

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill 4968

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[Originating in the Committee on the Judiciary

Reported on February 21, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13ff-1, §11-13ff-2, §11-13ff-3, §11-13ff-4, §11-13ff-5, §11-13ff-6, §11-
3 13ff-7, §11-13ff-8, §11-13ff-9, §11-13ff-10, §11-13ff-11, §11-13ff-12, §11-13ff-13, and to
4 amend said code by adding thereto a new article, designated §11-13gg-1, §11-13gg-2,
5 §11-13gg-3, §11-13gg-4, §11-13gg-5, §11-13gg-6, §11-13gg-7, §11-13gg-8, §11-13gg-9,
6 §11-13gg-10, §11-13gg-11, §11-13gg-12 and §11-13gg-13, all relating to expanding the
7 availability of new technology resources in the state to enhance opportunities for
8 technology investment and availability; providing for tax credits for construction of fiber
9 optics technologies in the state; providing for tax credits for certain information and
10 technology companies that create jobs in the state; providing for rulemaking and other
11 requirements, conditions and limitations relating to tax credits created herein.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13FF. WEST VIRGINIA FIBER OPTICS INVESTMENT ACT.

§11-13FF-1. Short title.

1 This article may be cited as the "West Virginia Fiber Optics Investment Act."

§11-13FF-2. Legislative findings and purpose.

1 The Legislature finds that the encouragement of economic growth through fiber optic
2 infrastructure projects in this state is in the public interest and promotes the general welfare of the
3 people of this state. In order to encourage greater economic growth and development in this
4 state, there is hereby enacted the West Virginia Fiber Optics Investment Act.

§11-13FF-3. Definitions.

1 (a) General. -- When used in this article, or in the administration of this article, terms
2 defined in subsection (b) of this section have the meanings ascribed to them by this section,
3 unless a different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. --

5 (1) "Direct fiber optics expenditure" means a transaction that occurs in the State of West
6 Virginia and includes:

7 (A) Payment of wages, fees and costs for related fringe benefits provided for construction,
8 management or labor that are subject to West Virginia income tax that directly relate to the
9 construction of a fiber optics infrastructure project;

10 (B) For projects that contain any other construction activities relating to installing other
11 utilities, other infrastructure or any other improvements or activity, the tax credits created herein
12 shall only apply to the portion of the construction activity related to installation and implementation
13 of fiber optics infrastructure.

14 (1) "Eligible project" means a fiber optics infrastructure project located in the state that will
15 provide fiber optic technology to residents or businesses located in the state; and may include
16 projects that includes providing this technology to out-of-state residents or businesses, as long
17 as in-state residents or businesses receive service as part of the project;

18 (2) "Fiber optic infrastructure" refers to the technology and medium used in the
19 transmission of data as pulses of light through a strand or fiber medium made of glass or plastic
20 optical fiber and includes instillation and construction of all necessary technology to support its
21 operation and delivery.

22 (3) "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her
23 designee.

§11-13FF-4. Creation of the tax credit.

1 (a) An eligible company may apply for, and the Tax Commissioner shall allow, a
2 nonrefundable tax credit in an amount equal to the percentage specified in section five of this
3 article of the direct production expenditures incurred in West Virginia that are directly attributable
4 to the production in West Virginia of a qualified fiber optics project and that occur in West Virginia.

5 (b) Expenditures utilized for purposes of calculating the tax credit authorized by this article

6 shall in no event be utilized by the eligible company for the purpose of calculating or qualifying
7 investment for claiming the economic opportunity tax credit authorized by article thirteen-q of this
8 chapter or the manufacturing investment tax credit authorized by article thirteen-s of this chapter.

§11-13FF-5. Amount of credit allowed; limitation of the credits.

1 (a) Base allowance. --

2 The amount of credit allowed to every eligible company, except as provided in subsection
3 (b) of this section, is 80% of cost of construction of fiber optics facilities.

4 (b) Extra allowance for hiring of local workers. --

5 Any amount allowed in subsection (a) of this section shall be increased by an additional
6 5% if the eligible company, or its authorized payroll service company, employs ten or more West
7 Virginia residents as part of its full-time employees working in the state or as apprentices working
8 in the state.

9 (c) Application of the credits. --

10 The tax credit allowed under this section shall be applied to the eligible company's state
11 tax liability as provided in section seven of this article.

§11-13FF-6. Requirements for credit.

1 (a) In order for any eligible company to claim a tax credit under this article, it shall comply
2 with the following requirements:

3 (A) Pay all taxes and obligations the eligible company has incurred in West Virginia; and

4 (B) The West Virginia Development Office shall certify to the tax department that the
5 project has or is being constructed and that the eligible company is in compliance with all
6 applicable state and federal laws relating to construction of the project and the project meets all
7 eligibility requirements relating to providing the service to state residents and businesses and
8 shall report this information to the Tax Commissioner in a manner and at times the development
9 office and the Tax Commissioner shall agree upon.

10 (b) Upon completion of a qualified project:

11 (1) An eligible company shall have filed all required West Virginia tax reports and returns
12 and paid any balance of West Virginia tax due on those returns;

13 (2) All claims for the tax credit shall be filed with an expense verification report prepared
14 by an independent certified public accountant, utilizing "agreed upon procedures" which are
15 prescribed by the development office in accordance with generally accepted auditing standards
16 in the United States. The certified public accountant will render a report as to the qualification of
17 the credits, consistent with guidelines to be determined by the development office and approved
18 by the Tax Commissioner; and

19 (3) An eligible company claiming an extra allowance for employing local workers shall
20 submit to the development office documentation verifying West Virginia residency for all
21 individuals claimed to qualify for the extra allowance. The documentation shall include the name,
22 home address and telephone number for all individuals used to qualify for the extra allowance.

23 (c) If the requirements of this section have been complied with, the Development Office
24 shall approve the tax credit and issue a document granting the appropriate tax credit to the eligible
25 company and shall report this information to the Tax Commissioner.

§11-13FF-7. Application of credit to state taxes.

1 (a) Credit allowed. —

2 Beginning in the taxable year that the expenditures permitted under section four of this
3 article are incurred, eligible companies and owners of eligible companies, as described in
4 subsection (d) of this section, are permitted a credit, as described in section five of this article,
5 against the taxes imposed by §11-24- 1 et seq., and §11-21-1 et seq. of the code, in that order,
6 as specified in this section.

7 (b) Corporation Net Income tax. —

8 The credit is first applied to reduce the taxes imposed by §11-24-1 et seq. of the code for
9 the taxable year before application of any other allowable credits against tax.

10 (c) Personal income tax. —

11 (1) If the eligible taxpayer is an electing small business corporation (as defined in Section
12 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited
13 liability company that is treated as a partnership for federal income tax purposes or a sole
14 proprietorship, then any unused credit, after application of subsections (b) of this subsection, is
15 allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from
16 business or other activity subject to tax under §11-24-1 et seq. of this code, or on income of a
17 sole proprietor attributable to the business.

18 (2) Electing small business corporations, limited liability companies, partnerships and
19 other unincorporated organizations shall allocate the credit allowed by this article among its
20 members in the same manner as profits and losses are allocated for the taxable year.

**§11-13FF-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration
and forfeiture of credit.**

1 (a) No credit is allowed under this section against any employer withholding taxes imposed
2 by §11-21-1 et seq. of this code.

3 (b) If the tax credit allowed under this article in any taxable year exceeds the sum of the
4 taxes enumerated in subsection (b) or (c), section seven of this article for that taxable year, the
5 excess may be applied against those taxes, in the order and manner stated in section seven of
6 this article, for succeeding taxable years until the earlier of the following:

7 (1) The full amount of the excess tax credit is used;

8 (2) The expiration of the second taxable year after the taxable year in which the
9 expenditures occurred. The tax credit remaining thereafter is forfeited; or

10 (3) The excess tax credit is transferred or sold.

11 (c) No carryback is allowed to a prior taxable year that does not have qualified
12 expenditures for the amount of any unused portion of any annual credit allowance.

13 (d) For purposes of this chapter, any proceeds received by the eligible company or
14 transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt

15 from the West Virginia consumers sales and service tax and use tax and from the corporate net
16 income tax and personal income tax.

17 (e) The Tax Commissioner shall not seek recourse against the transferee for any portion
18 of the credit that may be subsequently disqualified.

19 Failure to comply with this section will result in the disallowance of the tax credit until the
20 seller or transferor is in full compliance.

§11-13FF-9. Legislative rules.

1 (a) The Tax Commissioner shall propose for promulgation rules pursuant to §29A-3-1 et
2 seq. of this code as may be necessary to carry out the purposes of this article.

3 (b) The Secretary of the West Virginia Department of Commerce may propose for
4 promulgation rules pursuant to §29A-3-1 et seq. of this code, as may be necessary to carry out
5 the purposes of this article.

§11-13FF-10. Burden of proof.

1 The burden of proof is on the eligible company claiming the credit allowed by this article
2 to establish by clear and convincing evidence that the eligible company or credit transferee is
3 entitled to the amount of credit asserted for the taxable year.

§11-13FF-11. Tax credit review and accountability.

1 (a) Beginning on the first day of the third taxable year after the passage of this article and
2 every two years thereafter, the Development Office shall submit to the Governor, the President of
3 the Senate and the Speaker of the House of Delegates a tax credit review and accountability
4 report evaluating the cost effectiveness of this investment act during the most recent two-year
5 period for which information is available. The criteria to be evaluated shall include, but not limited
6 to, for each year of the two-year period:

7 (1) The number of eligible companies claiming the credit;

8 (2) The dollar amount of tax credit certificates issued to taxpayers;

9 (3) The number of residents and businesses receiving fiber optics services as a result of

10 the tax credit;

11 (4) The number of new jobs, if any, created by the tax credit;

12 (5) The amount of direct expenditures made on qualified projects; and

13 (6) The cost of the credit.

14 (b) Eligible companies claiming the credit shall provide any information the Tax

15 Commissioner and the Development Office may require preparing the report: *Provided*, That the

16 information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and

17 §11-10-5s. However, notwithstanding the provisions of §11-10-5d and §11-10-5s of this code, the

18 Tax Department is hereby authorized to disclose to the to the Development Office such tax

19 information as may be necessary to compile the report required by this section and the report

20 required by section twelve of this article.

§11-13FF-12. Economic development.

1 The West Virginia Development Office, in consultation and coordination with the

2 appropriate public and private entities, shall promote, foster, encourage and monitor the

3 development of the fiber optics technology in this state as part of its comprehensive economic

4 development strategy for West Virginia and report recommendations for expanding fiber optics

5 services in the state to the Governor and the Joint Committee on Government and Finance

6 annually on or before December 1, 2022.

§11-13FF-13. Effective date, elimination of tax credits, preservation of tax credits earned prior to the sunset date.

1 The credit allowed by this article shall be allowed upon eligible expenditures occurring

2 after December 31, 2021 and shall expire December 21, 2028.

ARTICLE 13GG. WEST VIRGINIA INFORMATION AND TECHNOLOGY INVESTMENT ACT.

§11-13GG-1. Short title.

1 This article may be cited as the "West Virginia Information and Technology Investment
2 Act."

§11-13GG-2. Legislative findings and purpose.

1 The Legislature finds that the encouragement of economic growth of Information
2 Technology is an important and necessary economic activity that is a part of any future healthy
3 state economy, and that West Virginia must create economic incentives to attract these
4 businesses to locate within this state. A future vibrant economy in this state must have a strong
5 technology component as the state currently loses over 1,900 graduating students each year from
6 our university and college system moving out-of-state to find these technology jobs, and stemming
7 the tide of loss of these most valuable citizens is critically necessary, and the situation demands
8 immediate action to facilitate attraction of technology industries to this state. Therefore, the
9 purpose of this article is to create a tax credit for the benefit of any company that brings 250 or
10 more new IT jobs into the state, and there is hereby enacted the West Virginia Information and
11 Technology Investment Act.

§11-13GG-3. Definitions.

1 (a) General. -- When used in this article, or in the administration of this article, terms
2 defined in subsection (b) of this section have the meanings ascribed to them by this section,
3 unless a different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. --

5 (1) "Eligible company" means any IT company that creates 250 or more new full-time jobs
6 and is located within the state of West Virginia;

7 (2) "Information technology" or "IT" means equipment, hardware, software, firmware,
8 programs, systems, networks, infrastructure, media, and related material used to automatically,
9 electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve,
10 analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate,
11 exchange, convert, converge, interface, switch or disseminate information of any kind or form.

12 (3) "Information technology company" means any business that has a primary purpose of
13 manufacturing, operating or participating in information technology which is not regulated as a
14 utility by the Public Service Commission.

15 (3) "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her
16 designee.

§11-13GG-4. Creation of the tax credit.

1 (a) An eligible company may apply for, and the Tax Commissioner shall allow, a
2 nonrefundable tax credit in an amount equal to the percentage specified in section five of this
3 article of the income for the company incurred in West Virginia that are directly attributable to the
4 profits derived from the creating a new IT facility in the state of West Virginia which employs 250
5 or more full-time employees.

6 (b) Expenditures utilized for purposes of calculating the tax credit authorized by this article
7 shall in no event be utilized by the eligible company for the purpose calculating or qualifying
8 investment for claiming the economic opportunity tax credit authorized by §11-13g-1 et seq. of
9 this code or the manufacturing investment tax credit authorized by §11-13s-1 et seq. of this code.

§11-13GG-5. Amount of credit allowed; limitation of the credits.

1 (a) Base allowance. --

2 The amount of credit allowed to every eligible company, except as provided in subsection
3 (b) of this section, is 50% of the company's tax liability.

4 (b) Application of the credits. --

5 The tax credit allowed under this section shall be applied to the eligible company's state
6 tax liability as provided in section seven of this article.

§11-13GG-6. Requirements for credit.

7 (a) In order for any eligible company to claim a tax credit under this article, it shall comply
8 with the following requirements:

9 (A) Pay all taxes and obligations the eligible company has incurred in West Virginia; and

10 (B) The West Virginia Development Office shall certify to the tax department that the
11 company has created 250 or more full-time jobs in West Virginia and the eligible company is in
12 compliance with all applicable state and federal laws relating to construction of the project and
13 the project meets all eligibility requirements relating to providing the service to state residents and
14 businesses and shall report this information to the Tax Commissioner in a manner and at times
15 the development office and the Tax Commissioner shall agree upon.

16 (b) Upon completion of a qualified project:

17 (1) An eligible company shall have filed all required West Virginia tax reports and returns
18 and paid any balance of West Virginia tax due on those returns;

19 (2) All claims for the tax credit shall be filed with an expense verification report prepared
20 by an independent certified public accountant, utilizing "agreed upon procedures" which are
21 prescribed by the development office in accordance with generally accepted auditing standards
22 in the United States. The certified public accountant will render a report as to the qualification of
23 the credits, consistent with guidelines to be determined by the development office and approved
24 by the Tax Commissioner; and

25 (3) An eligible company claiming a tax credit for employing state workers shall submit to
26 the development office documentation verifying West Virginia residency for all individuals claimed
27 to qualify for the extra allowance. The documentation shall include the name, home address and
28 telephone number for all individuals used to qualify for the extra allowance.

29 (c) If the requirements of this section have been complied with, the Development Office
30 shall approve the tax credit and issue a document granting the appropriate tax credit to the eligible
31 company and shall report this information to the Tax Commissioner.

§11-13GG-7. Application of credit to state taxes.

1 (a) Credit allowed. —

2 Beginning in the taxable year that the expenditures permitted under section four of this
3 article are incurred, eligible companies and owners of eligible companies are permitted a credit,

4 as described in section five of this article, against the taxes imposed by §11-24-1 et seq., §11-
5 24-1 et seq., and §11-21-1 et seq. of the code, in that order, as specified in this section.

6 (b) Corporation Net Income tax. —

7 The credit is first applied to reduce the taxes imposed by §11-24-1 et seq. of the code for
8 the taxable year, determined after application of the credits against tax provided in section
9 seventeen of said article, but before application of any other allowable credits against tax.

10 (c) Personal income tax. —

11 (1) If the eligible taxpayer is an electing small business corporation (as defined in Section
12 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited
13 liability company that is treated as a partnership for federal income tax purposes or a sole
14 proprietorship, then any unused credit, after application of subsections (b) of this subsection, is
15 allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income
16 from business or other activity subject to tax under article twenty-three of this chapter or on income
17 of a sole proprietor attributable to the business.

18 (2) Electing small business corporations, limited liability companies, partnerships and
19 other unincorporated organizations shall allocate the credit allowed by this article among its
20 members in the same manner as profits and losses are allocated for the taxable year.

**§11-13GG-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration
and forfeiture of credit.**

1 (a) No credit is allowed under this section against any employer withholding taxes imposed
2 by §11-22-1 et seq of this code.

3 (b) If the tax credit allowed under this article in any taxable year exceeds the sum of the
4 taxes enumerated in subsection (b) or (c), section seven of this article for that taxable year, the
5 excess may be applied against those taxes, in the order and manner stated in section seven of
6 this article, for succeeding taxable years until the earlier of the following:

7 (1) The full amount of the excess tax credit is used;

8 (2) The expiration of the second taxable year after the taxable year in which the
9 expenditures occurred. The tax credit remaining thereafter is forfeited; or

10 (3) The excess tax credit is transferred or sold.

11 (c) No carryback is allowed to a prior taxable year that does not have qualified
12 expenditures for the amount of any unused portion of any annual credit allowance.

13 (d) For purposes of this chapter, any proceeds received by the eligible company or
14 transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt
15 from the West Virginia consumers sales and service tax and use tax and from the corporate net
16 income tax and personal income tax.

17 (e) The Tax Commissioner shall not seek recourse against the transferee for any portion
18 of the credit that may be subsequently disqualified.

19 Failure to comply with this section will result in the disallowance of the tax credit until the
20 seller or transferor is in full compliance.

§11-13GG-9. Legislative rules.

1 (a) The Tax Commissioner shall propose for promulgation rules pursuant to §29A-3-1 et
2 seq. the code as may be necessary to carry out the purposes of this article.

3 (b) The Secretary of the West Virginia Department of Commerce may propose for
4 promulgation rules pursuant to §29A-3-1 et seq. the code as may be necessary to carry out the
5 purposes of this article.

§11-13GG-10. Burden of proof.

1 The burden of proof is on the eligible company claiming the credit allowed by this article
2 to establish by clear and convincing evidence that the eligible company or credit transferee is
3 entitled to the amount of credit asserted for the taxable year.

§11-13GG-11. Tax credit review and accountability.

1 (a) Beginning on the first day of the third taxable year after the passage of this article and
2 every two years thereafter, the Development Office shall submit to the Governor, the President of

3 the Senate and the Speaker of the House of Delegates a tax credit review and accountability
4 report evaluating the cost effectiveness of this investment act during the most recent two-year
5 period for which information is available. The criteria to be evaluated shall include, but not limited
6 to, for each year of the two-year period:

- 7 (1) The number of eligible companies claiming the credit;
8 (2) The dollar amount of tax credit certificates issued to taxpayers;
9 (3) The number of new jobs, if any, created by the tax credit;
10 (4) The amount of direct expenditures made on qualified projects; and
11 (5) The cost of the credit.

12 (b) Eligible companies claiming the credit shall provide any information the Tax
13 Commissioner and the Development Office may require preparing the report: *Provided*, That the
14 information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and
15 §11-10-5s of the code. However, notwithstanding the provisions of §11-10-5d and §11-10-5s of
16 this code, the Tax Department is hereby authorized to disclose to the to the Development Office
17 such tax information as may be necessary to compile the report required by this section and the
18 report required by section twelve of this article.

§11-13GG-12. Economic development.

1 The West Virginia Development Office, in consultation and coordination with the
2 appropriate public and private entities, shall promote, foster, encourage and monitor the
3 development of the fiber optics technology in this state as part of its comprehensive economic
4 development strategy for West Virginia and report recommendations for expanding and locating
5 IT resources and companies in the state to the Governor and the Joint Committee on Government
6 and Finance annually on or before December 1, 2022.

1 **§11-13GG-13. Effective date, elimination of tax credits, preservation of tax credits earned**
2 **prior to the sunset date.**

- 1 The credit allowed by this article shall be allowed upon eligible expenditures occurring
- 2 after December 31, 2021 and shall expire December 21, 2028.

NOTE: The purpose of this bill is to encourage investments in technologies that will enhance investment and create opportunities to state residences by creating incentives for investment in technology resources in West Virginia; creating a tax credit for construction fiber optic infrastructure to attract businesses and residents that desire that technology; and creating a tax credit for information and technology companies that create 250 or more jobs in West Virginia.

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