

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2644

FISCAL
NOTE

BY DELEGATES SKAFF, BOGGS, AND MAYNARD

[Introduced February 23, 2021; Referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-6M-1, §11-6M-2, §11-6M-3, §11-6M-4, §11-6M-5, §11-6M-6, and §11-
3 6M-7; and to amend said code by adding thereto a new article, designated §11-13EE-1,
4 §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-
5 13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-
6 13EE-14, §11-13EE-15, §11-13EE-16, §11-13EE-17, and §11-13EE-18, all relating to
7 creating the West Virginia Innovation Free-Trade Business Technology Property Valuation
8 Act and the West Virginia Innovation Free-Trade Tax Credit Act; defining terms; specifying
9 method for valuation of certain property; providing for application to county assessors by
10 specified date; providing procedure for protest and appeal of determination by county
11 assessor; requiring the West Virginia Development Office to report to the Joint Committee
12 on Government and Finance on the economic impact; specifying effective date; making
13 legislative findings; allowing credits and exemptions from certain taxes; providing for
14 computation of credit, application of credit and period for which credit is allowed; requiring
15 application to claim credit; requiring that new jobs be good-paying jobs with health
16 benefits; requiring identification of investment credit property and recomputation of credit
17 in event of premature disposition of investment property; providing for forfeiture of unused
18 tax credits and redetermination of credit allowed; imposing recapture tax under specified
19 circumstances to recover state taxes and property taxes; allowing transfer of qualified
20 investment to successors; providing for tax credit review and accountability; specifying
21 effective date and termination date; providing rule-making authority; and providing a
22 severability clause.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6M. SPECIAL METHOD FOR APPRAISING WEST VIRGINIA INNOVATION
FREE-TRADE ACT BUSINESS TECHNOLOGY PROPERTY.**

§11-6M-1. Short title.

1 This article shall be known and cited as the “West Virginia Innovation Free-Trade Business
2 Technology Property Valuation Act”.

§11-6M-2. Definitions.

1 For the purposes of this article:

2 “Innovative business technologies” means “innovative business technologies” as defined
3 in §11-13EE-3 of this code when the owner of the property qualifies or qualified for the tax credit
4 allowed by that article. Qualifications for that tax credit and the special valuation methodology
5 provided in this article include, but are not limited to, a minimum capital investment requirement,
6 a minimum new jobs creation requirement and a requirement that the new jobs created be good
7 paying jobs with health insurance benefits, all as defined in §11-13EE-1 et seq. of this code; and
8 “Salvage value” means five percent of original cost.

§11-6M-3. Valuation of Innovation Free-Trade Act business technology property.

1 Notwithstanding any other provision of this code to the contrary, the value of tangible
2 personal property and improvements to real property placed in service or use on or after July 1,
3 2021, and directly used in an innovative business technology as defined in §11-6M-2 of this code
4 shall, for the purpose of ad valorem property taxation under this chapter and under Article X of
5 the Constitution of this state, be its salvage value.

§11-6M-4. Initial determination by county assessor.

1 (a) On or before September 1 of the assessment year, the owner of tangible personal
2 property and improvements to real property placed in service or use on or after July 1, 2021,
3 directly used in a new business, or in a new segment of an existing business, that utilizes
4 innovative business technology and qualifies for the tax credit allowed by §11-13EE-1 et seq. of
5 this code may file a report with the county assessor of the county in which the property was located
6 on July 1 of that assessment year, listing the tangible personal property and improvements to real
7 property placed in service or use on or after July 1, 2021, that is qualified investment for purposes
8 of the credit allowed by §11-13EE-1 et seq. of this code. A taxpayer that fails to timely file the
9 report required by this subsection shall be deemed to have waived valuation of the property as

10 provided in this article for that assessment year.

11 (b) When the county assessor receives the report described in subsection (a) of this
12 section, the assessor shall review the report and make such inquiries as he or she deems
13 necessary to determine whether the tangible personal property and improvements to real property
14 placed in service or use on or after July 1, 2021, listed in the report is eligible for valuation under
15 this article. The county assessor shall notify the taxpayer in writing of his or her determination not
16 later than January 15 of the assessment year.

17 (c) Upon making a determination that a taxpayer owns tangible personal property and
18 improvements to real property placed in service or use on or after July 1, 2021, directly used in
19 an innovative business technology that is eligible for valuation under this article, the county
20 assessor shall notify the Tax Commissioner of that determination and shall provide information to
21 the Tax Commissioner as he or she requires relating to that determination.

§11-6M-5. Protest and appeal.

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

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

15 to the circuit court of the county for review of the question of the applicability of this article to the
 16 property in the same fashion as is provided for appeals from the county commission in §11-3-25
 17 of this code. The Tax Commissioner shall prescribe forms on which the questions under this
 18 section shall be certified and the Tax Commissioner has the authority to pursue any inquiry and
 19 procure any information necessary for disposition of the matter.

§11-6M-6. Report on economic benefit.

1 The West Virginia Development Office shall provide to the Joint Committee on
 2 Government and Finance by March 1, 2026, and again by March 1, 2028, a report detailing the
 3 economic benefit of the valuation method specified in this article. The report shall include the
 4 number of new jobs created due to this article and the ad valorem property tax impact.

§11-6M-7. Effective date.

1 This article shall be effective on and after July 1, 2021, for property placed in service or
 2 use on or after July 1, 2021, when the property and its use meet the requirements of this article.

ARTICLE 13EE. WEST VIRGINIA INNOVATION FREE-TRADE TAX CREDIT ACT.

§11-13EE-1. Short title.

1 This article may be cited as the “West Virginia Innovation Free-Trade Tax Credit Act”.

§11-13EE-2. Purpose and legislative findings.

1 (a) Purpose. -- The purpose of this article is to encourage economic opportunity, greater
 2 capital investment and development of the use in this state of new innovative technologies by
 3 enacting this innovative free-trade tax credit.

4 (b) Legislative findings. --

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

8 (2) State-of-the-art technologies are being developed, demonstrated and manufactured or
 9 used in manufacturing in other states in order to support economic development by responding

10 to the emergence of new technologies and the rapidly expanding world-wide export market for
11 such technologies.

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

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

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

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

20 (i) Aeronautics and space;

21 (ii) Agriculture;

22 (iii) Biotechnology;

23 (iv) Environment;

24 (v) Manufacturing and materials science;

25 (vi) Medicine and health;

26 (vii) Nanoelectronics and computer technology;

27 (viii) National and homeland security; and

28 (ix) Photonics.

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

§11-13EE-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 either the context in which the term is used, or
4 by specific definition, in this article.

5 (b) Terms defined. --

6 “Advanced coal technology” includes, but is not limited to, a technology that is used in a
7 new or existing energy generating facility to reduce airborne carbon emissions associated with
8 the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and
9 sequestration technology, supercritical technology, advanced supercritical technology as that
10 technology is determined by the West Virginia Public Service Commission, technology and
11 pressurized fluidized bed technology and any other resource, method, project or technology
12 certified by the Public Service Commission as advanced coal technology: *Provided*, That the
13 technology was not in commercial use anywhere in the United States before July 1, 2021.

14 “Advanced information technology” means the development, installation, and
15 implementation of computer systems and applications that utilize cloud computing, quantum
16 computing or the next evolution beyond cloud and quantum computing: *Provided*, That the
17 technology was not in commercial use anywhere in the United States before July 1, 2021.

18 “Advanced manufacturing” means the application of state-of-the-art technologies,
19 processes, and methods to design and manufacture tangible personal property for commercial or
20 industrial use or for use by consumers: *Provided*, That the technology was not in commercial use
21 anywhere in the United States before July 1, 2021.

22 “Bioinformatics” means the application of statistics and computer science to the field of
23 molecular biology and entails the creation and advancement of databases, algorithms,
24 computational and statistical techniques and theory to solve formal and practical problems arising
25 from the management and analysis of biological data. The primary goal of bioinformatics is to
26 increase the understanding of biological processes. What sets bioinformatics apart from other
27 approaches is its focus on developing and applying computationally intensive techniques (e.g.,
28 pattern recognition, data mining, machine learning algorithms and visualization) to achieve this
29 goal: *Provided*, That the technology was not in commercial use anywhere in the United States
30 before July 1, 2021.

31 “Bioscience” means the use of compositions, methods and organisms in cellular and

32 molecular research, development and manufacturing processes for such diverse areas as
33 pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical
34 instruments, biochemistry, microbiology, veterinary medicine, plant biology, agriculture and
35 industrial, environmental, and homeland security applications of bioscience, and future
36 developments in the biosciences. Bioscience includes biotechnology and life sciences: *Provided,*
37 That the technology was not in commercial use anywhere in the United States before July 1,
38 2021.

39 “Bioscience company” means a corporation, limited liability company, S corporation,
40 partnership, registered limited liability partnership, foundation, association, nonprofit entity,
41 business trust, group, or other entity that is engaged in the business of bioscience in this state
42 and has business operations in this state, including, without limitation, research, development, or
43 production directed towards developing or providing bioscience products or processes for specific
44 commercial or public purposes and are identified by the following NAICS codes: 325411, 325412,
45 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111, 339112, 339113, 334510,
46 334517, 339115, 621511, 621512, 541710, 541380, 541940, and 622110. “Bioscience company”
47 does not include a sole proprietorship.

48 “Biotechnology” means those fields focusing on technological developments in areas such
49 as biocomputing, biodefense, bioinformatics, genetic engineering, genomics, molecular biology,
50 nanotechnology, proteomics and physiomics: *Provided,* That the technology was not in
51 commercial use anywhere in the United States before July 1, 2021.

52 “Business” means any activity engaged in by any person in this state that is taxable under
53 §11-21-1 et seq., §11-23-1 et seq. or §11-24-1 et seq. of this code (or any combination of those
54 articles of this chapter).

55 “Business segment” means a component or subset of a business enterprise that: (A)
56 Provides a single product or service or a group of related products and services; (B) is subject to
57 risks and returns that are different from those of other business segments; and (C) earns revenue
58 for the business enterprise.

59 “Clean coal technology” means a technology first used commercially in the United States
60 on or after July 1, 2021, that significantly reduces the environmental impact of coal usage
61 including, but not limited to, coal gasification and carbon capture and storage: *Provided*, That the
62 technology was not in commercial use anywhere in the United States before July 1, 2021.

63 “Clean natural gas technology” means a technology first used commercially in the United
64 States on or after July 1, 2021, that significantly reduces the environmental impact of natural gas:
65 *Provided*, That the technology was not in commercial use anywhere in the United States before
66 July 1, 2021.

67 “Commissioner” and “Tax Commissioner” are used interchangeably herein and mean the
68 Tax Commissioner of the State of West Virginia, or his or her designee.

69 “Compensation” means wages, salaries, commissions, the cost of health insurance
70 benefits and any other form of remuneration paid to employees for personal services.

71 “Controlled group” means one or more chains of corporations connected through stock
72 ownership with a common parent corporation if stock possessing at least 50 percent of the voting
73 power of all classes of stock of each of the corporations is owned directly or indirectly by one or
74 more of the corporations; and the common parent owns directly stock possessing at least 50
75 percent of the voting power of all classes of stock of at least one of the other corporations.

76 “Corporation” means any corporation, joint-stock company or association, and any
77 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
78 certificate of interest or ownership or similar written instrument.

79 “Designee” in the phrase “or his or her designee”, when used in reference to the Tax
80 Commissioner, means any officer or employee of the Tax Division of the Department of Revenue
81 duly authorized by the commissioner directly, or indirectly by one or more redelegations of
82 authority, to perform the functions mentioned or described in this article.

83 “Eligible taxpayer” means a new business or a new segment of a business that is primarily
84 engaged in an emerging technology industry or that is primarily utilizing new innovative business
85 technologies, that makes at least the minimum required qualified investment in a new or expanded

86 business facility located in this state and creates the required number of new jobs that pay good
87 salaries and provide health insurance benefits, and that is subject to any of the taxes imposed by
88 §11-21-1 et seq., §11-23-1 et seq., and §11-24-1 et seq. of this code (or any one or any
89 combination of those articles).

90 “Emerging technologies” are technologies that are currently being developed or will be
91 developed over the next 5 to 10 years, that are significant technological developments that broach
92 new territory in some significant way in their field and which will substantially alter the business
93 and social environment. Examples of currently emerging technologies include, but are not limited
94 to, advanced coal technologies, alternative fuel vehicles, artificial intelligence, biotechnology,
95 clean coal and clean natural gas technologies, cognitive science, cloud computing, quantum
96 computing, man-machine communications, nanotechnology, photonics, photovoltaic devices, and
97 advanced robotics. Whether a technology is an emerging technology is determined as of the date
98 the new business or a new segment of an existing business is placed in service or use in this
99 state. Emerging technologies do not include any technology that was in commercial use anywhere
100 in the United States before July 1, 2021.

101 “Expanded business facility” means any business facility (other than a new or replacement
102 facility) resulting from the acquisition, construction, reconstruction, installation, or erection of
103 improvements or additions to existing property in this state when the improvements or additions
104 are purchased on or after July 1, 2021, but only to the extent of the taxpayer’s qualified investment
105 in the improvements or additions and the extent to which the expansion of the business facility is
106 directly used in a new segment of the taxpayer that primarily employs an emerging innovative
107 business technology.

108 “Health insurance benefits” means employer provided coverage for medical expenses of
109 the employee or the employee and his or her family under a group accident or health plan, or
110 employer contributions to an Archer medical savings account, as defined in Section 220 of the
111 Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section
112 223 of the Internal Revenue Code, of the employee when the employer’s contribution to any such

113 account is not less than 50 percent of the maximum amount permitted for the year as employer-
114 provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is
115 applicable.

116 “Includes” and “including”, when used in a definition or sentence contained in this article,
117 shall not be considered to exclude other things otherwise within the meaning of the term being
118 defined or the sentence in which the word is used.

119 “Innovative business technologies” means and includes, but is not limited to, emerging
120 technologies and other business technologies that primarily use state-of-the-art methodologies,
121 practices or techniques to manufacture, produce or provide its primary goods or services.
122 Innovative business technologies do not include any technology that was in commercial use
123 anywhere in the United States prior to July 1, 2021.

124 “Internal Revenue Code of 1986, as amended”, or “Internal Revenue Code”, means the
125 United States Internal Revenue Code of 1986 as codified in Title 26 of the United States Code,
126 as amended, and as defined in §11-3-24 of this code as last updated by the Legislature.

127 “Leased property” does not include property which the taxpayer is required to show on its
128 books and records as an asset under generally accepted principles of financial accounting. If the
129 taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the
130 property shall be treated as purchased property under this section.

131 “Life science” means any of several branches of science, such as biology, medicine,
132 anthropology or ecology, that deal with living organisms and their organization, life processes and
133 relationships to each other and their environment: *Provided*, That the technology was not in
134 commercial use anywhere in the United States before July 1, 2021.

135 “Nanotechnology” means the branch of engineering that deals with things smaller than
136 100 nanometers. Nanotechnology includes the materials and systems whose structures and
137 components exhibit novel and significantly improved physical, chemical, and biological properties,
138 phenomena, and processes due to their nanoscale size: *Provided*, That the technology was not
139 in commercial use anywhere in the United States before July 1, 2021.

140 “New business” means any business primarily employing emerging technology or a 21st
141 Century business technology whose ownership and activities are not closely related to a
142 preexisting business. A mere change in the stock ownership of a corporation, or the equity
143 ownership of a partnership or other entity treated as a partnership for federal income tax purposes,
144 shall not affect its status as an existing business. Additionally, a new business that acquires
145 substantially all of the assets of a corporation or other business entity or of a sole proprietorship
146 shall not be treated as a new business for purposes of this article. In determining whether or not
147 a new business is closely related to a preexisting business, all facts and circumstances shall be
148 considered by the Tax Commissioner. The existence of a majority of the following factors establish
149 that a new business is closely related to an existing business:

150 (A) The new business’s products or services are very similar to the products or services
151 provided by the preexisting business;

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

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

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

158 (E) The new business’s economic success builds on, or depends on, the success of the
159 preexisting business;

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

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

164 (H) 20 percent or more of the equity of the new business is collectively owned by
165 individuals and/or businesses that collectively owned more than 50 percent of the equity of the
166 preexisting business.

167 These 8 listed factors are not the only ones that may be considered by the Tax
168 Commissioner. Others may also be taken into account, in the discretion of the Tax Commissioner.
169 However, this definition shall not exclude the categorization of a business as a new business for
170 the sole reason that the entity engaging in the new business already does business in the State
171 of West Virginia.

172 “New business facility” means a business facility located in this state which satisfies all the
173 requirements of paragraphs (A), (B), (C), and (D) of this subdivision.

174 (A) The facility is employed by the taxpayer in a new business or in a new segment of an
175 existing business the conduct of a business the net income of which is or will be taxable under
176 §11-21-1 et seq. or §11-24-1 et seq. of this code. The facility is not considered a new business
177 facility in the hands of the taxpayer if the taxpayer’s only activity with respect to the facility is to
178 lease it to another person or persons;

179 (B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2021;

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

183 (D) The facility was not in service or use during the 90 days immediately prior to transfer
184 of the title to the facility, or prior to the commencement of the term of the lease of the facility:
185 Provided, That this 90-day period may be waived by the Tax Commissioner if the commissioner
186 determines that persons employed at the facility may be treated as “new employees” as that term
187 is defined in this subsection.

188 “New employee” means:

189 (A) A person residing and domiciled in this state, hired by the taxpayer to fill a position or
190 a job in this state which previously did not exist in the taxpayer’s business enterprise in this state
191 prior to the date on which the taxpayer’s qualified investment is placed in service or use in this
192 state. The term “new employee” also includes a person employed by the taxpayer who works
193 outside this state who relocates in this state, becomes domiciled in this state and is employed full-

194 time at the new business facility in this state. In no case may the number of new employees
195 directly attributable to the investment for purposes of this credit exceed the total net increase in
196 the taxpayer's employment in this state: *Provided*, That the Tax Commissioner may require that
197 the net increase in the taxpayer's employment in this state be determined and certified for the
198 taxpayer's controlled group.

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

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

202 (I) "Full-time" means employment for at least 140 hours per month at a wage not less than
203 the prevailing state or federal minimum wage, depending on which minimum wage provision is
204 applicable to the business;

205 (II) "Permanent" does not include employment that is temporary or seasonal and therefore
206 the wages, salaries, and other compensation paid to the temporary or seasonal employees may
207 not be considered for purposes of §11-13EE-5 and §11-13EE-7 of this code; or

208 (ii) A regular, part-time and permanent basis: *Provided*, That the person is customarily
209 performing the duties at least 20 hours per week for at least six months during the taxable year.

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

212 "New property" means:

213 (A) Property, the construction, reconstruction, or erection of which is completed on or after
214 July 1, 2021, and placed in service or use after that date; and

215 (B) Property leased or acquired by the taxpayer that is placed in service or use in this state
216 on or after July 1, 2021, if the original use of the property commences with the taxpayer and
217 commences after that date.

218 "NAICS" means the North American Industry Classification System.

219 "Original use" means the first use to which the property is put, whether or not the use
220 corresponds to the use of the property by the taxpayer.

221 “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated
222 organization through or by means of which any business or venture is carried on, and which is
223 not a trust or estate, a corporation or a sole proprietorship and which is treated as a partnership
224 for tax purposes under the laws of this state. The term “partner” includes a member in such a
225 syndicate, group, pool, joint venture or other organization.

226 “Person” includes any natural person, corporation or partnership, and includes any entity
227 that is treated like a corporation or partnership for federal income tax purposes.

228 “Photonics” includes the generation, emission, transmission, modulation, signal
229 processing, switching, amplification, detection and sensing of light: *Provided*, That the technology
230 was not in commercial use anywhere in the United States before July 1, 2021.

231 “Photovoltaic devices” means those products designed, manufactured and produced to
232 convert sunlight directly into electricity: *Provided*, That the technology was not in commercial use
233 anywhere in the United States before July 1, 2021.

234 “Property purchased or leased for business expansion” means:

235 (A) *Included property*. — Except as provided in paragraph (B) of this subdivision, the term
236 “property purchased or leased for business expansion” means real property and improvements
237 thereto, and tangible personal property, but only if the real or personal property was constructed,
238 purchased, or leased and placed in service or use by the taxpayer, for use as a component part
239 of a new business facility or expanded business facility as defined in this section, which is located
240 within the State of West Virginia. This term includes only:

241 (i) Real property and improvements thereto having a useful life of four or more years,
242 placed in service or use on or after July 1, 2021, by the taxpayer;

243 (ii) Real property and improvements thereto, acquired by written lease having a primary
244 term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2021;

245 (iii) Tangible personal property placed in service or use by the taxpayer on or after July 1,
246 2021, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in
247 determining the personal or corporation net income tax liability of the business taxpayer under

248 §11-21-1 et seq. or §11-24-1 et seq. of this code, and which has a useful life, at the time the
249 property is placed in service or use in the state, of four or more years;

250 (iv) Tangible personal property acquired by written lease having a primary term of four
251 years or longer, that commenced and was executed by the parties thereto on or after July 1, 2021,
252 if used as a component part of a new or expanded business facility, shall be included within this
253 definition; and

254 (v) Tangible personal property owned or leased, and used by the taxpayer at a business
255 location outside the state which is moved into the State of West Virginia on or after July 1, 2021,
256 for use as a component part of a new or expanded business facility located in the state: *Provided,*
257 That if the property is owned, it must be depreciable or amortizable personal property for income
258 tax purposes, and have a useful life of four or more years remaining at the time it is placed in
259 service or use in the state, and if the property is leased, the primary term of the lease remaining
260 at the time the leased property is placed in service or use in the state, must be four or more years;

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

263 (i) Property owned or leased by the taxpayer and for which the taxpayer was previously
264 allowed tax credit under §11-13C-1 et seq., §11-13D-1 et seq., §11-13E-1 et seq., §11-13H-1 et
265 seq., §11-13Q-1 et seq., §11-13R-1 et seq., §11-13S-1 et seq., §11-13T-1 et seq., §11-13U-1 et
266 seq., §11-13AA-1 et seq. or §11-1BB-1 et seq. of this code, or the tax credits allowed by this
267 article;

268 (ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other
269 transferor, was previously allowed tax credit under §11-13C-1 et seq., §11-13D-1 et seq., §11-
270 13E-1 et seq., §11-13H-1 et seq., §11-13Q-1 et seq., §11-13R-1 et seq., §11-13S-1 et seq., §11-
271 13T-1 et seq., §11-13U-1 et seq., §11-13AA-1 et seq. or §11-1BB-1 et seq. of this code, or the
272 tax credits allowed by this article;

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

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

277 (v) Airplanes;

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

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

282 (viii) Natural resources in place; or

283 (ix) Purchased or leased property the cost or consideration for which cannot be quantified
284 with any reasonable degree of accuracy at the time the property is placed in service or use:
285 Provided, That when the contract of purchase or lease specifies a minimum purchase price or
286 minimum annual rent the amount thereof shall be used to determine the qualified investment in
287 the property under §11-13EE-8 of this code if the property otherwise qualifies as property
288 purchased or leased for business expansion.

289 “Purchase” means any acquisition of property, but only if:

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

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

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

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

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

302 “Qualified activity” means any business or other activity subject to any of the taxes
303 imposed by §11-13-1 et seq., §11-21-1 et seq., §11-23-1 et seq. or §11-24-1 et seq. of this code
304 (or any combination of those articles of this chapter), but does not include the activity of severance
305 or production of natural resources.

306 “Related person” means:

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

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

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

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

313 For purposes of this definition, “control”, with respect to a corporation, means ownership,
314 directly or indirectly, of stock possessing 50 percent or more of the total combined voting power
315 of all classes of the stock of the corporation entitled to vote. “Control”, with respect to a trust,
316 means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the
317 principal or income of the trust. The ownership of stock in a corporation, of a capital or profits
318 interest in a partnership or association or of a beneficial interest in a trust is determined in
319 accordance with the rules for constructive ownership of stock provided in Section 267(c) of the
320 United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that
321 section.

322 “Replacement facility” means any property (other than an expanded facility) that replaces
323 or supersedes any other property located within this state that:

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

327 (B) Is not used by the taxpayer or a related person in or in connection with any qualified
328 activity for a continuous period of one year or more commencing with the date the replacement

329 or superseding property is placed in service by the taxpayer.

330 “State-of-the-art technology” or “leading-edge technology” means the highest level of
331 development, as of a device, technique, or scientific field achieved at a particular time: *Provided,*
332 That the technology was not in commercial use anywhere in the United States before July 1,
333 2021.

334 “Taxpayer” means any person subject to any of the taxes imposed by §11-21-1 *et seq.*,
335 §11-23-1 *et seq.* or §11-24-1 *et seq.* of this code (or any combination of those articles of this
336 chapter).

337 “This code” means the Code of West Virginia, 1931, as amended.

338 “This state” means the State of West Virginia.

339 “Used property” means property acquired after June 30, 2021, that is not “new property”.

§11-13EE-4. Amount of credit allowed.

1 (a) *Credit allowed.* — Eligible taxpayers are allowed a credit against the portion of taxes
2 imposed by this state that are attributable to and the consequence of the taxpayer’s qualified
3 investment, as described in §11-13EE-6 of this code, in a new business, or in a new segment of
4 an existing business, in this state that utilizes innovative business technology, which results in the
5 creation of new jobs. The amount of this credit is determined and applied as provided in this
6 article.

7 (b) *Amount of credit.* — When the eligible taxpayer creates at least 10 new jobs but less
8 than 15 new jobs in a new business in this state that utilizes innovative business technology and
9 whose qualified investment in this state is at least \$5 million but is less than \$10 million, the eligible
10 taxpayer shall for the tax year in which the 10 employees are first employed by the eligible
11 taxpayer and for the next four tax years thereafter be exempt from payment of the taxes imposed
12 by §11-23-1 *et seq.* and §11-24-1 *et seq.* of this code on the taxable capital attributable to the
13 emerging technology business activity in this state and West Virginia taxable income attributable
14 to the emerging technology business activity in this state: *Provided,* That the eligible taxpayer
15 may elect to defer for one tax year the start of this five-year period. When the eligible business

16 is a partnership or other entity treated as a partnership for federal income tax purposes, the
17 partners, S corporation shareholders or members of the limited liability company shall be exempt
18 from paying the tax imposed by §11-21-1 et seq. of this code on his or her distributive share
19 attributable to the emerging technology business activity in this state. The eligible business shall
20 also be exempt from paying the taxes imposed by §11-15-1 et seq., and §11-15A-1 et seq. of this
21 code on tangible personal property and services purchased for use or consumption by the eligible
22 taxpayer in the emerging technology business activity during the same five-year period, except
23 that this exemption shall not apply to the purchase of motor fuel or alternative fuels to power a
24 vehicle or to the purchase or lease of motor vehicles, unless the vehicle is an alternative fuel
25 vehicle. The exemption from paying the taxes imposed by §11-15-1 et seq., and §11-15A-1 et
26 seq. of this code on purchases for use in business allowed by this subsection is in addition to any
27 exemption that might otherwise be available to the taxpayer under those articles. When the
28 taxpayer qualifies for tax benefits under this subsection, these benefits are not forfeited if during
29 the applicable five-year period, the new business creates additional new jobs or makes additional
30 capital investment at the new business facility or does both.

31 (c) Amount of credit. -- When the eligible taxpayer does not qualify for credit under
32 subsection (b) of this section, either because the qualified investment exceeds \$10 million or the
33 number of new jobs created is 15 or more, or for both reasons, the amount of credit allowable is
34 determined by multiplying the amount of the taxpayer's "qualified investment" (determined under
35 §11-13EE-6 of this code) in "property purchased or leased for business expansion" (as defined in
36 §11-13EE-3 of this code) using innovative business technologies (as defined in §11-13EE-3 of
37 this code) by the taxpayer's new jobs percentage (determined under §11-13EE-7 of this code).
38 The product of this calculation establishes the maximum amount of credit allowable under this
39 article due to the qualified investment.

§11-13EE-5. Application of annual credit allowance.

1 (a) In general. -- When the credit is determined pursuant to §11-13EE-4(c) of this code,
2 the aggregate annual credit allowance for the current taxable year is an amount equal to the sum

3 of the following:

4 (1) The one-tenth part allowed under to §11-13EE-4(c) of this code for qualified investment
5 placed into service or use during a prior taxable year; plus

6 (2) The one-tenth part allowed under to §11-13EE-4(c) of this code for qualified investment
7 placed into service or use during the current taxable year.

8 (b) *Application of current year annual credit allowance.* -- The amount determined under
9 subsection (a) of this section is allowed as a credit against 100 percent of that portion of the
10 taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified
11 investment, and applied as provided in subsections (c) through (f), both inclusive, of this section,
12 and in that order.

13 (c) *Business and occupation taxes.* -- That portion of the allowable credit attributable to
14 qualified investment in a business or other activity subject to the taxes imposed by §11-13-2o of
15 this code must first be applied to reduce the taxes imposed or payable under that section, for the
16 taxable year (determined before application of allowable credits against tax and the annual
17 exemption). In no case may the credit allowed under this article be applied to reduce any tax
18 imposed by under any other section of §11-13-1 et seq. of this code except §11-13-2o of this
19 code.

20 (1) If the taxes due under §11-13-2o of this code are not solely attributable to and the
21 direct result of the taxpayer's qualified investment in a business or other activity taxable under
22 that section, the amount of those taxes that are attributable is determined by multiplying the
23 amount of taxes due under that section, for the taxable year (determined before application of any
24 allowable credits against tax and the annual exemption), by a fraction, the numerator of which is
25 all wages, salaries and other compensation paid during the taxable year to all employees of the
26 taxpayer employed in this state, whose positions are directly attributable to the qualified
27 investment in a business or other activity taxable under that section. The denominator of the
28 fraction shall be the wages, salaries and other compensation paid during the taxable year to all
29 employees of the taxpayer employed in this state, whose positions are directly attributable to the

30 business or other activity of the taxpayer that is taxable under §11-13-1 et seq. of this code.

31 (2) The annual exemption allowed by §11-13-3 of this code, plus any credits allowable
32 under §11-13D-1 et seq., §11-13E-1 et seq., §11-13Q-1 et seq., §11-13R-1 et seq., and §11-13S-
33 1 et seq. of this code, shall be applied against and reduce only the portion of §11-13-1 et seq. of
34 this code taxes not apportioned to the qualified investment under this article: *Provided*, That any
35 excess exemption or credits may be applied against the amount of §11-13-1 et seq. of this code
36 taxes apportioned to the qualified investment under this article, that is not offset by the amount of
37 annual credit against the taxes allowed under this article for the taxable year, unless their
38 application is otherwise prohibited by this chapter.

39 (d) *Business franchise tax.* —

40 (1) After application of subsection (c) of this section, any unused allowable credit is next
41 applied to reduce the taxes imposed by §11-23-1 et seq. of this code for the taxable year
42 (determined after application of the credits against tax provided in §11-23-17 of this code, but
43 before application of any other allowable credits against tax).

44 (2) If the taxes due under §11-23-1 et seq. of this code are not solely attributable to and
45 the direct result of the taxpayer's qualified investment in a business or other activity taxable under
46 that article for the taxable year, the amount of the taxes which are so attributable are determined
47 by multiplying the amount of taxes due (determined after application of the credits against tax as
48 provided in §11-23-17 of this code, but before application of any other allowable credits), by a
49 fraction, the numerator of which is all wages, salaries and other compensation paid during the
50 taxable year to all employees of the taxpayer employed in this state, whose positions are directly
51 attributable to the qualified investment in a business or other activity taxable under §11-23-1 et
52 seq. of this code. The denominator of the fraction is wages, salaries and other compensation paid
53 during the taxable year to all employees of the taxpayer employed in this state, whose positions
54 are directly attributable to the business or other activity of the taxpayer that is taxable under §11-
55 23-1 et seq. of this code.

56 (3) Any credits allowable under §11-13D-1 et seq., §11-13E-1 et seq., §11-13Q-1 et seq.,

57 §11-13R-1 et seq., and §11-13S-1 et seq. of this code are applied against and reduce only the
58 portion of §11-23-1 et seq. of this code taxes not apportioned to the qualified investment under
59 this article: *Provided*, That any excess exemption or credits may be applied against the amount
60 of those §11-23-1 et seq. of this code taxes apportioned to the qualified investment under this
61 article that is not offset by the amount of annual credit against those taxes allowed under this
62 article for the taxable year, unless their application is otherwise prohibited by this chapter.

63 (e) *Corporation net income taxes.* —

64 (1) After application of subsections (c) and (d) of this section, any unused credit is next
65 applied to reduce the taxes imposed by §11-24-1 et seq. of this code for the taxable year
66 (determined before application of allowable credits against tax).

67 (2) If the taxes due under §11-24-1 et seq. of this code (determined before application of
68 allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's
69 qualified investment, the amount of the taxes that is attributable are determined by multiplying the
70 amount of taxes due under that article for the taxable year (determined before application of
71 allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and
72 other compensation paid during the taxable year to all employees of the taxpayer employed in
73 this state whose positions are directly attributable to the qualified investment. The denominator of
74 the fraction is the wages, salaries, and other compensation paid during the taxable year to all
75 employees of the taxpayer employed in this state.

76 (3) Any credits allowable under §11-24-1 et seq. of this code are applied against and
77 reduce only the amount of that article's taxes not apportioned to the qualified investment under
78 this article: *Provided*, That any excess credits may be applied against the amount of §11-24-1 et
79 seq. of this code taxes apportioned to the qualified investment under this article that is not offset
80 by the amount of annual credit against such taxes allowed under this article for the taxable year,
81 unless their application is otherwise prohibited by this chapter.

82 (f) *Personal income taxes.* —

83 (1) If the person making the qualified investment is an electing small business corporation

84 (as defined in Section 1361 of the United States Internal Revenue Code of 1986 as amended), a
85 partnership, or a limited liability company that is treated as a partnership for federal income tax
86 purposes, then any unused credit (after application of subsections (c), (d), and (e) of this section)
87 is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income
88 from business or other activity subject to tax under §11-21-1 et seq. or §11-23-1 et seq. of this
89 code that is attributable to the business activity for credit is allowed under this article.

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

93 (3) If the amount of taxes due under §11-21-1 et seq. of this code (determined before
94 application of allowable credits against tax) that is attributable to business, is not solely
95 attributable to and the direct result of the qualified investment of the electing small business
96 corporation, limited liability company, partnership, other unincorporated organization or sole
97 proprietorship, the amount of the taxes that are so attributable are determined by multiplying the
98 amount of taxes due under §11-21-1 et seq. of this code (determined before application of
99 allowable credits against tax), that is attributable to business by a fraction, the numerator of which
100 is all wages, salaries and other compensation paid during the taxable year to all employees of the
101 electing small business corporation, limited liability company, partnership, other unincorporated
102 organization or sole proprietorship employed in this state, whose positions are directly attributable
103 to the qualified investment. The denominator of the fraction is the wages, salaries and other
104 compensation paid during the taxable year to all employees of the taxpayer.

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

107 (h) If the wages, salaries and other compensation fraction formula provisions of
108 subsections (c) through (f) of this section, inclusive, do not fairly represent the taxes solely
109 attributable to and the direct result of qualified investment of the taxpayer the commissioner may
110 require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

111 (1) Separate accounting or identification;

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

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

115 In order to effectuate the purposes of this subsection, the commissioner may propose for
116 promulgation rules, including emergency rules, in accordance with §29A-3-1 et seq. of this code.

117 (i) Unused credit. — If any credit remains after application of subsection (b) of this section,
118 the amount thereof is carried forward to each ensuing tax year until used or until the expiration of
119 the third taxable year subsequent to the end of the initial 10-year credit application period. If any
120 unused credit remains after the 13th year, the amount thereof is forfeited. No carryback to a prior
121 taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13EE-6. Qualified investment.

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

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

7 If useful life is: _____ The applicable percentage is:

8 Less than four years.....0 percent;

9 Four years or more but less than six years33 1/3 percent;

10 Six years or more but less than eight years66 2/3 percent;

11 Eight years or more100 percent; and

12 The useful life of any property, for purposes of this section, is determined as of the date
13 the property is first placed in service or use in this state by the taxpayer, determined in accordance
14 with rules and requirements the Tax Commissioner may proscribe.

15 (c) Cost. — For purposes of subsection (a) of this section, the cost of each property

16 purchased for business expansion is determined under the following rules:

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

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

22 (3) Rental property. --

23 (A) The cost of real property acquired by written lease for a primary term of 10 years or
24 longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20
25 years.

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

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

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

29 or

30 (iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the
31 lease, not to exceed 20 years: *Provided*, That in no event may rent reserved include rent for any
32 year subsequent to expiration of the book life of the equipment, determined using the straight-line
33 method of depreciation.

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

37 (5) Transferred property. -- The cost of property used by the taxpayer out-of-state and
38 then brought into this state, is determined based on the remaining useful life of the property at the
39 time it is placed in service or use in this state, and the cost is the original cost of the property to
40 the taxpayer less straight-line depreciation allowable for the tax years or portions thereof the
41 taxpayer used the property outside this state. In the case of leased tangible personal property,
42 cost is based on the period remaining in the primary term of the lease after the property is brought

43 into this state for use in a new or expanded business facility of the taxpayer, and is the rent
 44 reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the
 45 remaining useful life of the property (as determined by this section), whichever is less.

§11-13EE-7. New jobs; new jobs percentage.

1 (a) In general. -- For purposes of this article, the new jobs created by the taxpayer must
 2 be directly attributable to taxpayer's qualified investment in this state, must be filled by new
 3 employees as defined in §11-13EE-3 of this code and the compensation of new employees filling
 4 the new jobs must be equal to or exceed the compensation and health insurance benefits set
 5 forth in §11-13EE-8 of this code during the period for which the credit allowed by this article may
 6 be taken.

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

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

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

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

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

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

22 (d) Certification of new jobs. -- With the annual return for the applicable taxes filed for the
 23 taxable year in which the qualified investment is first placed in service or use in this state, the

24 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by
25 it in this state within the period prescribed in subsection (f) of this section that are, or will be,
26 directly attributable to the qualified investment of the taxpayer. For purposes of this section,
27 “applicable taxes” means the taxes imposed by §11-13-1 et seq., §11-21-1 et seq., §11-23-1 et
28 seq., and §11-24-1 et seq. of this code against which this credit is applied.

29 (e) *Equivalency of permanent employees.* — The hours of part-time employees shall be
30 aggregated to determine the number of equivalent full-time employees for the purpose of this
31 section.

32 (f) *Redetermination of new jobs percentage.* — With the annual return for the applicable
33 taxes imposed, filed for the third taxable year in which the qualified investment is in service or
34 use, the taxpayer shall certify the actual number of new jobs created by it in this state that are
35 directly attributable to the qualified investment of the taxpayer.

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

39 (2) If the actual number of jobs created would result in a lower new jobs percentage, the
40 credit previously allowed under this article shall be redetermined and amended returns filed for
41 the first and second taxable years. In applying the amount of redetermined credit allowable for
42 the two preceding taxable years, the redetermined credit shall first be applied to the extent it was
43 originally applied in the prior two years to personal income taxes, then to corporation net income
44 taxes, then to business franchise taxes and, lastly, to business and occupation taxes. Any
45 additional taxes due under this chapter shall be remitted with the amended returns filed with the
46 commissioner, along with interest, as provided in §11-10-17 of this code, and a 10 percent penalty
47 determined on the amount of taxes due with the amended return, which may be waived by the
48 commissioner if the taxpayer shows that the over-claimed amount of the new jobs percentage
49 was due to reasonable cause and not due to willful neglect.

§11-13EE-8. New jobs compensation and benefits requirement.

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

5 (1) The median compensation paid to the employees filling the new jobs must be at least
6 \$50,000 annually: *Provided*, That beginning November 1, 2021, and on or before every November
7 1 thereafter, the Tax Commissioner shall adjust this minimum annual compensation requirement
8 in the manner provided in subsection (b) of this section, which adjustment shall apply to
9 compensation paid for employee services during the next calendar year:

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

12 (3) Each new job is a full-time, permanent position, as those terms are defined in §11-
13 13EE-3 of this code.

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

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

28 (1) Cost-of-living adjustment. -- For purposes of this section, the cost-of-living adjustment
29 for any calendar year is the percentage, if any, by which the consumer price index for the
30 preceding calendar year exceeds the consumer price index for calendar year 2021.

31 (2) Consumer price index for any calendar year. -- For purposes of this section, the
32 consumer price index for any calendar year is the average of the federal consumer price index as
33 of the close of the 12-month period ending on August 31 of such calendar year.

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

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

39 (c) Unused credit remaining in any tax year after application against the taxes specified in
40 §11-13EE-5 of this code is forfeited and does not carry forward to any succeeding tax year and
41 does not carry back to a prior tax year.

42 (d) Reduction in number of employees credit forfeiture. -- If during the year when a new
43 job was created for which credit was granted under this section or during the remainder of the
44 credit period allowed by either §11-13EE-4(b) or §11-13EE-4(c) of this code, net jobs that are
45 attributable to and the consequence of the taxpayer's business operations in this state, decrease,
46 counting both new jobs for which credit was granted under this article and preexisting jobs, then
47 the total amount of credit to which the taxpayer is entitled under this section shall be decreased
48 and forfeited in the amount of \$3,000 for each net job lost.

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

1 (a) Application for credit required. -- Notwithstanding any provision of this article to the
2 contrary, no credit is allowed or may be applied under this article for any qualified investment
3 property placed in service or use until the person asserting a claim for the allowance of credit
4 under this article makes written application to the Tax Commissioner for allowance of credit as

5 provided in this subsection. An application for credit shall be filed, in the form prescribed by the
 6 Tax Commissioner, no later than the last day for filing the tax returns, determined by including
 7 any authorized extension of time for filing the return, required under §11-21-1 et seq. or §11-24-
 8 1 et seq. of this code for the taxable year in which the property to which the credit relates is placed
 9 in service or use and all information required by the form shall be provided.

10 (b) Failure to make timely application. — The failure to timely apply for the credit results in
 11 the forfeiture of 50 percent of the annual credit allowance otherwise allowable under this article.
 12 This penalty applies annually until the application is filed.

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

§11-13EE-10. Identification of investment credit property.

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

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its straight-line depreciation life;

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

7 (5) The amount of credit taken; and

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

§11-13EE-11. Forfeiture of unused tax credits; redetermination of credit allowed.

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

3 (1) Is disposed of prior to the end of its useful life, as determined under §11-13EE-8 of this
 4 code; or

5 (2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end
 6 of its useful life, as determined under §11-13EE-8 of this code, then the unused portion of the
 7 credit allowed for the property is forfeited for the taxable year and all ensuing years. Additionally,

8 except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is
9 stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing
10 the applicable percentage of cost of the property allowed under §11-13EE-8 of this code, to
11 correspond with the percentage of cost allowable for the period of time that the property was
12 actually used in this state in the new or expanded business of the taxpayer. The taxpayer shall
13 then file a reconciliation statement for the year in which the forfeiture occurs and pay any
14 additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus
15 interest and any applicable penalties. The reconciliation statement shall be filed with the annual
16 return for the primary tax for which the taxpayer is liable under §11-21-1 et seq., §11-23-1 et seq.
17 or §11-24-1 et seq. of this code.

18 (b) Cessation of operation of business facility. -- If during any taxable year the taxpayer
19 ceases operation of a business facility in this state for which credit was allowed under this article,
20 before expiration of the useful life of property with respect to which tax credit has been allowed
21 under this article, then the unused portion of the allowed credit is forfeited for the taxable year
22 and for all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or
23 other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by
24 reducing the applicable percentage of cost of the property allowed under §11-13EE-8 of this code,
25 to correspond with the percentage of cost allowable for the period of time that the property was
26 actually used in this state in a business of the taxpayer that is taxable under §11-23-1 et seq. or
27 §11-24-1 et seq. of this code, or in the case of a partnership, the distributive share of partnership
28 items is taxable under §11-21-1 et seq. of this code. The taxpayer shall then file a reconciliation
29 statement with the annual return for the primary tax for which the taxpayer is liable under §11-21-
30 1 et seq., §11-23-1 et seq. or §11-24-1 et seq. of this code, for the year in which the forfeiture
31 occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable
32 for the earlier years, plus interest and any applicable penalties.

33 (c) Reduction in number of employees. -- If during any taxable year subsequent to the
34 taxable year in which the new jobs percentage is redetermined as provided in §11-13EE-7 of this

35 code, the average number of employees of the taxpayer, for the then current taxable year,
36 employed in positions created because of and directly attributable to the qualified investment falls
37 below the minimum number of new jobs created upon which the taxpayer's annual credit
38 allowance is based, the taxpayer shall calculate what his or her annual credit allowance would
39 have been had his or her new jobs percentage been determined based upon the average number
40 of employees, for the then current taxable year, employed in positions created because of and
41 directly attributable to the qualified investment. The difference between the result of this
42 calculation and the taxpayer's annual credit allowance for the qualified investment as determined
43 under §11-13EE-4 of this code, is forfeited for the then current taxable year, and for each
44 succeeding taxable year unless for a succeeding taxable year the taxpayer's average
45 employment in positions directly attributable to the qualified investment once again meets the
46 level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.

§11-13EE-12. Recapture of credit; recapture tax imposed.

1 (a) *When recapture tax applies.* --

2 (1) Any person who places qualified investment property in service or use and who fails
3 to use the qualified investment property for at least the period of its useful life (determined as of
4 the time the property was placed in service or use), or the period of time over which tax credits
5 allowed under this article with respect to the property are applied under this article, whichever
6 period is less, and who reduces the number of its employees filling new jobs in its business in this
7 state, which were created and are directly attributable to the qualified investment property, after
8 the third taxable year in which the qualified investment property was placed in service or use, or
9 fails to continue to employ individuals in all the new jobs created as a direct result of the qualified
10 investment property and used to qualify for the credit allowed by this article, prior to the end of
11 the 10th taxable year after the qualified investment property was placed in service or use, the
12 person shall pay the recapture tax imposed by subsection (b) of this section.

13 (2) This section does not apply when §11-13EE-13 of this code applies. However, the
14 successor, or the successors, and the person(s), who previously claimed credit under this article

15 with respect to the qualified investment property and the new jobs attributable thereto, are jointly
16 and severally liable for payment of any recapture tax subsequently imposed under this section
17 with respect to the qualified investment property and new jobs.

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

20 (1) Full recapture. -- If the taxpayer prematurely removes qualified investment property
21 placed in service (when considered as a class) from economic service in the taxpayer's qualified
22 investment business activity in this state, and the number of employees filling the new jobs created
23 by the person falls below the number of new jobs required to be created in order to qualify for the
24 amount of credit being claimed or the requirements of §11-13EE-8 of this code are not satisfied,
25 the taxpayer shall recapture the amount of credit claimed under §11-13EE-4 of this code for the
26 taxable year, and all preceding taxable years, on qualified investment property which has been
27 prematurely removed from service. Additionally, the property tax benefit allowed under §11-6I-1
28 et seq. of this code shall be recaptured for a like period. The amount of tax due under this
29 subdivision is an amount equal to the amount of credit that is recaptured under this subdivision
30 plus the amount of the property tax benefit recaptured under this section.

31 (2) Partial recapture. -- If the taxpayer prematurely removes qualified investment property
32 from economic service in the taxpayer's qualified investment business activity in this state, and
33 the number of employees filling the new jobs created by the person remains 10 or more, but falls
34 below the number necessary to sustain continued application of credit determined by use of the
35 new job percentage upon which the taxpayer's one-tenth annual credit allowance was determined
36 under §11-13EE-4 or §11-13EE-10 of this code, taxpayer shall recapture an amount of credit
37 equal to the difference between: (A) The amount of credit claimed under §11-13EE-4 of this code
38 for the taxable year, and all preceding taxable years; and (B) the amount of credit that would have
39 been claimed in those years if the amount of credit allowable under §11-13EE-4 of this code had
40 been determined based on the qualified investment property which remains in service using the
41 average number of new jobs filled by employees in the taxable year for which recapture occurs.

42 The amount of tax due under this subdivision is an amount equal to the amount of credit that is
43 recaptured under this subdivision.

44 (3) Additional recapture. -- If after a partial recapture under subdivision (2) of this
45 subsection, the taxpayer further reduces the number of employees filling new jobs, the taxpayer
46 shall recapture an additional amount determined as provided under subdivision (1) of this
47 subsection. The amount of tax due under this subdivision is an amount equal to the amount of
48 credit that is recaptured under this subdivision.

49 (c) Payment of recapture tax. -- The amount of tax recaptured under this section is due
50 and payable on the day the person's annual return is due for the taxable year in which this section
51 applies, under §11-21-1 et seq. or §11-24-1 et seq. of this code. When the employer is a
52 partnership, limited liability company or Subchapter S corporation for federal income tax
53 purposes, the recapture tax shall be paid by those persons who are partners in the partnership,
54 members in the company, or shareholders in the Subchapter S corporation, in the taxable year in
55 which recapture occurs under this section. The Tax Commissioner shall cause the property tax
56 benefit recaptured to be paid over to the sheriff of the county in which the property is or was
57 located within 60 days after the recapture tax is paid to the Tax Commissioner.

58 (d) Rules. -- The Tax Commissioner may promulgate such rules as may be useful or
59 necessary to carry out the purpose of this section and to implement the intent of the Legislature.
60 Rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

§11-13EE-13. Transfer of qualified investment to successors.

1 (a) Mere change in form of business. -- Property may not be treated as disposed of under
2 §11-13EE-11 of this code, by reason of a mere change in the form of conducting the business as
3 long as the property is retained in the successor business in this state, and the transferor business
4 retains a controlling interest in the successor business. In this event, the successor business is
5 allowed to claim the amount of credit still available with respect to the business facility or facilities
6 transferred, and the transferor business may not be required to redetermine the amount of credit
7 allowed in earlier years.

8 (b) Transfer or sale to successor. — Property is not treated as disposed of under §11-
9 13EE-11 of this code of this article by reason of any transfer or sale to a successor business
10 which continues to operate the business facility in this state. Upon transfer or sale, the successor
11 shall acquire the amount of credit that remains available under this article for each subsequent
12 taxable year and the transferor business is not required to redetermine the amount of credit
13 allowed in earlier years.

§11-13EE-14. Failure to keep records of investment credit property.

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

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

6 (2) If a taxpayer cannot establish when investment credit property reported for purposes
7 of claiming this credit returned during the taxable year was placed in service, the taxpayer is
8 treated as having placed it in service in the most recent prior year in which similar property was
9 placed in service, unless the taxpayer can establish that the property placed in service in the most
10 recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned
11 property in service in the next most recent year.

§11-13EE-15. Interpretation and construction.

1 (a) No inference, implication or presumption of legislative construction or intent may be
2 drawn or made by reason of the location or grouping of any particular section, provision or portion
3 of this article; and no legal effect may be given to any descriptive matter or heading relating to
4 any section, subsection or paragraph of this article.

5 (b) This article shall be reasonably construed in order to effectuate the legislative intent
6 recited in §11-13EE-2 of this code.

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

§11-13EE-16. Tax credit review and accountability.

1 (a) On or before February 1, 2026, and on or before February 1 of every third year
2 thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate and
3 the Speaker of the House of Delegates, a tax credit review and accountability report evaluating
4 the cost effectiveness of the credit allowed by this article during the most recent three-year period
5 for which information is available. The criteria to be evaluated shall include, but not be limited to,
6 for each year of the three-year period:

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

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

9 (3) The cost of the credit;

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

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

13 (b) Taxpayers claiming the credit shall provide any information the Tax Commissioner may
14 require to prepare the report: *Provided*, That the information provided is subject to the
15 confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

§11-13EE-17. Effective date; termination date.

1 (a) *Effective date.* -- The credit allowed by this article is allowed for qualified investment
2 placed in service or use on or after July 1, 2021, subject to the rules contained in this section.

3 (b) *Termination date.* -- Unless extended by the Legislature, this credit shall not be allowed
4 for any qualified investment property placed in service or use after December 31, 2029: *Provided*,
5 That when the qualified investment property was placed in service or use prior to January 1, 2029,
6 taxpayers shall be allowed the tax benefits allowed by §11-13EE-4 of this code for the remainder
7 of the credit period allowed by §11-13EE-4(b) of this code, or the remainder of the credit period
8 allowed under §11-13EE-4(c) of this code, depending upon which is applicable to the taxpayer.

§11-13EE-18. Severability.

1 (a) If any provision of this article or the application thereof is for any reason adjudged by

2 any court of competent jurisdiction to be invalid, the judgment may not affect, impair or invalidate
3 the remainder of the article, but shall be confined in its operation to the provision thereof directly
4 involved in the controversy in which the judgment shall have been rendered, and the applicability
5 of the provision to other persons or circumstances may not be affected thereby.

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

NOTE: The purpose of this bill is to enact the West Virginia Innovation Free-Trade Act of 2021 consisting of West Virginia Innovation Free-Trade Business Technology Property Valuation Act and the West Virginia Innovation Free-Trade Tax Credit Act, the purpose of which is to encourage the development and use in this state of emerging technologies to create good jobs and grow West Virginia's economy. The bill defines terms. The bill specifies the method for valuation of certain property. The bill provides for application to county assessors by specified date. The bill provides a procedure for protest and appeal of determination by county assessor. The bill requires the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact. The bill makes legislative findings. The bill allows credit and exemption from certain taxes. The bill provides for computation of credit, application of credit and period for which credit is allowed. The bill requires an application to claim the credit. The bill requires that new jobs be good-paying jobs with health benefits. The bill requires identification of investment credit property and recomputation of credit in event of premature disposition of investment property. The bill provides for forfeiture of unused tax credits and redetermination of credit allowed. The bill imposes recapture tax under specified circumstances to recover state taxes and property taxes. The bill allows transfer of qualified investment to successors. The bill provides rules for failure to keep records of investment credit property. The bill provides rules for interpretation and construction of act. The bill provides for tax credit review and accountability. The bill specifies effective dates and termination dates. The bill provides rule-making authority. The bill provides a severability clause.

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