in whose jurisdiction the West Virginia project
10 launchpad for economic development will be located, in whole or in
11 part.

12 (4) A detailed map of the proposed West Virginia project
13 launchpad for economic development, or the proposed expansion of an
14 existing project launchpad, including geographic boundaries, total
15 area and present use and conditions of the land and structures of
16 the proposed West Virginia project launchpad for economic
17 development, or of a proposed expansion of an existing launchpad.

18 (5) The statement of the county assessor certifying the
19 taxable assessed value of real and tangible personal property
20 having a tax situs in the proposed launchpad for economic
21 development pad for the most recent tax year for which that
22 information is available and identifying whether or not the

1 proposed West Virginia project launchpad for economic development
2 would be located in an area which has tax revenue dedicated to the
3 payment of debt.

4 (b) *Content of opportunity plan.* - The opportunity plan
5 required by subsection (a) of this section shall include the
6 information required by the Secretary of Commerce. The required
7 information may include one or more of the following:

8 (1) Evidence of support from and participation of other local
9 government officials, county boards of education, other educational
10 institutions, business groups, community organizations and the
11 public for the creation, or expansion, of a West Virginia project
12 launchpad for economic development.

13 (2) A proposal to increase economic opportunity, reduce crime,
14 improve education, facilitate infrastructure improvement, or reduce
15 the local regulatory burden on business, and which identifies
16 potential jobs and job training opportunities within the launchpad.

17 (3) A general description of the current social, economic and
18 demographic characteristics of the proposed West Virginia project
19 launchpad for economic development and anticipated improvements in
20 education, health, human services, public safety and employment
21 that will result from establishment of the West Virginia project
22 launchpad for economic development, or from expansion of an

1 existing launchpad for economic development.

2 (4) A general description of anticipated activity in the
3 proposed West Virginia project launchpad for economic development,
4 or in the proposed expansion of an existing launchpad for economic
5 development, including, but not limited to, industrial use,
6 industrial site reuse, commercial use, retail use and residential
7 use.

8 (5) Evidence of potential private and public investment in the
9 proposed West Virginia project launchpad for economic development,
10 or in the proposed expansion of an existing launchpad for economic
11 development.

12 (6) The anticipated role of the proposed West Virginia project
13 launchpad for economic development in local or regional economic
14 and community development.

15 (7) A report on youth at risk within a twenty-five mile radius
16 from the center of the proposed West Virginia project launchpad for
17 economic development, to include issues relating to health,
18 welfare, education and opportunities for employment.

19 (8) A report on unemployment within a twenty-five mile radius
20 from the center of the proposed West Virginia project launchpad for
21 economic development, to include issues relating to health, welfare
22 and education of the unemployed.

1 (9) Evidence that the proposed West Virginia project launchpad
2 for economic development meets the required criteria specified in
3 section eight of this article for authorization of the project
4 launchpad for economic development, or for a proposed expansion of
5 an existing launchpad for economic development.

6 (10) Any other information reasonably required by the
7 Secretary of Commerce in his or her discretion.

8 **§5B-2I-7. Review of applications.**

9 (a) *Action by Secretary.* - The Secretary of Commerce, in
10 consultation with the Secretary of Revenue, shall review all
11 completed applications submitted timely under this article.

12 (b) *Timely submission.* - An application for authorization and
13 designation of a geographic area as a West Virginia project
14 launchpad for economic development is timely if it is physically
15 delivered by hand delivery, or by United States mail or by a
16 package delivery service, to the office of the Secretary of
17 Commerce on or before December 30, 2014.

18 (c) *Review process.* - The Governor may, after consultation
19 with the Secretary of Commerce and the Secretary of Revenue,
20 authorize up to ten West Virginia project launchpads for economic
21 development from applications meeting the criteria specified in
22 this article and based upon need and the likelihood of success of

1 the project launchpad for economic development, as determined by
2 the Governor in his or her sole discretion.

3 (d) *Authorization.* - The Governor shall authorize all West
4 Virginia project launchpads for economic development by December
5 31, 2014.

6 **§5B-2I-8. Criteria for authorization of West Virginia project**
7 **launchpads for economic development.**

8 (a) *Specific criteria.* -- In order to qualify for
9 authorization under this article, the proposed West Virginia
10 project launchpad for economic development shall meet at least two
11 of the following twelve criteria:

12 (1) At least twenty percent of the population is below the
13 poverty level.

14 (2) The unemployment rate is 1.25 times the statewide average.

15 (3) At least twenty percent of all real property within a
16 five-mile radius of the proposed West Virginia project launchpad
17 for economic development to be located outside a municipal
18 corporation is, as a class, deteriorated, underutilized or vacant.

19 (4) At least twenty percent of all real property within a
20 one-mile radius of the proposed West Virginia project launchpad for
21 economic development to be located within a municipal corporation
22 is, as a class, deteriorated, underutilized or vacant.

1 (5) At least twenty percent of all occupied housing within a
2 two-mile radius of the proposed West Virginia project launchpad for
3 economic development to be located outside a municipal corporation
4 is, as a class, deteriorated, substandard or vacant.

5 (6) At least twenty percent of all occupied housing within a
6 one-mile radius of the proposed West Virginia project launchpad for
7 economic development to be located in a municipal corporation is,
8 as a class, deteriorated substandard or vacant.

9 (7) If the proposed West Virginia project launchpad for
10 economic development would be located in a municipal corporation,
11 the median family income of residents of the municipal corporation
12 shall be eighty percent or less of the median family income for the
13 nearest metropolitan statistical area.

14 (8) If the proposed West Virginia project launchpad for
15 economic development is to be located outside of a municipal
16 corporation, then the median family income of residents of the
17 county living outside a municipal corporation shall be eighty
18 percent or less of the statewide nonurban median family income.

19 (9) The population loss exceeds ten percent in an area that
20 includes the proposed West Virginia project launchpad for economic
21 development and its surrounding area but is not larger than the
22 county or counties in which the proposed West Virginia project

1 launchpad for economic development would be located, based on 2010
2 census data or census estimates since 2010 establishing a pattern
3 of population loss.

4 (10) The county or municipality in which the proposed West
5 Virginia project launchpad for economic development would be
6 located has experienced a sudden and/or severe job loss.

7 (11) At least thirty-three percent of the real property in a
8 proposed West Virginia project launchpad for economic development
9 would, but for establishment of the West Virginia project launchpad
10 for economic development, remain underdeveloped or nonperforming
11 for at least the next five years after the year in which the
12 application is filed due to physical characteristics of the real
13 property.

14 (12) The area of the proposed West Virginia project launchpad
15 for economic development has substantial real property with
16 adequate infrastructure and energy to support new or expanded
17 development of the launchpad for economic development. For purposes
18 of this subdivision, "infrastructure" means transportation
19 infrastructure (road, water and rail, as appropriate), water and
20 sewer infrastructure, communications infrastructure including
21 telephone, cellular telephone and broadband infrastructure, and
22 electricity.

1 (b) *Additional criteria.* -- In addition to the criteria
2 required under subsection (a) of this section, the Governor shall
3 consider the following additional criteria:

4 (1) Evidence of distress, including, but not limited to,
5 unemployment, percentage of population below eighty percent of the
6 state median income, poverty rate, deteriorated property and
7 adverse economic and socioeconomic conditions in the proposed West
8 Virginia project launchpad for economic development.

9 (2) The strength and viability of the proposed goals,
10 objectives and strategies in the opportunity plan as determined by
11 the Secretary of Commerce and Secretary of Revenue.

12 (3) Whether the opportunity plan is creative and innovative in
13 comparison to other applications, based on recommendations of the
14 Secretary of Commerce and the Secretary of Revenue.

15 (4) Local public and private commitment to the development of
16 the proposed West Virginia project launchpad for economic
17 development and the potential cooperation of surrounding
18 communities, based on recommendations of the Secretary of Commerce
19 and the Secretary of Revenue.

20 (5) Existing resources available to the proposed West Virginia
21 project launchpad for economic development, as determined by the
22 Secretary of Commerce and the Secretary of Revenue.

1 (6) How the proposed West Virginia project launchpad for
2 economic development would relate to other current economic and
3 community development projects and to regional initiatives or
4 programs for the area in which the project launchpad for economic
5 development would be located, as determined by the Secretary of
6 Commerce and the Secretary of Revenue, in their sole discretion,
7 and recommended to the Governor.

8 (7) How the local regulatory burden will be eased for
9 businesses operating in the proposed West Virginia project
10 launchpad for economic development.

11 (8) Proposals to implement educational opportunities and
12 improvements in the proposed West Virginia project launchpad for
13 economic development.

14 (9) Crime statistics and proposals to implement local crime
15 reduction measures in the proposed West Virginia project launchpad
16 for economic development.

17 (10) Proposals to establish and link job creation and job
18 training in the proposed West Virginia project launchpad for
19 economic development.

20 (c) *Tax reduction orders and ordinances.* -- An area may not be
21 authorized as a West Virginia project launchpad for economic
22 development unless, as a part of the application, each county

1 commission, county council and governing body of a municipal
2 corporation in which the proposed project launchpad for economic
3 development is to be located adopts and provides a copy of its
4 ordinance, order or other required action from the governing body
5 of the qualified political subdivision that provides the tax
6 benefits or other benefits to qualified persons and qualified
7 businesses upon designation of the area as a West Virginia project
8 launchpad for economic development. All appropriate ordinances,
9 orders or other required action shall be effective on or before
10 July 1, 2014, and may be made contingent upon the West Virginia
11 project launchpad for economic development being authorized by the
12 Governor as provided in this article. The ordinance, order or
13 other required action shall be binding and nonrevocable on the
14 qualified political subdivisions for the duration of the West
15 Virginia project launchpad for economic development.

16 **§5B-2I-9. Failure to submit timely application.**

17 Failure of a county commission, county council or municipal
18 corporation, to submit the application provided in sections five
19 and six of this article, on or before the date specified in section
20 seven of this article, shall preclude any portion of the
21 unincorporated area of the county, or the incorporated area of a
22 municipality, as the case may be, from being designated as a West

1 Virginia project launchpad for economic development by the
2 Governor, until section seven is amended by the Legislature
3 specifying a new date by which applications may be filed.

4 **§5B-2I-10. Extension of authorized West Virginia project**
5 **launchpads.**

6 (a) The Governor may approve an application to extend the
7 geographic boundaries of a previously authorized West Virginia
8 project launchpad for economic development to include an unoccupied
9 parcel or tract of land when the proposed extension is of land
10 contiguous to the existing project launchpad for economic
11 development and the extension does not result in the project
12 launchpad for economic development, after extension, exceeding the
13 maximum number of contiguous acres specified in section four of
14 this article or the other limitations specified in that section.

15 (b) When the proposed extension is of a West Virginia project
16 launchpad for economic development located in an unincorporated
17 area of the county and land proposed to be included in the
18 launchpad is also located in the unincorporated area of that
19 county, then application for extension shall be submitted by the
20 president of the county commission or county council of the county
21 after adoption by the county commission or county council of a
22 resolution authorizing submission of the application for extension

1 of the West Virginia project launchpad for economic development to
2 the Secretary of Commerce.

3 (c) When the proposed extension is of a West Virginia project
4 launchpad for economic development located within the corporate
5 limits of a municipality and land proposed to be included in the
6 launchpad is also located within that municipality or is located
7 outside the municipal corporation or is located both within and
8 without the municipal corporation, the application for extension of
9 the existing launchpad must be submitted by the mayor of the
10 municipal corporation and the president of the county commission or
11 county council pursuant to adoption of a resolution by the
12 governing body of the municipal corporation and adoption of a
13 resolution by the county commission or county council authorizing
14 its submission to the Secretary of Commerce.

15 (d) When the proposed extension involves land located in two
16 municipalities, or in two counties, or in any combination thereof,
17 the application for extension must be signed by the mayor of each
18 municipal corporation pursuant to a resolution adopted by the
19 governing body of the municipal corporation and by the president of
20 the county commission or county council of each county in which the
21 land is located pursuant to a resolution adopted by the county
22 commission or county council authorizing submission of the

1 application for extension to the Secretary of Commerce.

2 (e) The application for extension of an existing West Virginia
3 project launchpad for economic development shall be in a form
4 prescribed by the Secretary of Commerce and shall include all of
5 the information required by section six of this article updated to
6 reflect any changes in the information provided in the original
7 application submitted under section six of this article due to
8 passage of time and any additional information required by the
9 Secretary of Commerce. The map of the previously authorized West
10 Virginia project launchpad for economic development shall be
11 updated to clearly identify the boundaries of contiguous acres
12 would be added to the existing West Virginia project launchpad for
13 economic development.

14 (f) The application for extension of an existing West Virginia
15 project launchpad for economic development shall be processed as
16 provided in section eight of this article.

17 (g) The Governor may authorize the expansion of an existing
18 West Virginia project launchpad for economic development, when the
19 application for extension is filed with the Secretary of Commerce
20 on or before December 31, 2025.

21 **§5B-2I-11. Residency of individuals.**

22 In order to qualify for a tax benefit under this article, an

1 individual shall be domiciled and reside in a West Virginia project
2 launchpad for economic development for a period of one hundred
3 eighty four days or more each taxable year, which period may begin
4 on the date of designation of the West Virginia project launchpad
5 for economic development by the Governor or on the date the person
6 first resides in a West Virginia project launchpad for economic
7 development.

8 **§5B-2I-12. Qualified businesses.**

9 (a) Qualification. - In order to qualify each year for a tax
10 benefit provided under this article, a business shall own or lease
11 real property in a West Virginia project launchpad for economic
12 development from which the business actively conducts a trade,
13 profession or other business activity utilizing a state-of-the-art
14 technology, as defined in section two of this article, as a primary
15 component of the business activity in the project launchpad for
16 economic development. The qualified business shall receive
17 certification from the Secretary of Commerce that the business is
18 a qualified business located and engaged in the active conduct of
19 a trade, profession or other business activity utilizing as a
20 primary component or primary element of the business a
21 state-of-the-art technology within the West Virginia project
22 launchpad for economic development. The business shall obtain

1 annual renewal of the certification from the Secretary of Commerce
2 to continue to qualify under this section.

3 (b) *Relocation.* - Any business that relocates from outside a
4 West Virginia project launchpad for economic development may not
5 receive any tax benefit set forth in this article unless that
6 business utilizes within the project launchpad for economic
7 development a state-of-the-art technology as a primary element or
8 component of the business activity within the project launchpad for
9 economic development and does one of the following:

10 (1) Increases full-time employment by at least twenty percent
11 in the first full year of operation within the West Virginia
12 project launchpad for economic development;

13 (2) Makes a capital investment in the property located within
14 the West Virginia project launchpad for economic development at
15 least equivalent to ten percent of the gross revenues of that
16 business in the immediately preceding calendar or fiscal year of
17 the business; or

18 (3) Enters into a lease agreement for property located within
19 the West Virginia project launchpad for economic development:

20 (A) For a primary term at least ten years; and

21 (B) With aggregate payment under the lease agreement at least
22 equivalent to five percent of the gross revenues of that business

1 in the immediately preceding calendar or fiscal year of the
2 business.

3 The Secretary of Commerce, in consultation with the Secretary
4 of Revenue, may waive or modify the requirements of this subsection
5 (b), as appropriate, and in their sole discretion.

6 **§5B-2I-13. Decertification.**

7 (a) *Application.* - The president of the county commission or
8 county council of the county in which the West Virginia project
9 launchpad for economic development is located or the mayor of the
10 municipal corporation when the project launchpad is located, in
11 whole or in part, within the corporate limits of the municipal
12 corporation, pursuant to resolution adopted by the county
13 commission or county council or the governing body of the municipal
14 corporation, may apply to the Secretary of Commerce to have the
15 Governor decertify and remove the designation of West Virginia
16 project launchpad for economic development from some or all of the
17 geographic area previously designated as a project launchpad for
18 economic development pursuant to this article. The application for
19 decertification shall contain all of the following:

20 (1) An identification of the property to be removed from the
21 existing West Virginia project launchpad for economic development.

22 (2) A copy of an agreement which was supported by

1 consideration in which each entity which possesses an interest in
2 the real property to be removed, including any holder of an option
3 either to purchase the real estate or to enter into a ground lease
4 of the real estate or any other leasehold interest in the real
5 estate, waives the party's right to any exemptions, deductions,
6 abatements or credits granted by this article.

7 (3) A copy of a binding ordinance, resolution or other
8 governing document passed by the qualified political subdivision
9 removing any exemptions, deductions, abatements or credits granted
10 by this article effective upon decertification by the Secretary of
11 Commerce.

12 (b) *Review process.* - The Secretary of Commerce may after
13 consultation with the Secretary of Revenue request that the
14 Governor grant the application to decertify and remove the property
15 when the application for decertification is complete and has been
16 signed by the president of the county commission or county council
17 and the mayor of the municipal corporation, if any, in which the
18 West Virginia project launchpad for economic development is
19 located.

20 **§5B-2I-14. Prohibition on use of illegal alien labor.**

21 (a) *General rule.* - No person or business that receives a tax
22 benefit under this article may knowingly permit the labor services

1 of an illegal alien under a contract to which the person or
2 business is a party in the applicable West Virginia project
3 launchpad for economic development. A person or business shall be
4 deemed to have knowingly employed or knowingly permitted the labor
5 services of an illegal alien if the business or person has active
6 knowledge of or has reason to know that the labor services of an
7 illegal alien have been provided under the contract in the
8 applicable West Virginia project launchpad for economic
9 development.

10 (b) *Reimbursement.* - As a condition of the receipt of a tax
11 benefit under this article, the department or political subdivision
12 that awards the tax benefit under this article shall require full
13 repayment of the value or amount of the tax exemption, deduction,
14 abatement or credit if subsection (c) applies.

15 (c) *Violations.*

16 (1) Repayment under subsection (b) is required if any of the
17 following apply:

18 (A) The person or business that received the tax exemption,
19 deduction, abatement or credit under this article is sentenced
20 under federal law for an offense involving knowing use of labor by
21 an illegal alien under the contract in the applicable West Virginia
22 project launchpad for economic development.

1 (B) All of the following apply:

2 (i) A contractor to a person or business that received the tax
3 exemption, deduction, abatement or credit under this article is
4 sentenced under federal law for an offense involving knowing use of
5 labor by an illegal alien on the contract.

6 (ii) The person or business knew or had reason to know of the
7 contractor's use of labor by an illegal alien on the contract.

8 (2) Any person or business that is required to repay the State
9 Tax Commissioner or a qualified political subdivision under this
10 section shall be ineligible to apply for any tax exemption,
11 deduction, abatement or credit under this article for a period of
12 two years.

13 (3) It is an affirmative defense to a violation of this
14 section, if the person or business contracts with a contractor to
15 provide labor under the contract in the applicable West Virginia
16 project launchpad for economic development and establishes that the
17 person has required the contractor to certify compliance with the
18 requirements of section 274A of the Immigration Reform and Control
19 Act of 1986 (Public Law 99-603, 8 U.S.C. § 1324A) with respect to
20 the hiring, recruiting or referral for employment of an alien in
21 the United States and has notified the appropriate federal
22 authority, if the person knew that the contractor used labor by an

1 illegal alien.

2 (d) *Definition.* - As used in this section, "illegal alien"
3 means a noncitizen of the United States who is violating federal
4 immigration laws and is providing compensated labor within this
5 state.

6 **§5B-2I-15. State taxes.**

7 A person who is a resident of a West Virginia project
8 launchpad for economic development, as defined in section eleven of
9 this article, a qualified business, as defined in section twelve of
10 this article, or a nonresident under section seventeen of this
11 article shall receive the tax benefits as provided in this article
12 for the duration of the West Virginia project launchpad for
13 economic development, or after expansion of the project launchpad
14 for economic development, or the person ceases to be a resident, a
15 qualified business or a nonresident deriving income from activity
16 in a West Virginia project launchpad for economic development,
17 whichever occurs first. Tax benefits shall expire on the date of
18 expiration of the West Virginia project launchpad for economic
19 development, whether the expiration is by operation of law or by
20 decertification.

21 **§5B-2I-16. State sales and use taxes.**

22 (a) *Exemption.* - Sales of tangible personal property except

1 motor vehicles and motor fuel, and sales of custom software and
2 services to a qualified business or a construction contractor
3 pursuant to a construction contract with a qualified business,
4 landowner or lessee for the exclusive use, consumption and
5 utilization of the tangible personal property or service by the
6 qualified business, landowner or lessee at the qualified
7 business's, landowner's or lessee's facility located within a West
8 Virginia project launchpad for economic development shall be exempt
9 from the taxes imposed by articles fifteen and fifteen-a of chapter
10 eleven of this code. No person may be allowed an exemption for
11 purchases made prior to designation of the real property as part of
12 a West Virginia project launchpad for economic development.

13 (b) *Expiration of exemption.* - The exemption allowed by this
14 section shall remain in effect for the duration of the West
15 Virginia project launchpad for economic development or the person
16 ceases to be a resident, a qualified business or a nonresident
17 deriving income from activity in a West Virginia project launchpad
18 for development, whichever occurs first. Unless the exemption as to
19 any person sooner expires, this exemption shall expire on the date
20 of expiration of the West Virginia project launchpad for economic
21 development, whether the expiration is by operation of law or by
22 decertification.

1 **§5B-2I-17. Personal income tax.**

2 (a) *General rule.* - An individual shall be allowed a
3 decreasing modification to his or her federal adjusted gross income
4 for the taxable year for the following items, to the extent they
5 are included in his or her federal adjusted gross income:

6 (1) Compensation received during the time period when the
7 individual was a resident of a West Virginia project launchpad for
8 economic development.

9 (2) The West Virginia source income of a partner in a
10 partnership, or a shareholder in a small business corporation, that
11 is a qualified business located in a West Virginia project
12 launchpad for economic development that is attributable to business
13 activity of the partnership, or electing small business
14 corporation, conducted within a West Virginia project launchpad for
15 economic development, except that when a partnership or other pass
16 through entity operates in West Virginia but does business both
17 within and outside the West Virginia project launchpad for economic
18 development, West Virginia source income of the partnership or
19 other pass through entity shall be apportioned to the project
20 launchpad for economic development by the ratio the gross receipts
21 from business activity done in the project launchpad for economic
22 development bears to total West Virginia gross receipts for the

1 taxable year from all business activity in West Virginia.

2 (3) All of the following:

3 (A) Net gains or income, less net losses, derived by a
4 resident or nonresident of a West Virginia project launchpad for
5 economic development from the sale, exchange or other disposition
6 of real or tangible personal property located in a West Virginia
7 project launchpad for economic development as determined in
8 accordance with generally accepted accounting principles and
9 practices. The exemption provided in this paragraph (A) shall not
10 apply to the sale, exchange or other disposition of any stock of
11 goods, merchandise or inventory, or any operational assets unless
12 the transfer is in connection with the sale, exchange or other
13 disposition of all of the assets in complete liquidation of a
14 qualified business located in a West Virginia project launchpad for
15 economic development. This paragraph (A) shall also apply to
16 intangible personal property employed in a trade, profession or
17 business that is a qualified business in a West Virginia project
18 launchpad for economic development, but only when transferred in
19 connection with a sale, exchange or other disposition of all of the
20 assets in complete liquidation of the qualified business located in
21 the West Virginia project launchpad for economic development.

22 (B) Net gains, less net losses, realized by a resident of a

1 West Virginia project launchpad for economic development from the
2 sale, exchange or disposition of intangible personal property or
3 obligations issued on or after July 1, 2014, by this state, a
4 public authority, commission, board or other agency, political
5 subdivision or authority created by a political subdivision or by
6 the Federal Government when the interest is exempt from state
7 taxation under 31 U.S.C. § 3124, as determined in accordance with
8 accepted accounting principles and practices and the laws of the
9 United States.

10 (C) The exemption from income for gain or loss provided in
11 subparagraphs (i) and (ii) of this paragraph (C) shall be prorated
12 based on the following:

13 (i) In the case of gains, less net losses, in this
14 subparagraph (i), the percentage of time, based on calendar days,
15 the property located in a West Virginia project launchpad for
16 economic development was held by a resident or nonresident of the
17 West Virginia project launchpad for economic development during the
18 time period the West Virginia project launchpad for economic
19 development was in effect in relation to the total time the
20 property was held.

21 (ii) In the case of gains, less net losses, in this
22 subparagraph (ii), the percentage of time, based on calendar days,

1 the property was held by the person or business while a resident of
2 a West Virginia project launchpad for economic development in
3 relation to the total time the property was held by the person or
4 business.

5 (4) Net gains or income derived from or in the form of rents
6 received by a person, whether a resident or nonresident of a West
7 Virginia project launchpad for economic development, to the extent
8 that income or loss from the rental of real or tangible personal
9 property is allocable to a West Virginia project launchpad for
10 economic development. For purposes of calculating this exemption:

11 (A) Net rents derived from real or tangible personal property
12 located in a West Virginia project launchpad for economic
13 development are allocable to a West Virginia project launchpad for
14 economic development.

15 (B) If the tangible personal property was used both within and
16 without the West Virginia project launchpad for economic
17 development during the taxable year, only the net income
18 attributable to use in the West Virginia project launchpad for
19 economic development is exempt. The net rental income shall be
20 multiplied by a fraction, the numerator of which is the number of
21 days the property was used in the West Virginia project launchpad
22 for economic development and the denominator which is the total

1 days of use.

2 (5) Dividends received during the time the person was a
3 resident of a West Virginia project launchpad for economic
4 development.

5 (6) Interest received during the time period the person was a
6 resident of a West Virginia project launchpad for economic
7 development.

8 (7) The part of the income or gains received by an estate or
9 trust for its taxable year ending within or with the
10 resident-beneficiary's taxable year which, under the governing
11 instrument and applicable state law, is required to be distributed
12 currently or is in fact paid or credited to the
13 resident-beneficiary and which would have been exempt under this
14 article if received by a resident-beneficiary directly.

15 (A) Exemptions.

16 (i) Beginning January 1, 2014, a person located in a
17 designated West Virginia project launchpad for economic development
18 shall be allowed a deduction under subsection (a) of this section
19 from federal adjusted gross income, to the extent included therein
20 for purposes of the tax imposed by article twenty-one, chapter
21 eleven of this code for the classes of income set forth in
22 subsection (a) of this section. No person shall be allowed a

1 deduction for activities conducted prior to designation of the real
2 property as part of a West Virginia project launchpad for economic
3 development.

4 (ii) Pass through entities. - The deductions provided in
5 subdivisions (2), (3) and (4) of this subsection (a) shall apply to
6 all of the following:

7 (iii) The income or gain of a partnership or association. The
8 partner or member shall be entitled to the exemptions under this
9 section for the partner's or member's share, whether or not
10 distributed, of the income or gain received by the partnership or
11 association for its taxable year.

12 (iv) The income or gain of electing small business
13 corporation. The shareholder shall be entitled to the exemptions
14 under this section for the shareholder's pro rata share, whether or
15 not distributed, of the income or gain received by the corporation
16 for its taxable year ending within or with the shareholder's
17 taxable year.

18 (b) *Limitations.* -

19 (1) A partnership, association, electing small business
20 corporation, resident or nonresident individual may not apply an
21 exemption from income under this article for any class of income
22 against any other classes of income or gain.

1 (2) A partnership, association, electing small business
2 corporation, resident or nonresident individual may not carry back
3 or carry forward any deduction or exemption under this article from
4 year to year.

5 (3) Any credit allowed under this section may not exceed the
6 tax liability of the taxpayer under article twenty-one, chapter
7 eleven of this code for the taxable year.

8 (c) *Section not applicable to certain entities.* - Any portion
9 of net income or gain that is attributable to operation of a
10 railroad, truck, bus or airline company, pipeline or natural gas
11 company, water transportation company or other public service
12 business subject to the jurisdiction of the West Virginia Public
13 Service Commission may not be used to compute a deduction or
14 exemption from tax under this section.

15 **§5B-2I-18. Residency considerations.**

16 If a person completes the residency requirements under section
17 eleven of this article or if a nonresident realizes income
18 attributable to business activity or property within an authorized
19 West Virginia project launchpad for economic development, on or
20 before the end of the taxable year, the person may claim the
21 deductions from federal adjusted gross income, to the extent
22 included therein, for the items set forth in section seventeen of

1 this article for that portion of the tax year that the person was
2 a resident for that portion of the tax year during which the area
3 is designated as an authorized West Virginia project launchpad for
4 economic development.

5 **§5B-2I-19. Corporate net income tax.**

6 (a) *Credits.* - For the tax years that begin on or after
7 January 1, 2014, a corporation that is a qualified business under
8 this article may claim a credit against the tax imposed by article
9 twenty-four, chapter eleven of this code, for tax liability
10 attributable to business activity conducted within the authorized
11 West Virginia project launchpad for economic development in the
12 taxable year.

13 (b) *Limitation.* - No credit may be claimed for activities
14 conducted prior to designation of the real property as part of an
15 authorized West Virginia project launchpad for economic
16 development. The business activity must be conducted directly by a
17 corporation in the authorized West Virginia project launchpad for
18 economic development in order for the corporation to claim the tax
19 credit allowed by this section.

20 (c) *Tax liability determinations.* - The corporate tax
21 liability attributable to business activity conducted within an
22 authorized West Virginia project launchpad for economic development

1 shall be determined by multiplying the corporation's West Virginia
2 taxable income that is attributable to business activity conducted
3 within the authorized West Virginia project launchpad for economic
4 development by the rate of tax imposed under article twenty-four,
5 chapter eleven of this code for the taxable year.

6 (d) *Determinations of attributable tax liability.* - Tax
7 liability attributable to business activity conducted within an
8 authorized West Virginia project launchpad for economic development
9 shall be computed, construed, administered and enforced in
10 conformity with article twenty-four, chapter eleven of this code
11 and with specific reference to the following:

12 (1) If the entire business of the corporation in this state is
13 transacted wholly within the authorized West Virginia project
14 launchpad for economic development, the taxable income attributable
15 to business activity within the project launchpad for economic
16 development shall consist of the West Virginia taxable income of
17 the business as determined under article twenty-four, chapter
18 eleven of this code.

19 (2) If the entire business of the corporation in this state is
20 not transacted wholly within the authorized West Virginia project
21 launchpad for economic development, the West Virginia taxable
22 income of the corporation attributable to business activity in the

1 West Virginia project launchpad for economic development shall be
2 determined by apportioning the West Virginia taxable income as
3 provided in subsection (e) of this section.

4 (e) *Income apportionment.* - The West Virginia taxable income
5 of a corporation that is a qualified business doing business both
6 within and outside of a West Virginia project launchpad for
7 economic development shall be apportioned to the authorized West
8 Virginia project launchpad for economic development by multiplying
9 the corporation's West Virginia taxable income by a fraction, the
10 numerator of which is the property factor plus the payroll factor
11 and the denominator of which is two, in accordance with the
12 following:

13 (1) *Property factor.* - The property factor is a fraction, the
14 numerator of which is the average value of the taxpayer's real and
15 tangible personal property owned or rented and used in the
16 authorized West Virginia project launchpad for economic development
17 during the tax period and the denominator of which is the average
18 value of all the taxpayer's real and tangible personal property
19 owned or rented and used in this state during the tax period but
20 shall not include the security interest of any corporation as
21 seller or lessor in personal property sold or leased under a
22 conditional sale, bailment lease, chattel mortgage or other

1 contract providing for the retention of a lien or title as security
2 for the sales price of the property.

3 (2) Payroll factor. - The payroll factor is a fraction, the
4 numerator of which is the total amount paid to employees based in
5 the authorized West Virginia project launchpad for economic
6 development during the taxable year by the taxpayer for
7 compensation and the denominator of which is the total compensation
8 taxpayer paid to employees in this state during the taxable year.
9 Compensation is paid in the authorized West Virginia project
10 launchpad for economic development if:

11 (A) The person's service is performed entirely within the
12 authorized West Virginia project launchpad for economic
13 development;

14 (B) The person's service is performed both within and without
15 the authorized West Virginia project launchpad for economic
16 development, but the service performed without the project
17 launchpad is incidental to the person's service within the project
18 launchpad for economic development; or

19 (C) Some of the service is performed in the West Virginia
20 project launchpad for economic development and the base of
21 operations or, if there is no base of operations, the place from
22 which the service is directed or controlled is in the project

1 launchpad for economic development, or the base of operations or
2 the place from which the service is directed or controlled is not
3 in any location in which some part of the service is performed, but
4 the person's residence is in the project launchpad for economic
5 development.

6 (f) *Computation.* - A corporation shall compute its West
7 Virginia taxable income in conformity with article twenty-four,
8 chapter eleven of this code, with no adjustments or subtractions
9 for authorized West Virginia project launchpad for economic
10 development taxable income.

11 (g) *Limitation on amount of credit.* - The credit allowed under
12 this section may not exceed the tax liability of the taxpayer under
13 article twenty-four, chapter eleven of this code for the tax year,
14 determined after application of any net operating losses and
15 application of tax credits allowed for the year under chapter
16 eleven of this code.

17 (h) *Section not applicable to certain businesses.* - Any
18 portion of the taxpayer's taxable income that is attributable to
19 the operation of a railroad, truck, bus or airline company,
20 pipeline or natural gas company, water transportation company, or
21 other public service business regulated by the West Virginia Public
22 Service Commission must be excluded when determining the tax credit

1 allowed by this section. Additionally, the property factor may not
2 include in the numerator or denominator any property of the public
3 service business actively and the payroll factor may not include in
4 either the numerator or the denominator compensation paid for the
5 taxable year to employees employed in the public service business
6 activity.

7 **§5B-2I-20. Business franchise tax.**

8 (a) *Exemption.* - A business that has its official headquarters
9 located in an authorized West Virginia project launchpad for
10 economic development is exempt from the tax imposed by article
11 twenty-three, chapter eleven of this code attributable to business
12 activity engaged in within the authorized West Virginia project
13 launchpad for economic development for taxable years beginning on
14 or after January 1, 2014, notwithstanding any provision of the code
15 to the contrary.

16 (b) *Credits.* - For tax years that begin on or after January 1,
17 2014, a corporation, partnership or other pass through entity that
18 is a qualified business as defined in section twelve of this
19 article may claim a credit against the tax imposed by article
20 twenty-three, chapter eleven of this code, for tax liability
21 attributable to the taxable capital employed within the West
22 Virginia project launchpad for economic development in the taxable

1 year. No credit may be claimed for capital employed prior to
2 designation of the real property as part of a West Virginia project
3 launchpad for economic development. The business activity in the
4 West Virginia project launchpad for economic development must be
5 conducted directly by a corporation, partnership or other pass
6 through entity in order for the corporation, partnership or other
7 pass through entity to claim the tax credit allowed by this
8 section.

9 (c) *Tax liability.* - When the corporation, partnership or
10 other pass through entity does business both within and outside the
11 West Virginia project launchpad for economic development, the
12 entity's tax liability attributable to capital employed within a
13 project launchpad for economic development shall be determined by
14 multiplying the portion of entity's taxable capital attributable to
15 business activity within the project launchpad for economic
16 development, determined as provided in subsection (d) of this
17 section, by the rate of tax imposed under article twenty-three,
18 chapter eleven of this code for the taxable year. The corporation,
19 partnership or other pass through entity shall compute its West
20 Virginia taxable capital in conformity with article twenty-three,
21 chapter eleven of this code with no adjustments or subtractions for
22 the capital employed in the West Virginia project launchpad for

1 economic development.

2 (d) *Determination of attributable tax liability.* - The
3 determination of the taxable capital of a corporation, partnership
4 or other pass through entity attributable to the capital employed
5 within a West Virginia project launchpad for economic development
6 shall be determined with specific reference to the following:

7 (1) If the entire business of the corporation in this state is
8 transacted wholly within the project launchpad, the taxable capital
9 attributable to the business activity within the West Virginia
10 project launchpad for economic development shall consist of the
11 entire West Virginia taxable capital as determined under article
12 twenty-three, chapter eleven of this code.

13 (2) If the entire business of the corporation in this state is
14 not wholly transacted within an authorized West Virginia project
15 launchpad for economic development, the taxable capital of a
16 corporation or pass through entity doing business in an authorized
17 West Virginia project launchpad for economic development shall be
18 determined upon such portion of the West Virginia taxable capital
19 not attributable to the capital employed within the authorized West
20 Virginia project launchpad for economic development by employing
21 the apportionment factors set forth in section nineteen of this
22 article.

1 (e) *Limitation on amount of credit.* - The credit allowed under
2 this section may not exceed the tax liability of the taxpayer under
3 article twenty-three, chapter eleven of this code, for the tax
4 year.

5 (f) *Credit not available.*-- Any portion of the taxpayer's
6 taxable capital that is attributable to the capital employed in the
7 operation of a railroad, truck, bus or airline company, pipeline or
8 natural gas company, water transportation company, or other public
9 service business subject to regulation by the West Virginia Public
10 Service Commission shall not be used to calculate a credit under
11 this section.

12 **§5B-2I-21. West Virginia project launchpad jobs tax credit.**

13 (a) *Credits.*-- For tax years that begin on or after January 1,
14 2014, a qualified business under this article may apply to the
15 State Tax Commissioner for a jobs tax credit against the taxes
16 imposed by articles twenty-three and twenty-four of chapter eleven
17 of this code, or for the taxes imposed by articles twenty-one and
18 twenty-three of chapter eleven of this code, when the qualified
19 business is a pass through entity for federal income tax purposes,
20 for all new full-time jobs with health benefits located within an
21 authorized West Virginia project launchpad for economic
22 development. The job must be held directly with a qualified

1 business and be based in the authorized West Virginia project
2 launchpad for economic development in order for the qualified
3 business to apply for the tax credit. The Tax Commissioner shall
4 prescribe the form of the application and the process to obtain the
5 credit. The Tax Commissioner may promulgate in accordance with the
6 provisions of article three, chapter twenty-nine-a of this code,
7 rules the commissioner deems necessary to implement, administer and
8 enforce this section.

9 (b) Application when business relocates within state.

10 (1) A business that relocates from a location in this state
11 that is not located in an authorized West Virginia project
12 launchpad for economic development to a location in an authorized
13 West Virginia project launchpad for economic development may not
14 apply for a credit for an existing job that is transferred,
15 discontinued or lost in this state which is attributable to the
16 relocation.

17 (2) A qualified business that has relocated pursuant to
18 subdivision (1) of this subsection may apply for a West Virginia
19 project launchpad job tax credit, for a new full-time job with
20 health benefits that is created and based in the authorized West
21 Virginia project launchpad for economic development. A new
22 full-time job is created with a qualified business if the average

1 monthly employment for that qualified business has increased from
2 the average monthly employment of the business in this state during
3 the prior twelve-month calendar year and the new job is based in an
4 authorized West Virginia project launchpad for economic
5 development.

6 (c) *Application of credit.* - A qualified business apply for a
7 credit allowed by this section by January 15 of the then current
8 calendar year for credit for the previous calendar year.

9 (d) *Apportionment.* - The State Tax Commissioner shall
10 apportion a West Virginia project launchpad jobs tax credit, for a
11 qualified business that has not operated in an authorized West
12 Virginia project launchpad for economic development for a full
13 fiscal year by the percentage that the number of days the qualified
14 business operated in the project launchpad for economic development
15 bears to three hundred sixty five days.

16 (e) *Credit determinations.* - The West Virginia project
17 launchpad jobs tax credit shall be determined by multiplying the
18 monthly average of all full-time jobs by the allowance. The
19 allowance for purposes of the West Virginia project launchpad jobs
20 tax credit, for taxable years shall be \$1,250 per new job with
21 health benefits created by the qualified business when the new job
22 is based in the West Virginia launchpad for economic development.

1 (f) *Notification of credit.* - By March 15 of each year, the
2 Tax Commissioner shall notify each qualifying business that applies
3 for credit under this section of the amount of credit approved for
4 that qualified business.

5 (g) *Limitation on amount of credit.* - The tax credit allowed
6 under this section shall be applied by the qualified business after
7 all other credits allowable for the year under this code have been
8 applied but may not reduce the liability of the business for taxes
9 under articles twenty-three and twenty-four of chapter eleven of
10 this code, by more than fifty percent of the tax liability of the
11 qualified business under articles twenty-three and twenty-four of
12 chapter eleven of this code attributable to the business activity
13 of the qualified business engaged in within the West Virginia
14 project launchpad for economic development.

15 (h) *Allocation.* - The total amount of credits approved by the
16 Tax Commissioner may not exceed \$1 million annually. If the credits
17 applied for exceed the \$1 million cap in a given year, the credits
18 shall be allocated on a pro rata basis.

19 (i) *Computation of allocation.* - If the total amount of West
20 Virginia project launchpad jobs tax credits applied for by all
21 qualified businesses under this section exceeds \$1 million then the
22 credit to be received by each qualified business shall be the

1 product of \$1 million multiplied by the quotient of the credit
2 applied for by the qualified business divided by the total of all
3 credits applied for by all qualified businesses. The algebraic
4 equivalent for this computation is: Qualified business's West
5 Virginia project launchpad jobs tax credit = \$1 million X (the
6 amount of West Virginia project launchpad tax credit applied for by
7 the qualified business divided by the sum of all West Virginia
8 project launchpad jobs tax credits applied for by all qualified
9 businesses for the taxable year).

10 (j) *Pass-through entities.* - The tax credits provided in this
11 section shall apply to the following:

12 (1) A partner or member of a partnership, limited partnership,
13 limited liability company or association that qualifies under this
14 section shall be entitled to a job creation tax credit in
15 proportion to the partner's or member's share, whether or not
16 distributed, of the income or gain received by the partnership,
17 limited partnership, limited liability company or association for
18 its taxable year.

19 (2) A shareholder of a small business corporation that
20 qualifies under this section shall be entitled to a job creation
21 tax credit in proportion to the shareholder's pro rata share,
22 whether or not distributed, of the income or gain received by the

1 corporation for its taxable year ending within or with the
2 shareholder's taxable year.

3 (3) No partnership, limited partnership, limited liability
4 company, association or small business corporation, or partner,
5 member or shareholder, may claim any other tax benefit, expense or
6 credit for the same West Virginia project launchpad jobs tax
7 credit.

8 (k) *Unused credit forfeited.* - Unused project launchpad jobs
9 tax credit allowed under this section may not carry back or forward
10 to any other year and may not be transferred to any other person or
11 business.

12 **§5B-2I-22. Local taxes.**

13 Every qualified political subdivision in which an authorized
14 West Virginia project launchpad for economic development is
15 located, in whole or in part, shall exempt, deduct, abate or credit
16 local taxes in accordance with ordinances and orders adopted
17 pursuant to section four of this article, as is applicable. Failure
18 to exempt, deduct, abate or credit local taxes shall result in the
19 revocation of the authorization to be a West Virginia project
20 launchpad for economic development.

21 **§5B-2I-23. Ad valorem property tax.**

22 *General rule.* - Notwithstanding any provision of this code to

1 the contrary property located in an authorized West Virginia
2 project launchpad for economic development owned by a qualified
3 business shall be eligible for the special valuation methodology
4 for ad valorem property tax purposes provided in article six-1,
5 chapter eleven of this code as of July 1 beginning on or after the
6 date the geographic area is designated a West Virginia project
7 launchpad for economic development or beginning on or after the
8 date the West Virginia project launchpad for economic development
9 is extend to include the geographic area in which the qualified
10 business is located.

11 **§5B-2I-24. Local business and occupation taxes, earned income and**
12 **net profits taxes.**

13 (a) *General exemption.* - A municipal corporation or county
14 commission or county council that has enacted any tax on the
15 privilege of engaging in any business activity, profession or
16 occupation, measured by gross receipts, earned income or net
17 profits, may impose that tax on persons or qualified businesses
18 located within the boundaries of an authorized West Virginia
19 project launchpad for economic development. The municipal
20 corporation or county commission or county council shall exempt
21 from the imposition or operation of the local tax ordinances,
22 statutes, regulations or otherwise:

1 (1) The business gross receipts for operations conducted by a
2 qualified business within an authorized West Virginia project
3 launchpad for economic development.

4 (2) The earned income received by a resident of an authorized
5 West Virginia project launchpad for economic development.

6 (3) The net profits of a qualified business attributable to
7 business activity conducted within an authorized West Virginia
8 project launchpad for economic development when imposed by the
9 qualified political subdivision where that qualified business is
10 located.

11 No exemption may be granted for operations conducted, for
12 earned income received or for activities conducted prior to
13 designation of the real property as part of an authorized West
14 Virginia project launchpad for economic development.

15 (b) *Determination of exemption.* - For the purposes of
16 determining an exemption under this section, a tax on or measured
17 by any of the following shall be attributed to business activity
18 conducted within an authorized West Virginia project launchpad for
19 economic development by applying the apportionment factors under
20 section nineteen of this article:

21 (1) Business gross receipts.

22 (2) Gross or net income.

1 (3) Gross or net profits.

2 **§5B-2I-25. Local business license tax.**

3 (a) *Municipalities.* - No person or qualified business with a
4 physical location in an authorized West Virginia project launchpad
5 for economic development may be required to pay any license tax or
6 fee to that municipal corporation for business activity done in a
7 West Virginia project launchpad for economic development. For
8 purposes of this section "business license tax" means a license tax
9 or fee that a municipal corporation imposes pursuant to article
10 thirteen, chapter eight of this code.

11 (b) *Counties.* - No person or qualified business with a
12 physical location in the portion of a county located in an
13 authorized West Virginia project launchpad for economic development
14 may be required to pay any license tax or fee to the county
15 corporation for business activity done in a launchpad for economic
16 development located in the county. For purposes of this section
17 "business license tax" means a license tax or fee that a county or
18 county council may impose pursuant to chapter seven of this code.

19 **§5B-2I-26. Local sales and use taxes.**

20 A municipal corporation or county commission or county council
21 shall exempt from its sales and use taxes purchases, including
22 leases, of tangible personal property, custom software or services

1 for use or consumption within a West Virginia project launchpad for
2 economic development by a qualified business with a physical
3 location in the West Virginia project launchpad for economic
4 development.

5 **§5B-2I-27. No transferability of tax benefits.**

6 Any tax benefit provided under this article to any person or
7 qualified business is nontransferable and may not be applied, used
8 or assigned to any other person or business, except as expressly
9 provided in this article in the case of pass through entities
10 treated as a partnership for federal income tax purposes for the
11 taxable year.

12 **§5B-2I-28. Recapture.**

13 (a) *General rule.* - If any qualified business located within
14 an authorized West Virginia project launchpad for economic
15 development has received any tax benefit or other economic benefit
16 under this article and subsequently relocates outside of the
17 project launchpad for economic development or ceases to do business
18 within the first five years of locating in or expanding in an
19 authorized West Virginia project launchpad for economic
20 development, that business shall refund to the State Tax
21 Commissioner and to the qualified political subdivisions which
22 granted the tax or other benefit received in accordance with the

1 following:

2 (1) If a qualified business relocates, or ceases doing
3 business, within three years from the date of first locating in a
4 West Virginia project launchpad for economic development, sixty-
5 six percent of all of the tax and other benefits attributed to that
6 qualified business's participation in the West Virginia project
7 launchpad for economic development shall be refunded to the State
8 Tax Commissioner and to the qualified political subdivisions that
9 provided the benefits.

10 (2) If a qualified business relocates, or ceases doing
11 business, within three to five years from the date of first
12 locating in a West Virginia project launchpad for economic
13 development, thirty-three percent of all tax and other benefits
14 attributed to that qualified business's activity in the West
15 Virginia project launchpad for economic development shall be
16 refunded to the State Tax Commissioner and to the qualified
17 political subdivisions that provided the benefits.

18 (b) *Waiver*.-- The Secretary of Commerce, in consultation with
19 the State Tax Commissioner and the applicable qualified political
20 subdivisions, may waive or modify the recapture requirements under
21 this section if the Secretary of Commerce determines that the
22 business relocation was due to circumstances beyond the control of

1 the business, including, but not limited to:

2 (1) Natural disaster;

3 (2) Unforeseen industry trends; or

4 (3) Loss of a major supplier or market.

5 **§5B-2I-29. Delinquent or deficient state or local taxes.**

6 (a) *Persons.* - No person may claim or receive any tax benefit
7 under this article unless that person is in full compliance with
8 all West Virginia state and local tax laws, ordinances and
9 resolutions that are applicable to the person.

10 (b) *Qualified businesses.* -

11 (1) No qualified business may claim or receive any tax benefit
12 under this article unless that qualified business is in full
13 compliance with all West Virginia state and local tax laws,
14 ordinances and resolutions applicable to that business.

15 (2) No qualified business may claim or receive a tax benefit
16 under this article if any person or business with a twenty percent
17 or greater interest in that qualified business is not in full
18 compliance with all West Virginia state and local tax laws,
19 ordinances and resolutions applicable to that person or business.

20 (c) *Later compliance and eligibility.* -

21 (1) Any person or qualified business that is not eligible to
22 claim any tax benefit under this article due to noncompliance with

1 any West Virginia state or local tax law, ordinance or resolution
2 may become eligible if that person or qualified business
3 subsequently comes into full compliance with all West Virginia
4 state and local tax laws, ordinances and orders applicable to the
5 person or business to the satisfaction of the Tax Commissioner or
6 the tax collector of the political subdivision within the calendar
7 year in which the noncompliance first occurred.

8 (2) If full compliance is not attained by February 5 of the
9 calendar year following the calendar year during which
10 noncompliance first occurred or is first discovered, whichever
11 occurs last, then that person or qualified business is precluded
12 from claiming any tax benefit under this article for that preceding
13 calendar year, whether or not full compliance is achieved
14 subsequently.

15 (d) For purposes of this section, a person or qualified
16 business is not out of compliance during the time the question of
17 compliance is being litigated in an administrative or judicial
18 proceeding, or the person or qualified business is in compliance
19 with the terms of any authorized plan for payment of past due
20 taxes.

21 **§5B-2I-30. Code compliance.**

22 (a) *General rule.* - A person or qualified business is

1 precluded from claiming any tax benefit provided in this article if
2 that person or qualified business owns real property in an
3 authorized West Virginia project launchpad for economic development
4 and the real property is not in compliance with all applicable
5 state and local zoning, building and housing laws and ordinances or
6 orders of the county commission or county council.

7 (b) *Opportunity to achieve compliance.* -

8 (1) The person or qualified business who is not in compliance
9 under subsection (a) of this section has until December 31 of the
10 calendar year following designation of the real property as part of
11 an authorized West Virginia project launchpad for economic
12 development to be in compliance in order to claim any tax benefit
13 under this article for that year or the prior calendar year. If
14 full compliance is not attained by December 31 of that following
15 calendar year, the person or qualified business is precluded from
16 claiming any tax benefit under this article for the year on
17 noncompliance or for the following calendar year, whether or not
18 compliance is achieved in a subsequent calendar year. A municipal
19 corporation or county commission or county council of a county in
20 which the West Virginia project launchpad for economic development
21 is located may extend the time period in which a person or
22 qualified business must come into compliance with a local ordinance

1 or order, for a period not to exceed one year if the county or
2 county council or municipal corporation determines that the person
3 or qualified business has made and shall continue to make a good
4 faith effort to come into compliance and that an extension will
5 enable the person or qualified business to achieve full compliance.

6 (2) Municipal corporations and county commissions or county
7 councils are required to notify the Tax Commissioner in writing,
8 within thirty days following the end of each calendar year, of all
9 persons or qualified businesses not in compliance with this
10 subsection.

11 **§5B-2I-31. Reporting to Governor and Legislature.**

12 The Secretary of Commerce and the Tax Commissioner shall
13 report to the Governor, the President of the Senate, and the
14 Speaker of the House of Delegates on the economic effects of this
15 article in each authorized West Virginia project launchpad economic
16 development on or before the first day of the regular session of
17 the Legislature in 2019, 2023, 2027 and 2031. This report may be a
18 joint report of the Secretary of Commerce and the Tax Commissioner,
19 or the reports required by this section may be separate reports
20 prepared and filed in compliance with this section.

21 **§5B-2I-32. Other tax credits.**

22 A person or qualified business that is entitled to claim a tax

1 benefit in accordance with the provisions of this article is not
2 entitled to claim or accumulate any of the following tax benefits
3 due to activity within a West Virginia project launchpad for
4 economic development: The tax credits allowed by article
5 thirteen-c, thirteen-d, thirteen-e, thirteen-j, thirteen-k,
6 thirteen-l, thirteen-m, thirteen-n, thirteen-o, thirteen-p,
7 thirteen-q, thirteen-r, thirteen-s, thirteen-t, thirteen-u,
8 thirteen-v, thirteen-w, thirteen-x, thirteen-z, thirteen-aa or
9 thirteen-bb of chapter eleven of this code or the credit allowed by
10 this article.

11 **§5B-2I-33. Illegal activity.**

12 Any funds or other forms of consideration received by a person
13 or business conducting any type of illegal activity are not
14 eligible for any of the tax benefits or any other benefit otherwise
15 allowable under this article.

16 **§5B-2I-34. Rules.**

17 (a) The Tax Commissioner may propose rules for legislative
18 approval pursuant to article three, chapter twenty-nine-a of this
19 code, that the commissioner deems to be necessary to effectuate the
20 provisions of this article administered by the Tax Commissioner.

21 (b) The Secretary of Commerce may propose rules for
22 legislative approval pursuant to article three, chapter

1 twenty-nine-a of this code, that the secretary deems to be
2 necessary to effectuate the provisions of this article administered
3 by the Secretary of Commerce.

4 **§5B-2I-35. Compliance.**

5 Any person or qualified business eligible for any tax benefit
6 under this article shall comply with all reporting, filing and
7 compliance requirements any tax imposed by or administered under
8 chapter eleven of this code, on the person or qualified business
9 and for any tax imposed by a county commission or county council
10 pursuant to chapter seven of this code, or a municipal corporation
11 pursuant to article thirteen, chapter eight of this code, unless
12 otherwise provided in this article.

13 **§5B-2I-36. Penalties.**

14 (a) *Civil money penalties.--*

15 (1) In addition to any additions to tax or other penalty
16 authorized by article ten, chapter eleven of this code, for
17 violations of that article, the Tax Commissioner may impose an
18 additional administrative penalty not to exceed \$10,000 for any
19 article or violation of this article relating to state and local
20 taxes, including the filing of any false statement, return or
21 document.

22 (2) The Tax Commissioner may impose a civil penalty not to

1 exceed \$10,000 for a violation of this article, including the
2 filing of any false statement, return or document.

3 (3) In addition to any additions to tax or other penalty set
4 forth in an ordinance of a municipal corporation imposing a tax for
5 violations of that tax, the municipal corporation by its authorized
6 officer may impose an additional administrative penalty not to
7 exceed \$10,000 for any article or violation of this article
8 relating to local taxes collected by the municipal corporation,
9 including the filing of any false statement, return or document.

10 (4) The civil money penalties imposed by this section may be
11 collected in the same manner as additions to tax or tax penalties
12 are collected by the State Tax Commissioner or the municipal
13 corporation.

14 (b) *Criminal penalty.* - In addition to any criminal penalty
15 under article nine, chapter eleven of this code, any person or
16 business who knowingly violates any of the provisions of this
17 article is guilty of a misdemeanor and, upon conviction, shall be
18 fined not more than \$1,000 for each offense or imprisoned for not
19 more than one year in a correctional facility, or both fined and
20 imprisoned, in the discretion of the court.

21 **§5B-2I-37. Construction of article.**

22 This article is declared to be socioeconomic legislation that

1 shall be interpreted to ensure that all provisions relating to
2 state and local tax benefits and other benefits are liberally
3 construed in favor of the taxpayer and strictly construed against
4 the government.

5 **§5B-2I-38. Applicability of article.**

6 The provisions of this article shall be applied prospectively.
7 No person or business may claim any tax benefit or other benefit
8 under this article until that person or business becomes qualified
9 as provided in this article.

10 **§5B-2I-39. Severability.**

11 The provisions of this article are severable. If any provision
12 of this article or its application to any person or circumstance is
13 held invalid by a court of competent jurisdiction, the invalidity
14 shall not affect other provisions or applications of this article
15 which can be given effect without the invalid provision or
16 application.

17 **§5B-2I-40. Conflicts.**

18 Should any provision of this code be inconsistent with this
19 article, the provisions of this article shall be deemed to control.

20 **§5B-2I-41. Expiration.**

21 This article and all benefits associated with this article
22 shall terminate for tax years beginning after December 31, 2030,

1 unless this date is extended by the Legislature.

2 **CHAPTER 11. TAXATION.**

3 **ARTICLE 6L. SPECIAL METHOD FOR APPRAISING PROPERTY IN WEST**
4 **VIRGINIA PROJECT LAUNCHPADS for ECONOMIC**
5 **DEVELOPMENT.**

6 **§11-6L-1. Short title.**

7 This article shall be known and cited as the "West Virginia
8 Project Launchpad for Economic Development Property Valuation Act".

9 **§11-6L-2. Definitions.**

10 For the purposes of this article:

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

12 (2) "State-of-the-art technologies" means "state-of-the-art
13 technologies" as defined in section two, article two-1, chapter
14 five-b of this code when the owner of the property is a "qualified
15 business" as defined in section two, article two-1 of chapter
16 five-b of this code. Qualifications for that tax credit and the
17 special valuation methodology provided in this article include, but
18 are not limited to, a minimum capital investment requirement, a
19 minimum new jobs creation requirement and a requirement that the
20 new jobs created be good paying jobs with health insurance
21 benefits, all as defined in article two-1 of chapter five-b of this
22 code; and

1 (3) "Tax Commissioner" or "Commissioner" means the chief
2 executive officer of the Tax Division of the Department of Revenue
3 provided in article one, chapter eleven of this code, or his or her
4 designee.

5 **§11-6L-3. Valuation of property in West Virginia project launchpad**
6 **for economic development.**

7 Notwithstanding any other provision of this code to the
8 contrary, the value of tangible personal property and improvements
9 to real property placed in service or use on or after July 1, 2014,
10 and directly used in a state-of-the-art technology as defined in
11 section two of this article shall, for the purpose of ad valorem
12 property taxation under this chapter and under Article X of the
13 Constitution of this state, is its salvage value.

14 **§11-6L-4. Initial determination by county assessor.**

15 (a) On or before September 1 of the assessment year, the owner
16 of tangible personal property and improvements to real property
17 placed in service or use on or after July 1, 2014, directly used in
18 a new business, or in a new segment of an existing business, that
19 utilizes a state-of-the-art business technology and qualifies for
20 the tax benefits allowed by article two-i, chapter five-b of this
21 code may file a report with the county assessor of the county in
22 which the property was located on July 1 of that assessment year,

1 listing the tangible personal property and improvements to real
2 property placed in service or use on or after July 1, 2014, that is
3 qualified investment for purposes of the tax benefits allowed by
4 article two-i of said chapter five-b. A taxpayer that fails to
5 timely file the report required by this subsection shall be deemed
6 to have waived valuation of the property as provided in this
7 article for that assessment year.

8 (b) When the county assessor receives the report described in
9 subsection (a) of this section, the assessor shall review the
10 report and make such inquiries as he or she deems necessary to
11 determine whether the tangible personal property and improvements
12 to real property placed in service or use on or after July 1, 2014,
13 listed in the report is eligible for valuation under this article.
14 The county assessor shall notify the taxpayer in writing of his or
15 her determination not later than January 15 of the assessment year.

16 (c) Upon making a determination that a taxpayer owns tangible
17 personal property and improvements to real property placed in
18 service or use on or after July 1, 2014, directly used in an
19 innovative business technology that is eligible for valuation under
20 this article, the county assessor shall notify the Tax Commissioner
21 of that determination and shall provide information to the Tax
22 Commissioner as he or she requires relating to that determination.

1 **§11-6L-5. Protest and appeal.**

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

17 (b) The Tax Commissioner shall, as soon as possible on receipt
18 of the question, but in no case later than February 28 of the
19 assessment year, instruct the county assessor as to how the
20 property shall be treated. The instructions issued and forwarded by
21 mail to the county assessor are binding upon the county assessor,
22 but either the county assessor or the taxpayer may apply to the

1 circuit court of the county for review of the question of the
2 applicability of this article to the property in the same fashion
3 as is provided for appeals from the county commission or county
4 council in section twenty-five, article three of this chapter. The
5 Tax Commissioner shall prescribe forms on which the questions under
6 this section shall be certified and the Tax Commissioner has the
7 authority to pursue any inquiry and procure any information
8 necessary for disposition of the matter.

9 **§11-6L-6. Report on economic benefit.**

10 The Secretary of Commerce shall provide to the Joint Committee
11 on Government and Finance by March 1, 2019, and again by March 1,
12 2022, a report detailing the economic benefit of the valuation
13 method specified in this article. The report shall include the
14 number of new jobs created due to the provisions of this article
15 and the ad valorem property tax impact.

16 **§11-6L-7. Effective date.**

17 This article shall be effective on and after July 1, 2014, for
18 property placed in service or use on or after July 1, 2014, when
19 the property and its use meet the requirements of this article.

20 **ARTICLE 21A. PROMOTING WEST VIRGINIA EMPLOYMENT ACT.**

21 **§11-21A-1. Short title.**

22 This article shall be known and may be cited as the "Promoting

1 West Virginia Employment Act".

2 **§11-21A-2. Scope of article.**

3 This article relates to fostering economic development,
4 creating new jobs and opportunities for citizens of West Virginia
5 and providing incentives for businesses to locate or expand
6 business facilities, other operations and jobs in this state.

7 **§11-21A-3. Definitions.**

8 (a) The following words and phrases when used in this article
9 have the meanings given to them in this section unless the context
10 in which used clearly indicates that a different meaning was
11 intended by the Legislature.

12 (b) Terms defined.

13 (1) "Agreement" means an agreement entered into under section
14 eight of this article.

15 (2) "Development Office" means the Development Office of the
16 Department of Commerce established in chapter five-e of this code.

17 (3) "Health insurance benefits" means employer-provided
18 coverage for medical expenses of the employee or the employee and
19 his or her family under a group accident or health plan, or
20 employer contributions to an Archer medical savings account, as
21 defined in Section 220 of the Internal Revenue Code of 1986, as
22 amended, or to a health savings account, as defined in Section 223

1 of the Internal Revenue Code, of the employee when the employer's
2 contribution to any such account is not less than fifty percent of
3 the maximum amount permitted for the year as employer-provided
4 coverage under Section 220 or 223 of the Internal Revenue Code,
5 whichever section is applicable.

6 (4) "Qualified company" means a for-profit corporation,
7 partnership or other entity that agrees to create at least five new
8 jobs in this state within twenty-four months from the date the
9 agreement is entered into under section eight of this article,
10 makes available to its full-time employees health insurance
11 coverage, and pays at least fifty percent of the premium for the
12 health insurance and meets the requirements of section four of this
13 article: *Provided*, That "qualified company" does not include any
14 corporation, partnership or other entity which meets any of the
15 following:

16 (A) Is identified by any of the following North American
17 Industry Classification System code groups, sectors or subsectors:

18 (i) Industry group 7132 or 8131.

19 (ii) Sectors 44, 45, 61, 92 or 221, including water and sewer
20 services.

21 (iii) Subsector 722.

22 (B) Is delinquent in the payment of any taxes or any other

1 amounts to the Federal Government, this state or any political
2 subdivision of this state.

3 (C) Has filed for or has publicly announced its intention to
4 file for bankruptcy protection.

5 (5) "Student loan payment assistance" means the payment of
6 principal or interest on:

7 (A) Any indebtedness incurred by the employee solely to pay
8 qualified higher education expenses (as defined in section 221 of
9 the Internal Revenue Code), which:

10 (i) Are paid or incurred within a reasonable period of time
11 before or after the indebtedness was incurred, and

12 (ii) Are attributable to education furnished during a period
13 during which the employee was an eligible student, or

14 (B) Any indebtedness used to refinance indebtedness described
15 in paragraph (A). However, "student loan payment assistance" does
16 not include any payment of principal or interest on indebtedness
17 owed to a person who is related (within the meaning of subsection
18 (b), section 267 of the Internal Revenue Code or subsection (b),
19 section 707 of the Internal Revenue Code), to the employee or to
20 any person by reason of a loan under any qualified employer plan,
21 as defined in paragraph (4), subsection (p), section 72 of the
22 Internal Revenue Code, or under any contract referred to in

1 paragraph (5), subsection (p), section 72 of the Internal Revenue
2 Code.

3 (6) "Withholding tax" means the tax employers are required to
4 withhold from their employees under section 71, article 21 of this
5 chapter.

6 **§11-21A-4. Qualification.**

7 In order to qualify for benefits under this article, a
8 qualified company must be located in this state and meet the
9 requirements under subsection (a), section five of this article.

10 **§11-21A-5. Benefits.**

11 (a) *Requirement.* - A qualified company that enters into an
12 agreement must create five new jobs in this state within two years
13 of entering into the agreement under section eight of this article.

14 (b) *Retention.* - A qualified company that meets the
15 requirements of subsection (a) is eligible to retain seventy-five
16 percent of the qualified company's withholding taxes for
17 individuals employed in the new jobs for one of the following
18 periods:

19 (1) Seven years, if the individuals are compensated at a rate
20 equal to at least one hundred percent of the amount specified in
21 section six of this article.

22 (2) Eight years, if the individuals are compensated at a rate

1 equal to at least one hundred and ten percent of the amount
2 specified in section six of this article.

3 (3) Nine years, if the individuals are compensated at a rate
4 equal to at least one hundred and twenty percent of the amount
5 specified in section six of this article.

6 (4) Ten years, if the individuals are compensated at a rate
7 equal to at least one hundred and forty percent of the amount
8 specified in section six of this article.

9 (c) When the qualified company certifies that it has a student
10 loan payment assistance program for its West Virginia employees,
11 then the words "ninety-five percent" shall be substituted for
12 "seventy-five percent" in subsection (b) of this section.

13 (d) *Information statement.* - A qualified company shall comply
14 with section seventy-two, article twenty-one of this chapter,
15 without regard to the benefits the company receives under this
16 article.

17 (e) *Notice.* - The qualified company shall provide to each
18 individual employed in a new job notice of the benefits the
19 qualified company is receiving under this article at the time the
20 individual is hired. The information must be easily understandable
21 and must state that the employee's withholding tax is being
22 retained by the qualified company under this article.

1 **§11-21A-6. Compensation of employees filling new jobs.**

2 (a) The benefit allowed by this article shall be available for
3 each new job in this state of the qualified company that:

4 (1) Pays at least \$34,100 annually. Beginning January 1, 2014,
5 and on January 1 of each year thereafter, the Tax Commissioner
6 shall prescribe an amount that shall apply in lieu of the \$34,100
7 amount for new jobs filled during that calendar year. This amount
8 is prescribed by increasing the \$34,100 figure by the
9 cost-of-living adjustment for that calendar year. If any increase
10 under this subdivision is not a multiple of \$50, the increase shall
11 be rounded to the next lowest multiple of \$50;

12 (2) Provides health insurance. The employer may in addition
13 offer benefits including child care, retirement, student loan
14 repayment assistance and other benefits; and

15 (3) Is a full-time, permanent position, as those terms are
16 defined in this section.

17 (b) Jobs that pay less than \$34,100 annually, or less than the
18 amount prescribed by the Tax Commissioner pursuant to subdivision
19 (1), subsection (a) of this section, whichever is higher, or that
20 pay that salary but do not also provide health benefits in addition
21 to the salary do not qualify for benefits under this article. Jobs
22 that are less than full-time, permanent positions do not qualify

1 for the benefits under this article.

2 (c) The employer having obtained entitlement to the benefit
3 under this article for the year in which the new job is filled is
4 not required to raise wages of the employees currently employed in
5 the new jobs upon which the initial benefit was based by reason of
6 the cost-of-living adjustment for new jobs filled in subsequent
7 years provided the employer continues to provide healthcare
8 benefits and, if applicable, student loan payment assistance.

9 (b) For purposes of this section, the following definitions
10 apply:

11 (1) "Compensation" means wages, salaries, commissions and any
12 other form of remuneration paid to employees for personal services.

13 (2) "Cost-of-living adjustment" for any calendar year is the
14 percentage (if any) by which the consumer price index for the
15 preceding calendar year exceeds the consumer price index for the
16 calendar year 2014.

17 (3) "Consumer price index" for any calendar year means the
18 average of the federal consumer price index as of the close of the
19 twelve-month period ending on August 31 of that calendar year.

20 (4) "Federal consumer price index" means the most recent
21 consumer price index as of August 31 each year for all urban
22 consumers published by the United States Department of Labor.

1 (5) "New employee" means a person residing and domiciled in
2 this state, hired by the taxpayer to fill a position or a job in
3 this state which previously did not exist in the taxpayer's
4 business enterprise in this state prior to the date the application
5 was filed under section eight of this article. In no event may the
6 number of new employees exceed the total net increase in the
7 employer's employment in this state: *Provided*, That the Tax
8 Commissioner may require that the net increase in the taxpayer's
9 employment in this state be determined and certified for the
10 taxpayer's controlled group as defined in article twenty-four of
11 this chapter. In addition, a person is a "new employee" only if the
12 person's duties are on a regular, full-time and permanent basis:

13 (A) "Full-time employment" means employment for at least one
14 hundred forty hours per month at a wage not less than the amount
15 specified in subdivision (1), subsection (a) of this section; and

16 (B) "Permanent employment" does not include employment that is
17 temporary or seasonal and therefore the wages, salaries and other
18 compensation paid to the temporary or seasonal employees will not
19 be considered for purposes of this article even if the compensation
20 paid to the temporary or seasonal employee equal or exceeds the
21 amount specified in subdivision (1), subsection (a) of this
22 section; or

1 (6) "New job" means a job which did not exist in the business
2 of the taxpayer in this state prior to filing the application for
3 benefits under this article, and which is filled by a new employee.

4 **§11-21A-7. Application and review.**

5 (a) *Application.* - A qualified company that meets the
6 requirements of section four of this article may apply to the
7 Development Office for benefits under this article. The application
8 shall be on a form required by the Development Office and shall
9 include all of the following:

10 (1) The name and address of the applicant.

11 (2) Documentation that the applicant is a qualified company.

12 (3) Documentation that the applicant meets the requirements of
13 section four of this article.

14 (4) Documentation that the applicant does not owe any
15 delinquent taxes or any other amounts to the federal government,
16 this state or any political subdivision of this state.

17 (5) An affidavit that the applicant has not filed for or
18 publicly announced its intention to file for bankruptcy protection
19 and that the company will not seek bankruptcy protection within the
20 next six calendar months following the date of the application.

21 (6) A waiver of confidentiality under section five-d, article
22 ten of this chapter for information provided in the application.

1 (7) Any other information required by the development office.

2 (b) *Review.* - Within thirty days of receipt of the
3 application, the development office, in conjunction with the Tax
4 Division of the Department of Revenue, shall review the application
5 and determine if the applicant is a qualified company and that the
6 requirements of section four of this article have been met.

7 (c) *Approval.* - The development office may approve or deny the
8 application. Upon approval of an application, the development
9 office shall notify the applicant in writing and enter into an
10 agreement with the qualified company for benefits under this
11 article.

12 **§11-21A-8. Agreement.**

13 (a) The agreement between the qualified company and the
14 development office shall be entered into before any benefits may be
15 provided under this article.

16 (b) The agreement shall do all of the following:

17 (1) Specify the terms and conditions the qualified company
18 must comply with in order to receive benefits under this article.

19 (2) Require the development office to certify all of the
20 following to the Tax Division of the Department of Revenue every
21 taxable year:

22 (A) That the qualified company is eligible to receive benefits

1 under this article.

2 (B) The number of new jobs created by the company during each
3 taxable year.

4 (C) The amount of gross wages being paid to each individual
5 employed in a new job.

6 (3) Include any other information deemed necessary by the
7 Development Office.

8 **§11-21A-9. Recapture of withholding taxes.**

9 (a) *Compliance with terms and conditions.* - If the qualified
10 company fails to comply with the terms and conditions set forth in
11 the agreement or fails to comply with this article, the development
12 office shall immediately terminate the agreement. The qualified
13 company is not entitled to any further benefits provided under this
14 article and shall be required to remit to the Tax Commissioner an
15 amount equal to the aggregate withholding taxes retained by the
16 qualified company under this article as of the date the agreement
17 is terminated.

18 (b) *Relocation.* - If a qualified company relocates outside of
19 this state within the five-year period immediately following the
20 last year the company received benefits under this article, the
21 following apply:

22 (1) If a qualified company relocates within three years from

1 the last year the company received benefits under this article, an
2 amount equal to sixty-six percent of the aggregate withholding
3 taxes retained by the qualified company under this article shall be
4 paid over to the Tax Commissioner.

5 (2) If a qualified company relocates within three to five
6 years from the last year the company received benefits under this
7 article, an amount equal to thirty-three percent of the aggregate
8 withholding taxes retained by the qualified company under this
9 article shall be paid over to the Tax Commissioner.

10 (c) *Waiver.* - The Development Office may waive or modify
11 recapture requirements under subsection (b) if the Development
12 Office determines that the qualified company's relocation was due
13 to circumstances beyond the control of the company, including, but
14 not limited to:

15 (1) Natural disaster; or

16 (2) Loss of a major supplier or market.

17 **§11-21A-10. Quarterly filing.**

18 (a) *Filing.* - Within thirty days from the end of each calendar
19 quarter for the duration of the agreement, a qualified company
20 shall file quarterly with the Tax Division of the Department of
21 Revenue on a form prescribed by the Tax Commissioner.

22 (b) *Contents.* - The form under subsection (a) shall request

1 the following information:

2 (1) The name and Employer Identification Number of the
3 qualified company.

4 (2) The effective date of the agreement.

5 (3) The reporting period end date.

6 (4) Information relating to each individual employed in a new
7 job as required by the Tax Commissioner.

8 (5) Information on amounts retained or remitted.

9 (6) Any other information required by the Tax Commissioner.

10 (c) *Confidentiality*.— The contents of the completed form shall
11 be subject to the confidentiality rules set forth in section
12 five-d, article ten of this chapter.

13 **§11-21A-11. Prohibitions.**

14 A qualified company claiming benefits under this article may
15 not participate in any program in which any portion of the
16 qualified company's withholding taxes attributable to new jobs have
17 been pledged to finance indebtedness or transferred to or for the
18 benefit of the qualified company.

19 **§11-21A-12. Employee withholding statement.**

20 An individual employed in a new job whose withholding tax is
21 subject to this act shall be credited one hundred percent of the
22 withholding tax withheld from the individual's paycheck as if the

1 qualified company remitted one hundred percent of the withholding
2 tax to the Tax Commissioner.

3 **§11-21A-13. Administration and regulation.**

4 The Development Office of the Department of Commerce, in
5 conjunction with the Tax Commissioner, shall adopt guidelines
6 necessary to implement and administer this article.

7 **§11-21A-14. Review.**

8 (a) *Duty.* - The development office shall conduct an annual
9 review of the activities undertaken by a qualified company to
10 ensure that the qualified company is in compliance with this
11 article, the agreements and any regulations or guidelines adopted
12 under this article.

13 (b) *Inspection.* - The books and records concerning employment
14 and wages of any employees for which the qualified company has
15 retained any withholding taxes shall be available for inspection by
16 the development office or the Tax Commissioner, or by both
17 agencies, during regular business hours. The development office may
18 request the Tax Commissioner to audit the qualified company for
19 compliance with this article.

20 **§11-21A-15. Report to Governor and Legislature.**

21 (a) *Duty.* - The development office shall submit an annual
22 report to the Governor, the President of the Senate and the Speaker

1 of the House of Delegates indicating the effectiveness of the tax
2 benefits provided by this article no later than January 15
3 following the year in which the benefits were approved under this
4 article. The report shall include the following information:

5 (1) The name of each qualified company participating as of the
6 date of the report.

7 (2) The types of qualified companies utilizing this article.

8 (3) The location of the qualified company and any of its
9 business operations in this state.

10 (4) The number of new jobs created.

11 (5) The wages paid to individuals employed in the new jobs.

12 (6) The annual amount of benefits provided under this article.

13 (7) The estimated net fiscal impact to the state, including
14 the direct and indirect new state tax revenue to be derived from
15 the new jobs created.

16 (8) An estimate of the multiplier effect of the benefits
17 received under this act.

18 (b) *Confidentiality*.- Notwithstanding any provision of this
19 code providing for the confidentiality of tax records or records of
20 the development office, the information contained in the report is
21 public information.

22 **§11-21A-16. Annual limitation on benefits.**

1 The aggregate annual amount of benefits retained under this
2 article may not exceed \$5 million per fiscal year of the state.

3 **§11-21A-17. Applicability.**

4 No agreement under this article may be entered into after
5 December 31, 2020.

6 **§11-21A-18. Effective dates.**

7 This article shall take effect July 1, 2014 and be of no
8 further effect after December 31, 2020, except as to benefits
9 awarded before December 31, 2020.

NOTE: The purpose of this bill is to encourage economic development and job creation by creating the West Virginia Project Launch Pad Act; to provide criteria for establishment of West Virginia project launchpads in certain areas by the Governor; allow county commissions and county councils to apply for launchpad designations; provide the process for application and approval of launchpads; and to provide economic benefits for businesses locating or expanding in launchpads including state and local tax relief and other economic benefits. The bill prohibits businesses in a launchpad from employing illegal aliens, engaging in illegal activity, and being delinquent in payment of state and local taxes; permits the transfer of economic benefits to successor businesses; and requires businesses to comply with applicable zoning laws and state and local building and other codes. The bill also provides for the recapture of taxes and other economic benefits under specified circumstances; requires the promulgation of rules and regulations; imposes civil and criminal penalties for noncompliance; and requires periodic reports to the Governor and the Legislature. Additionally, the bill provides a special method for appraising property in a launchpad for economic development, including providing a new method of valuation of launchpad property; providing for an initial determination of value by the assessor and for protest and appeals; and requiring periodic reports to Governor and Legislature. Finally, the bill creates the

"Promoting West Virginia Employment Act" and provides qualification for certain economic benefits provided under the act upon application and review; it also specifies an annual cap on benefits; provides for recapture of benefits; provides for administration and enforcement of the article including the issuance of regulations; and requires periodic reports to Governor and Legislature.

§5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4,,§5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5B-2I-9, §5B-2I-10, §5B-2I-11, §5B-2I-12, §5B-2I-13, §5B-2I-14, §5B-2I-15, §5B-2I-16, §5B-2I-17, §5B-2I-18, §5B-2I-19, §5B-2I-20, §5B-2I-21, §5B-2I-22, §5B-21-23, §5B-2I-24, §5B-2I-25, §5B-2I-26, §5B-2I-27, §5B-2I-28, §5B-2I-29, §5B-2I-30, §5B-2I-31, §5B-2I-32, §5B-2I-33, §5B-2I-34, §5B-2I-35, §5B-2I-36, §5B-2I-37, §5B-2I-38, §5B-2I-39, §5B-2I-40, §5B-2I-41, §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6, §11-6L-7, §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10, §11-21A-11, §11-21A-12, §11-21A-13, §11-21A-14, §11-21A-15, §11-21A-16, §11-21A-17 and §11-21A-18 are new; therefore, strike-throughs and underscoring have been omitted.