

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2510

By Delegates Howell, Anderson, Hott, Zatezalo,
Clark, Ferrell, Storch, Smith, Phillips, Cannon, and
Linville

[Introduced January 13, 2023; Referred to the
Committee on Economic Development and Tourism]

1 A BILL to amend the Code of West Virginia, 1931, as amended; by adding thereto a new article,
2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, §11-
3 13MM-6, §11-13MM-7, §11-13MM-8, §11-13MM-9, §11-13MM-10, §11-13MM-11, §11-
4 13MM-12, §11-13MM-13, §11-13MM-14, §11-13MM-15, §11-13MM-16, §11-13MM-17,
5 §11-13MM-18, §11-13MM-19, §11-13MM-20, and §11-13MM-21, all relating to the creation
6 of the Rare Earth Element and Critical Mineral Investment Tax Credit Act; providing for a
7 short title; providing legislative findings and purpose; defining terms including rare earth
8 elements and critical minerals; providing for administration and enforcement of act;
9 specifying an amount of credit allowable based on amount of qualified investment and the
10 number of new jobs created for mining and processing of rare earth elements and critical
11 minerals and manufacturing of products requiring rare earth elements and critical minerals;
12 providing limitations and conditions for the qualification and use; defining in service or use;
13 providing for the application of the credit to the corporate net income tax and the personal
14 income tax, as appropriate; providing for methods of calculation of the qualified
15 investment; providing for a determination and certification of the number of new jobs;
16 providing for carry over and forfeiture of unused tax credits and redetermination of tax
17 credits under certain circumstances; providing certain limitations for credits being carried
18 over; providing for full recapture and partial recapture of credit under certain circumstances
19 and imposing a recapture tax; allowing transfer of qualified investment property without
20 forfeiture or recapture under certain circumstances; requiring identification of qualified
21 investment property and record keeping; providing civil penalties for failure to keep
22 required records; providing for interpretation and construction of credit; requiring timely
23 filing of application for credit; providing for criminal and civil penalties; specifying burden of
24 proof; requiring periodic review and reporting; authorizing rule-making; making the credit
25 subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax
26 Crimes and Penalties Act; providing for severability; and specifying an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13MM. RARE EARTH ELEMENT AND CRITICAL MINERAL INVESTMENT
TAX CREDIT ACT.**

§11-13MM-1. Short title.

1 This article may be cited as the Rare Earth Element and Critical Mineral Investment Tax
2 Credit _____ Act.

§11-13MM-2. Legislative finding and purpose.

1 The Legislature finds that investment into the mining and processing of rare earth elements
2 and critical minerals and the manufacturing of products that require these rare earth elements and
3 critical minerals is in the public's interest. Such investments promote the welfare and livelihoods of
4 the population of this state. In order to encourage capital investment into businesses which focus
5 on mining, processing, and manufacturing, there is hereby enacted the Rare Earth Element and
6 Critical Mineral Investment Tax Credit Act. By enacting this tax credit, it is expected that new and
7 existing companies will take advantage of this unique opportunity and will create new jobs and
8 facilities for the purpose of mining and processing of rare earth elements and critical minerals, and
9 the manufacturing of products that require them.

10 Rare earth elements and critical minerals present an opportunity for West Virginians.
11 Those who extract and mine rare earth elements and critical minerals, those who process them
12 after extraction, and those who manufacture products which require them will benefit from the act
13 and position West Virginia to be a leader in this field.

§11-13MM-3. Definitions.

1 (a) General. – When used in this article or in the administration of this article, terms defined
2 in subsection (b) have the meanings ascribed to them by this section, unless a different meaning is
3 clearly required by either the context in which the term is used, or by specific definition, in §11-
4 13MM-1 et seq. of this code.

5 (b) Terms defined:

6 (1) "Affiliated group" means any affiliated group within the meaning section 1504(a) of the
7 Internal Revenue Code, or any similar group defined under a similar provision of state, local, or
8 foreign law, except that section 1504 of the Internal Revenue Code shall be applied by substituting
9 "more than 50 percent" for "at least 80 percent" each place it appears in that section;

10 (2) "Business" means a business engaged in mining, processing, or manufacturing
11 products with rare earth elements or critical minerals which is taxable under §11-21-1 et seq. or
12 §11-24-1 et seq. of this code;

13 (3) "Business expansion" means capital investment in a new or expanded rare earth
14 element or critical mineral facility in this state which engages in the mining or processing of rare
15 earth elements and critical minerals, or manufacturing products from rare earth elements and
16 critical minerals;

17 (4) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and
18 mean the Tax Commissioner of the State of West Virginia, or his or her designee;

19 (5) "Compensation" means wages, salaries, commissions, and any other form of
20 remuneration paid to employees for personal services;

21 (6) "Controlled group of corporations" means a controlled group of corporations as defined
22 in section 1563(a) of the Internal Revenue Code;

23 (7) "Corporation" means any corporation, joint-stock company, association, limited liability
24 company, or other entity treated as a corporation for federal income tax purposes, and any
25 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
26 certificate of interest or ownership or similar written instrument;

27 (8) "Critical minerals" mean only aluminum, antimony, arsenic, barite, beryllium, bismuth,
28 cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium,
29 lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium,
30 ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, zirconium, uranium,
31 osmium, strontium, rhenium, potash, and bauxite;

32 (9) "Designee" in the phrase "or his or her designee," when used in reference to the Tax
33 Commissioner, means any officer or employee of the State Tax Department duly authorized by the
34 commissioner directly, or indirectly by one or more redelegations of authority, to perform the
35 functions mentioned or described in this article;

36 (10) "Eligible taxpayer" means any person who a makes qualified investment in a new or
37 expanded rare earth element or critical mineral mining, processing, or manufacturing facility
38 located in this state and creates at least the required number of new jobs and who is subject to any
39 of the taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code;

40 (11) "Expanded facility" means any rare earth element or critical mineral mining or
41 processing facility, or any manufacturing facility that uses rare earth elements and critical minerals
42 for their products, other than a new or replacement business facility, resulting from the acquisition,
43 construction, reconstruction, installation, or erection of improvements or additions to existing
44 property if the improvements or additions are purchased on or after July 1, 2024, but only to the
45 extent of the taxpayer's qualified investment in the improvements or additions;

46 (12) "Includes" and "including" when used in a definition contained in this article, shall not
47 be considered to exclude other things otherwise within the meaning of the term defined;

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

52 (14) "New rare earth element or critical mineral mining, processing, or product
53 manufacturing facility" means a business facility which satisfies all the requirements of paragraphs
54 (A), (B), (C), and (D) of this subdivision.

55 (A) The facility is employed by the taxpayer in the conduct of rare earth element or critical
56 mineral mining, processing, or product manufacturing activity, the net income of which is or would
57 be taxable under §11-21-1 et seq. or §11-24-1 et seq. of this code. The facility is not considered a

58 new rare earth element or critical mineral mining, processing, or product manufacturing facility in
59 the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to
60 another person or persons.

61 (B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2024.

62 (C) The facility was not purchased or leased by the taxpayer from a related person. The
63 commissioner may waive this requirement if the facility was acquired from a related party for its fair
64 market value and the acquisition was not tax motivated.

65 (D) The facility was not in service or use during the 90 days immediately prior to transfer of
66 the title to the facility, or prior to the commencement of the term of the lease of the facility:
67 Provided, That this 90-day period may be waived by the commissioner if the commissioner
68 determines that persons employed at the facility may be treated as "new employees" as that term
69 is defined in this subsection.

70 (15) "New employee". –

71 (A) The term new employee means an individual hired by the taxpayer to fill a position or a
72 job in this state which previously did not exist in the taxpayer's rare earth element or critical mineral
73 mining, processing, or product manufacturing activity in this state prior to the date on which the
74 taxpayer's qualified investment in a new or expanded rare earth element or critical mineral mining,
75 processing, or product manufacturing facility is placed in service or use in this state. In no case
76 may the number of new employees directly attributable to the investment for purposes of this credit
77 exceed the total net increase in the taxpayer's employment in this state: Provided, That the Tax
78 Commissioner may require that the net increase in the taxpayer's employment in this state be
79 determined and certified for the taxpayer's controlled group: Provided, however, That persons
80 filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or
81 leased for business expansion may be treated as new employees filling new jobs if the taxpayer
82 certifies the material facts to the commissioner and the Tax Commissioner expressly finds that:

83 (i) But for the new employer purchasing the assets of a rare earth element or critical
84 mineral mining, processing, or product manufacturing business in bankruptcy under chapter 7 or
85 11 of the United States bankruptcy code and the new employer making qualified investment in
86 property purchased or leased for business expansion, the assets would have been sold by the
87 United States Bankruptcy Court in a liquidation sale and the jobs saved would have been lost; or

88 (ii) But for the taxpayer's qualified investment in property purchased or leased for rare
89 earth element or critical mineral mining, processing, or product manufacturing business expansion
90 in this state, the taxpayer would have closed its rare earth element or critical mineral mining,
91 processing, or product manufacturing facility in this state and the employees of the taxpayer
92 located at the facility would have lost their jobs: *Provided*, That the Tax Commissioner may not
93 make this certification unless the commissioner finds that the taxpayer is insolvent as defined in 11
94 U.S.C. §101(32) or that the taxpayer's rare earth element or critical mineral mining, processing, or
95 product manufacturing facility was destroyed, in whole or in significant part, by fire, flood, or other
96 act of God.

97 (B) A person is considered to be a new employee only if the person's duties in connection
98 with the operation of the rare earth element or critical mineral mining, processing, or product
99 manufacturing facility are on:

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

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

104 (II) Permanent employment does not include employment that is temporary or seasonal
105 and therefore the wages, salaries, and other compensation paid to the temporary or seasonal
106 employees will not be considered for purposes of §11-13MM-5 of this code;

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

109 (16) "New job" means a job which did not exist in the rare earth element or critical mineral
110 mining, processing, or product manufacturing business of the taxpayer in this state prior to the
111 taxpayer's qualified investment being made, and which is filled by a new employee;

112 (17) "New property" means:

113 (A) Property, the construction, reconstruction, or erection of which is completed on or after
114 July 1, 2024, and placed in service or use after that date; and

115 (B) Property leased or acquired by the taxpayer that is placed in service or use in this state
116 on or after July 1, 2024, if the original use of the property commences with the taxpayer and
117 commences after that date.

118 (18) "Original use" means the first use to which the property is put, whether or not the use
119 corresponds to the use of the property by the taxpayer;

120 (19) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated
121 organization through or by means of which any business, financial operation, or venture is carried
122 on, which is treated as a partnership for federal income tax purposes, and which is not a trust or
123 estate, a corporation, or a sole proprietorship;

124 (20) "Partner" includes a member in such a syndicate, group, pool, joint venture, or other
125 organization;

126 (21) "Person" includes any natural person, corporation, limited liability company, or
127 partnership;

128 (22) "Property purchased or leased for business expansion". –

129 (A) *Included property.* – Except as provided in paragraph (B), the term "property purchased
130 or leased for business expansion" means real property and improvements thereto, and tangible
131 personal property, but only if the real or personal property was constructed, purchased, or leased
132 and placed in service or use by the taxpayer, for use as a component part of a new or expanded
133 rare earth element or critical mineral mining, processing, or product manufacturing facility as
134 defined in this section, which is located within the State of West Virginia. This term includes only:

135 (i) Real property and improvements thereto having a useful life of four or more years,
136 placed in service or use on or after July 1, 2024, by the taxpayer;

137 (ii) Real property and improvements thereto, acquired by written lease having a primary
138 term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2024;

139 (iii) Tangible personal property placed in service or use by the taxpayer on or after July 1,
140 2024, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in
141 determining the personal or corporation net income tax liability of the business taxpayer under
142 §11-21-1 et seq. or §11-24-1 et seq. of this code, and which has a useful life, at the time the
143 property is placed in service or use in this state, of four or more years;

144 (iv) Tangible personal property acquired by written lease having a primary term of four
145 years or longer, that commenced and was executed by the parties thereto on or after July 1, 2024,
146 if used as a component part of a new or expanded rare earth element or critical mineral mining,
147 processing, or product manufacturing facility, shall be included within this definition; and

148 (v) Tangible personal property owned or leased, and used by the taxpayer at a business
149 location outside this state which is moved into the State of West Virginia on or after July 1, 2024,
150 for use as a component part of a new or expanded rare earth element or critical mineral mining,
151 processing, or product manufacturing facility located in this state: *Provided*, That if the property is
152 owned, it must be depreciable or amortizable personal property for income tax purposes, and have
153 a useful life of four or more years remaining at the time it is placed in service or use in this state,
154 and if the property is leased, the primary term of the lease remaining at the time the leased
155 property is placed in service or use in this state, must be four or more years.

156 (B) *Excluded property.* – The term property purchased or leased for business expansion
157 does not include:

158 (i) Property owned or leased by the taxpayer and for which the taxpayer was previously or
159 is currently being allowed tax credit under §11-13D-1 et seq., §11-13Q-1 et seq., §11-13S-1 et
160 seq., or §11-13U-1 et seq. of this code;

161 (ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other
162 transferor, was previously or is currently being allowed tax credit under §11-13D-1 et seq., §11-
163 13Q-1 et seq., §11-13S-1 et seq., or §11-13U-1 et seq. of this code;

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

166 (iv) Airplanes and helicopters;

167 (v) Property which is primarily used outside this state, with use being determined based
168 upon the amount of time the property is actually used both within and outside this state;

169 (vi) Property which is acquired incident to the purchase of the stock or assets of the seller,
170 unless for good cause shown, the Tax Commissioner consents to waiving this requirement;

171 (vii) Natural resources in place;

172 (viii) Purchased or leased property, the cost or consideration for which cannot be quantified
173 with any reasonable degree of accuracy at the time the property is placed in service or use:

174 Provided, That when the contract of purchase or lease specifies a minimum purchase price or
175 minimum annual rent the amount thereof shall be used to determine the qualified investment in the
176 property under §11-13MM-6 of this code if the property otherwise qualifies as property purchased
177 or leased for expansion of a rare earth element or critical mineral mining, processing, or
178 manufacturing facility.

179 (23) "Purchase" means any acquisition of property, but only if:

180 (A) The property is not acquired from a person whose relationship to the person acquiring it
181 would result in the disallowance of deductions under section 267 or 707 (b) of the United States
182 Internal Revenue Code;

183 (B) The property is not acquired by one component member of an affiliated or controlled
184 group from another component member of the same affiliated or controlled group, as applicable.

185 The Tax Commissioner may waive this requirement if the property was acquired from a related
186 party for its then fair market value; and

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

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

191 (ii) Under Section 1014(e) of the United States Internal Revenue Code.

192 (24) "Qualified activity" means any rare earth element or critical mineral mining,
193 processing, or product manufacturing business activity subject to any of the taxes imposed by §11-
194 21-1 et seq. or §11-24-1 et seq. of this code;

195 (25) "Rare earth elements" (also known as rare earth metals or rare earth oxides) mean
196 only yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium,
197 gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium;

198 (26) "Rare earth element or critical element mining" or a "rare earth element or critical
199 mineral mining facility" refers to rare earth or critical element mining operations that take place
200 during the initial extraction of rare earth elements or critical elements, and includes any factory,
201 mill, plant, warehouse, building, or complex of buildings located within this state, including the land
202 on which it is located, and all machinery, equipment, and other real and personal property located
203 at or within the facility, used in connection with the operation of the facility, in a business that is
204 taxable in this state, and all site preparation and start-up costs of the taxpayer for the rare earth
205 element or critical mineral mining facility which it capitalizes for federal income tax purposes;

206 (27) "Rare earth element or critical element processing" or a "rare earth element or critical
207 mineral processing facility" refers to rare earth or critical element processing operations that take
208 place after the initial extraction of rare earth elements or critical minerals but before the
209 manufacturing of such elements or minerals, and includes any factory, mill, plant, warehouse,
210 building, or complex of buildings located within this state, including the land on which it is located,
211 and all machinery, equipment, and other real and personal property located at or within the facility,
212 used in connection with the operation of the facility, in a business that is taxable in this state, and

213 all site preparation and start-up costs of the taxpayer for the rare earth element or critical mineral
214 processing facility which it capitalizes for federal income tax purposes;

215 (28) "Rare earth or critical mineral product manufacturing" or a "rare earth element or
216 critical mineral product manufacturing facility" refers to manufacturing operations that occur after
217 both the extraction and processing phase of rare earth elements or critical minerals, whose
218 companies primarily manufacture products that use rare earth elements or critical minerals, and
219 includes any factory, mill, plant, warehouse, building, or complex of buildings located within this
220 state, including the land on which it is located, and all machinery, equipment, and other real and
221 personal property located at or within the facility, used in connection with the operation of the
222 facility, in a business that is taxable in this state, and all site preparation and start-up costs of the
223 taxpayer for the rare earth element or critical mineral product manufacturing facility, which it
224 capitalizes for federal income tax purposes;

225 (29) "Related person" means:

226 (A) A corporation, partnership, association, limited liability company, or trust controlled by
227 the taxpayer;

228 (B) An individual, corporation, partnership, limited liability company, association, or trust
229 that is in control of the taxpayer;

230 (C) A corporation, partnership, limited liability company, association, or trust controlled by
231 an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

232 (D) A member of the same affiliated or controlled group as the taxpayer.

233 (30) For purposes of this subdivision, control, with respect to a corporation or limited
234 liability company means ownership, directly or indirectly, of stock possessing 50 percent or more
235 of the total combined voting power of all classes of the stock of the corporation entitled to vote.

236 Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or
237 more of the beneficial interest in the principal or income of the trust. The ownership of stock in a
238 corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest

239 in a trust is determined in accordance with the rules for constructive ownership of stock provided in
240 section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that
241 section.

242 (31) "Replacement rare earth element or critical mineral mining, processing, or product
243 manufacturing facility" means any property (other than an expanded rare earth element or critical
244 mineral mining, processing, or product manufacturing facility) that replaces or supersedes any
245 other property located within this state that:

246 (A) The taxpayer or a related person used in or in connection with any rare earth element or
247 critical mineral mining, processing, or product manufacturing facility for more than two years
248 during the period of five consecutive years ending on the date the replacement or superseding
249 property is placed in service by the taxpayer; or

250 (B) Is not used by the taxpayer or a related person in or in connection with any rare earth
251 element or critical mineral mining, processing, or product manufacturing facility for a continuous
252 period of one year or more commencing with the date the replacement or superseding property is
253 placed in service by the taxpayer.

254 (32) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 et seq.
255 or §11-24-1 et seq. of this code;

256 (33) "This code" means the Code of West Virginia, 1931, as amended;

257 (34) "This state" means the State of West Virginia;

258 (35) "United States Internal Revenue Code" or "I.R.C." means the Internal Revenue Code
259 as defined in §11-21-1 et seq. or §11-24-1 et seq. of this code;

260 (36) "Used property" means property acquired after July 1, 2024, that is not "new property".

§11-13MM-4. Amount of credit allowed.

1 (a) Credit allowed. — Notwithstanding any other provision of this code, eligible taxpayers
2 are allowed a credit against the portion of taxes imposed by this state that are attributable to and
3 the consequence of the taxpayer's qualified investment in a new or expanded rare earth element

4 or critical mineral mining, processing, or product manufacturing facility in this state which results in
5 the creation of new jobs. The amount of this credit is determined and applied as provided in this
6 article.

7 (b) Amount of credit. — The amount of credit allowable is determined by multiplying the
8 amount of the taxpayer's qualified investment, determined under §11-13MM-6 of this code, in
9 property purchased or leased for a new, or expansion of an existing "rare earth element or critical
10 mineral mining, processing, or product manufacturing facility", as defined in §11-13MM-3 of this
11 code, by the taxpayer's new jobs percentage, determined under §11-13MM-7 of this code. The
12 product of this calculation establishes the maximum amount of credit allowable under this article
13 due to the qualified investment.

14 (c) Application of credit over 10 years. — The amount of credit allowable must be taken
15 over a 10-year period, at the rate of one-tenth of the amount thereof per taxable year, beginning
16 with the taxable year in which the taxpayer places the qualified investment in service or use in this
17 state, unless the taxpayer elected to delay the beginning of the 10-year period until the next
18 succeeding taxable year. This election shall be made in the annual income tax return filed under
19 this chapter for the taxable year in which qualified investment is first placed into service or use by
20 the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken in
21 the manner prescribed in §11-13MM-5 of this code.

22 (d) Placed in service or use. — For purposes of the credit allowed by this section, property
23 is considered placed in service or use in the earlier of the following taxable years:

24 (1) The taxable year in which, under the taxpayer's depreciation practice, the period for
25 depreciation with respect to the property begins; or

26 (2) The taxable year in which the property is placed in a condition or state of readiness and
27 availability _____ for _____ a _____ specifically _____ assigned _____ function.

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

1 (a) In general. — The aggregate annual credit allowance for the current taxable year is an
2 amount equal to the sum of the following:

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

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

7 (b) Application of current year annual credit allowance. — The amount determined under
8 subsection (a) of this section is allowed as a credit against 80 percent of that portion of the
9 taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified
10 investment, and applied as provided in subsections (c) and (d), both inclusive, of this section, and
11 in that order: *Provided*, That if the median salary of the new jobs is higher than the statewide
12 average nonfarm payroll wage, as determined annually by Workforce West Virginia, the amount
13 determined under subsection (a) of this section is allowed as a credit against 100 percent of that
14 portion of the taxpayer's state tax liability which is attributable to and the direct result of the
15 taxpayer's qualified investment, and shall be applied, as provided in subsections (c) through (d),
16 both inclusive, of this section, and in that order.

17 (c) Corporation net income taxes. —

18 (1) That portion of the allowable credit attributable to qualified investment in rare earth
19 element or critical mineral mining, processing, or product manufacturing facility, may be applied to
20 reduce the taxes imposed by §11-24-1 *et seq.* of this code for the taxable year as determined
21 before application of allowable credits against tax.

22 (2) If the taxes due under §11-24-1 *et seq.* of this code, as determined before application of
23 allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's
24 qualified investment in a rare earth element or critical mineral mining, processing, product
25 manufacturing business, the amount of the taxes that is attributable are determined by multiplying
26 the amount of taxes due under §11-24-1 *et seq.* of this code for the taxable year, as determined

27 before application of allowable credits against tax, by a fraction, the numerator of which is all
28 wages, salaries, and other compensation paid during the taxable year to all employees of the
29 taxpayer employed in this state whose positions are directly attributable to the qualified
30 investment. The denominator of the fraction is the wages, salaries, and other compensation paid
31 during the taxable year to all employees of the taxpayer employed in this state.

32 (d) *Personal income taxes.* —

33 (1) If the person making the qualified investment in a rare earth element or critical mineral
34 mining, processing, or manufacturing facility is an electing small business corporation, as defined
35 in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability
36 company that is treated as a partnership for federal income tax purposes, or a sole proprietorship,
37 then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this
38 code on the income from a rare earth element and critical mineral mining, processing, or product
39 manufacturing facility, or on income of a sole proprietor attributable to the rare earth element and
40 critical mineral mining, processing, or product manufacturing facility.

41 (2) Electing small business corporations, limited liability companies treated as partnerships
42 for federal income tax purposes, partnerships, and other unincorporated organizations shall
43 allocate the credit allowed by this article among its members in the same manner as profits and
44 losses are allocated for the taxable year.

45 (3) If the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before
46 application of allowable credits against tax, that is attributable to business, is not solely attributable
47 to and the direct result of the qualified investment of the electing small business corporation,
48 limited liability company treated as a partnership for federal income tax purposes, other
49 unincorporated organization, or sole proprietorship, the amount of the taxes that are so
50 attributable are determined by multiplying the amount of taxes due under §11-21-1 *et seq.* of this
51 code, as determined before application of allowable credits against tax that is attributable to
52 business by a fraction, the numerator of which is all wages, salaries, and other compensation paid

53 during the taxable year to all employees of the electing small business corporation, limited liability
54 company, partnership, other unincorporated organization, or sole proprietorship employed in this
55 state, whose positions are directly attributable to the qualified investment. The denominator of the
56 fraction is the wages, salaries, and other compensation paid during the taxable year to all
57 employees of the taxpayer.

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

60 (e) If the wages, salaries, and other compensation fraction formula provisions of
61 subsections (c) and (d) of this section, inclusive, do not fairly represent the taxes solely attributable
62 to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require,
63 in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

64 (1) Separate accounting or identification;

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

67 (3) The inclusion of one or more additional factors that will fairly represent the taxes solely
68 attributable to and the direct result of the qualified investment of the taxpayer and all other project
69 participants in the businesses or other activities subject to tax; or

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

71 (f) Unused credit. — If any credit remains after application of subsection (b) of this section,
72 the amount thereof is carried forward to each ensuing tax year until used or until the expiration of
73 the 10th taxable year subsequent to the end of the initial 10-year credit application period. If any
74 unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior
75 taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13MM-6. Qualified investment.

1 (a) General. — The qualified investment in property purchased or leased for a new, or
2 expansion of an existing, rare earth element or critical mineral mining, processing, or product

3 manufacturing facility is the applicable percentage of the cost of each property purchased or
4 leased for the purpose of the new, or expansion of an existing, rare earth element or critical
5 mineral mining, processing, or product manufacturing facility, which is placed in service or use in
6 this state by the taxpayer during the taxable year.

7 (b) *Applicable percentage.* — For the purpose of subsection (a), the applicable percentage
8 of any property is determined under the following table:

9 <u>If useful life is:</u>	<u>The applicable percentage is:</u>
10 <u>Less than four years</u>	<u>0%</u>
11 <u>Four years or more but less than six years</u>	<u>33 1/3%</u>
12 <u>Six years or more but less than eight years</u>	<u>66 2/3%</u>
13 <u>Eight years or more</u>	<u>100%</u>

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

17 (c) *Cost.* — For purposes of subsection (a) of this section, the cost of each property
18 purchased for a new, or expansion of an existing, rare earth element or critical mineral mining,
19 processing, or manufacturing facility is determined under the following rules:

20 (1) *Trade-ins.* — Cost does not include the value of property given in trade or exchange for
21 the property purchased for a new, or for expansion of an existing, rare earth element or critical
22 mineral mining, processing, or manufacturing facility; or

23 (2) *Damaged, destroyed, or stolen property.* — If property is damaged or destroyed by fire,
24 flood, storm, or other casualty, or is stolen, then the cost of replacement property does not include
25 any insurance proceeds received in compensation for the loss.

26 (3) *Rental property.* —

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

29 (B) The cost of tangible personal property acquired by written lease for a primary term of:
30 (i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;
31 (ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or
32 (iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the
33 lease, not to exceed 20 years: *Provided*, That in no event may rent reserved include rent for any
34 year subsequent to expiration of the book life of the equipment, determined using the straight-line
35 method of depreciation.

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

39 (5) *Transferred property.* — The cost of property used by the taxpayer out-of-state and
40 then brought into this state, is determined based on the remaining useful life of the property at the
41 time it is placed in service or use in this state, and the cost is the original cost of the property to the
42 taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer
43 used the property outside this state. In the case of leased tangible personal property, cost is based
44 on the period remaining in the primary term of the lease after the property is brought into this state
45 for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the
46 remaining period of the primary term of the lease, not to exceed 20 years, or the remaining useful
47 life of the property, as determined as aforesaid, whichever is less.

§11-13MM-7. New jobs percentage.

1 (a) *In general.* — The new jobs percentage is based on the number of new jobs created in
2 this state directly attributable to the qualified investment of the taxpayer.

3 (b) *When a job is attributable.* — An employee's position is directly attributable to the
4 qualified investment if:

5 (1) The employee's service is performed or his or her base of operations is at the new or
6 expanded rare earth element or critical mineral mining, processing, or manufacturing facility;

7 (2) The position did not exist prior to the construction, renovation, expansion, or acquisition
8 of the rare earth element or critical mineral mining, processing, or product manufacturing facility,
9 and the making of the qualified investment; and

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

11 (c) Applicable percentage. — For the purpose of subsection (a) of this section, the
12 applicable new jobs percentage is determined under the following table:

<u>If number of new jobs is at least:</u>	<u>The applicable percentage is:</u>
<u>5</u>	<u>10%</u>
<u>50</u>	<u>15%</u>
<u>150</u>	<u>20%</u>

17 (d) Certification of new jobs. — With the annual return for the applicable taxes filed for the
18 taxable year in which the qualified investment is first placed in service or use in this state, the
19 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it
20 in this state within the period prescribed in subsection (f) of this section that are, or will be, directly
21 attributable to the qualified investment of the taxpayer. For purposes of this section, applicable
22 taxes means the taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code against which
23 this credit is applied.

24 (e) Equivalency of permanent employees. — The hours of part-time employees shall be
25 aggregated to determine the number of equivalent full-time employees for the purpose of this
26 section.

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

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

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

44 (g) Additional new jobs percentage. — When the qualified investment is \$20 million or
45 more and if the number of full-time construction laborers and mechanics working at the job site of
46 the new or expanded business facility is 50 or more, or if the number of hours of all construction
47 laborers and mechanics working at the job site is equal to or greater than the number of hours 50
48 full-time construction laborers and mechanics would have worked at the job site during a 12
49 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under
50 subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points
51 higher than the new jobs percentage allowed under subsection (a) of this section. In no event may
52 construction laborers and mechanics be used to attain or retain a subsection (a) new jobs
53 percentage. The number of full-time construction laborers and mechanics working at the job site
54 shall be determined by dividing the total number of hours worked by all construction laborers and
55 mechanics on a new or expanded business facility during a 12 consecutive month period by 2,080
56 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this

57 section unless the taxpayer includes with the certification filed under subsection (d) of this section
58 a certification signed by the general contractor or the construction manager certifying that
59 construction laborers employed at the job site during a consecutive 12 month period aggregated
60 the equivalent of at least 50 full-time employees and the taxpayer has received from the general
61 contractor or construction manager records substantiating the certification, which records shall be
62 retained by the taxpayer for 13 years after the day the expansion to an existing business facility, or
63 the new business facility, is first placed in service or use by the taxpayer. For purposes of
64 subsection (g) of this section:

65 (1) The term construction laborers and mechanics means those workers, utilized by a
66 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including
67 those workers who use tools or are performing the work of a trade, as distinguished from mental or
68 managerial and working supervisors who devote more than 20 percent of their time during a
69 workweek performing the duties of a laborer or mechanic; and

70 (2) The term job site is limited to the physical place or places where the construction called
71 for in the contract will remain when the work on it is completed and nearby property, as described
72 in subdivision (3) of this subsection, used by the contractor or subcontractor during construction
73 that, because of proximity, can reasonably be included in the site.

74 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile
75 factories, batch plants, borrow pits, job headquarters, and tool yards are part of the job site
76 provided they are dedicated exclusively, or nearly so, to performance of the contract or project and
77 are located in proximity to the actual construction location so that it would be reasonable to include
78 them.

79 (4) The term "job site" does not include permanent home offices, branch offices, branch
80 plant establishments, fabrication yards, or tool yards of a contractor or subcontractor whose
81 locations and continuance in operation are determined without regard to the contract or
82 subcontract for construction of a new or expanded business facility.

§11-13MM-8. 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 §11-13MM-1 *et seq.* of this code:

3 (1) Is disposed of prior to the end of its useful life, as determined under §11-13MM-6 of this
4 code; or

5 (2) Ceases to be used in a rare earth element or critical mineral mining, processing, or
6 product manufacturing facility of the taxpayer in this state prior to the end of its useful life, as
7 determined under §11-13MM-6 of this code, then the unused portion of the credit allowed for the
8 property is forfeited for the taxable year and all ensuing years. Additionally, except when the
9 property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, the taxpayer
10 shall redetermine the amount of credit allowed in all earlier years by reducing the applicable
11 percentage of cost of the property allowed under §11-13MM-5 of this code, to correspond with the
12 percentage of cost allowable for the period of time that the property was actually used in this state
13 in the new or expanded business of the taxpayer. The taxpayer shall then file a reconciliation
14 statement for the year in which the forfeiture occurs and pay any additional taxes owed due to
15 reduction of the amount of credit allowable for the earlier years, plus interest and any applicable
16 penalties. The reconciliation statement shall be filed with the annual income return for the primary
17 tax for which the taxpayer is liable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code,
18 whichever is applicable.

19 (b) Cessation of operation of rare earth element or critical mineral mining, processing, or
20 product manufacturing facility. — If during any taxable year the taxpayer ceases operation of a
21 rare earth element or critical mineral mining, processing, or product manufacturing facility in this
22 state for which credit was allowed under this article, before expiration of the useful life of property
23 with respect to which tax credit has been allowed under this article, then the unused portion of the
24 allowed credit is forfeited for the taxable year and for all ensuing years. Additionally, except when
25 the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine the

26 amount of credit allowed in earlier years by reducing the applicable percentage of cost of the
27 property allowed under §11-13MM-6 of this code, to correspond with the percentage of cost
28 allowable for the period of time that the property was actually used in this state in a rare earth
29 element or critical mineral mining, processing, or product manufacturing business of the taxpayer
30 that is taxable under §11-24-1 et seq. of this code, or in the case of a partnership, limited liability
31 company treated as a partnership for federal income tax purposes, electing small business
32 corporation, other unincorporated entity, or sole proprietorship, taxable under §11-21-1 et seq. of
33 this code. The taxpayer shall then file a reconciliation statement with the annual return for the
34 primary tax for which the taxpayer is liable under §11-21-1 et seq. or §11-24-1 et seq. of this code,
35 whichever is applicable, for the year in which the forfeiture occurs, and pay any additional taxes
36 owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and
37 any applicable penalties.

38 (c) *Reduction in number of employees.* — If during any taxable year subsequent to the
39 taxable year in which the new jobs percentage is redetermined as provided in §11-13MM-7 of this
40 code, the average number of employees of the taxpayer, for the then current taxable year,
41 employed in positions created because of and directly attributable to the qualified investment falls
42 below the minimum number of new jobs created upon which the taxpayer's annual credit
43 allowance is based, the taxpayer shall calculate what his or her annual credit allowance would
44 have been had his or her new jobs percentage been determined based upon the average number
45 of employees, for the then current taxable year, employed in positions created because of and
46 directly attributable to the qualified investment. The difference between the result of this
47 calculation and the taxpayer's annual credit allowance for the qualified investment as determined
48 under §11-13MM-4 of this code, is forfeited for the then current taxable year, and for each
49 succeeding taxable year unless for a succeeding taxable year the taxpayer's average employment
50 in positions directly attributable to the qualified investment once again meets the level required to
51 enable the taxpayer to utilize its full annual credit allowance for that taxable year.

§11-13MM-9. 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 at a rare earth
3 element or critical mineral mining, processing, or manufacturing facility and who fails to use the
4 qualified investment property for at least the period of its useful life, as determined as of the time
5 the property was placed in service or use, or the period of time over which tax credits allowed
6 under this article with respect to the property are applied under this article, whichever period is
7 less, and who reduces the number of its employees filling new jobs at its rare earth element or
8 critical mineral mining, processing, or product manufacturing facility in this state, which were
9 created and are directly attributable to the qualified investment property, after the third taxable
10 year in which the qualified investment property was placed in service or use, or fails to continue to
11 employ individuals in all the new jobs created as a direct result of the qualified investment property
12 and used to qualify for the credit allowed by this article, prior to the end of the 10th taxable year
13 after the qualified investment property was placed in service or use, the person shall pay the
14 recapture tax imposed by subsection (b) of this section.

15 (2) This section does not apply when §11-13MM-11 of this code applies. However, the
16 successor, or the successors, and the person, or persons, who previously claimed credit under
17 this article with respect to the qualified investment property and the new jobs attributable thereto,
18 are jointly and severally liable for payment of any recapture tax subsequently imposed under this
19 section with respect to the qualified investment property and new jobs.

20 (b) Recapture tax imposed. — The recapture tax imposed by this subsection is the amount
21 determined as follows:

22 (1) Full recapture. — If the taxpayer prematurely removes qualified investment property
23 placed in service (when considered as a class) from economic service in the taxpayer's rare earth
24 element or critical mineral mining, processing, or product manufacturing facility in this state, and
25 the number of employees filling the new jobs created by the person falls below the number of new

26 jobs required to be created in order to qualify for the amount of credit being claimed, the taxpayer
27 shall recapture the amount of credit claimed under §11-13MM-5 of this code for the taxable year,
28 and all preceding taxable years, on qualified investment property which has been prematurely
29 removed from service. The amount of tax due under this subdivision is an amount equal to the
30 amount of credit that is recaptured under this subdivision.

31 (2) *Partial recapture.* — If the taxpayer prematurely removes qualified investment property
32 from economic service in the taxpayer's rare earth element or critical mineral mining, processing,
33 or product manufacturing facility in this state, and the number of employees filling the new jobs
34 created by the person remains 20 or more, but falls below the number necessary to sustain
35 continued application of credit determined by use of the new job percentage upon which the
36 taxpayer's one-tenth annual credit allowance was determined under §11-13MM-4 of this code,
37 taxpayer shall recapture an amount of credit equal to the difference between:

38 (A) The amount of credit claimed under §11-13MM-5 of this code for the taxable year, and
39 all preceding taxable years; and

40 (B) The amount of credit that would have been claimed in those years if the amount of
41 credit allowable under §11-13MM-4 of this code had been determined based on the qualified
42 investment property which remains in service using the average number of new jobs filled by
43 employees in the taxable year for which recapture occurs. The amount of tax due under this
44 subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

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

50 (c) Payment of recapture tax. — The amount of tax recaptured under this section is due
51 and payable on the day the person's annual return is due for the taxable year in which this section
52 applies, under §11-21-1 et seq. or §11-24-1 et seq. of this code. When the employer is a
53 partnership, limited liability company, or S corporation for federal income tax purposes, the
54 recapture tax shall be paid by those persons who are partners in the partnership, members in the
55 company, or shareholders in the S corporation, in the taxable year in which recapture occurs under
56 this section.

§11-13MM-10. Transfer of qualified investment to successors.

1 (a) Mere change in form of business. — Property may not be treated as disposed of under
2 §11-13MM-8 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's rare earth element or critical mineral mining,
4 processing, or product manufacturing facility in this state, and the transferor business retains a
5 controlling interest in the successor business. In this event, the successor business is allowed to
6 claim the amount of credit still available with respect to the business facility or facilities transferred,
7 and the transferor business may not be required to redetermine the amount of credit allowed in
8 earlier years.

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

§11-13MM-11. Identification of investment credit property.

1 Every taxpayer who claims credit under §11-13MM-1 et seq. of this code shall maintain
2 sufficient records to 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 use as qualified property in the
9 rare earth element or critical mineral mining, processing, or product manufacturing facility of the
10 taxpayer.

§11-13MM-12. 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 that
5 year.

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

§11-13MM-13. 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 §11-13MM-1 et seq. of this code; and no legal effect may be given to any descriptive matter or
4 heading relating to any section, subsection, or paragraph of this article.

5 (b) The provisions of §11-13MM-1 et seq. of this code shall be reasonably construed in
6 order to effectuate the legislative intent recited in §11-13MM-2 of this code.

§11-13MM-14. Burden of proof; application required; failure to make timely application.

1 (a) Burden of proof. — The burden of proof is on the taxpayer to establish by clear and
2 convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13MM-1 et seq. of
3 this code.

4 (b) Application for credit required. —

5 (1) Application required. — Notwithstanding any provision of this article to the contrary, no
6 credit is allowed or may be applied under §11-13MM-1 et seq. of this code for any qualified
7 investment property placed in service or use until the person asserting a claim for the allowance of
8 credit under this article makes written application to the commissioner for allowance of credit as
9 provided in this subsection. An application for credit shall be filed, in the form prescribed by the Tax
10 Commissioner, no later than the last day for filing the tax returns, determined by including any
11 authorized extension of time for filing the return, required under §11-21-1 et seq. or §11-24-1 et
12 seq. of this code for the taxable year in which the property to which the credit relates is placed in
13 service or use and all information required by the form shall be provided.

14 (2) Failure to make timely application. — The failure to timely apply for the credit results in
15 the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13MM-1
16 et seq. of this code. This penalty applies annually until the application is filed.

§11-13MM-15. Tax credit review and accountability.

1 (a) Beginning on February 1, 2028, and every third year thereafter, the Tax Commissioner
2 shall submit to the Governor and the Joint Committee on Government and Finance a tax credit
3 review and accountability report evaluating the cost effectiveness of this credit during the most
4 recent three-year period for which information is available. The criteria to be evaluated shall
5 include, but not be limited to, for each year of the three-year period:

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

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

8 (3) The cost of the credit;

9 (4) The cost of the credit per new job created; and
10 (5) Comparison of employment trends for an industry and for taxpayers within the industry
11 that claim the credit.

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

15 (c) On or before February 1, 2028, the Department of Commerce, in consultation with the
16 Tax Commissioner, the Department of Transportation, and the Department of Environmental
17 Protection shall submit to the Governor and the Joint Committee on Government and Finance a
18 report of the impact of all the tax credits and other economic incentives provided in §11-13MM-1 *et*
19 *seq.* of this code upon: (1) Economic development in this state, including, but not limited to, the
20 creation of jobs in this state; (2) the state's infrastructure, including, but not limited to, the need for
21 construction or maintenance of the roads and highways of the state; (3) the natural resources of
22 the state; and (4) upon public and private property interests in the state.

§11-13MM-16. Rules.

1 The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules
2 as the commissioner deems to be useful or necessary to carry out the purpose of §11-13MM-1 *et*
3 *seq.* of this code and to implement the intent of the Legislature. The Tax Commissioner may
4 promulgate emergency rules. All rules shall be promulgated in accordance with the provisions of
5 §29A-3-1 *et seq.* of this code.

§11-13MM-17. General procedure and administration.

1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set
2 forth in §11-10-1 *et seq.* of this code applies to the tax credit allowed under §11-13MM-1 *et seq.* of
3 this code, except as otherwise expressly provided in this article, with like effect as if that act were
4 applicable only to the tax credit allowed by §11-13MM-1 *et seq.* of this code and were set forth *in*
5 *extenso* in this article.

§11-13MM-18. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in
2 §11-9-1 et seq. of this code applies to the tax credit allowed by §11-13MM-1 et seq. of this code
3 with like effect as if that act were applicable only to the tax credit §11-13MM-1 et seq. of this code
4 and were set forth in extenso in this article.

§11-13MM-19. Severability.

1 (a) If any provision of §11-13MM-1 et seq. of this code, or the application thereof, is for any
2 reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect,
3 impair, or invalidate the remainder of §11-13MM-1 et seq. of this code, but shall be confined in its
4 operation to the provision thereof directly involved in the controversy in which the judgment shall
5 have been rendered, and the applicability of the provision to other persons or circumstances may
6 not be affected thereby.

7 (b) If any provision of §11-13MM-1 et seq. of this code, or the application thereof, is made
8 invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein
9 addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the
10 remainder of §11-13MM-1 et seq. of this code, but shall be confined in its operation to the provision
11 thereof directly involved with, pertaining to, addressing, or referring to the statute, and the
12 application of the provision with regard to other statutes or in other instances not affected by any
13 such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13MM-20. Applicability to qualified investment property.

1 Nothing in this article prohibits a qualified investment property from being subject to a
2 payment in lieu of taxes agreement as provided for in §7-11B-18 of this code.

§11-13MM-21. Effective date.

1 The credit allowed by this article is allowable for qualified investment property placed in
2 service or use on or after July 1, 2024, subject to the rules contained in §11-13MM-1 et seq. of this
3 code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to create the Critical Mineral Investment Tax Credit Act of 2023. The bill exempts rare earth elements, critical minerals, and carbon-based products otherwise taxed elsewhere in code. The amount of credit allowable depends upon the cost of the qualified investment property and the number of new jobs created. Property that qualifies for another tax credit in chapter 11 of the West Virginia Code is not eligible for credit under this bill. Similarly, qualified investment property under this bill is not eligible for another credit under chapter 11 of the code. The bill includes rules for administration and enforcement of the credit. If enacted, the credit would apply to qualified investment property placed in service or use at a rare earth element or critical mineral mining or processing facility, or a manufacturing facility that uses rare earth elements or critical minerals in this state. The bill allows for qualified investment. The bill provides for an effective date. Finally, the bill establishes clear legal right to the title of chemical compounds, elements, and substances that are derived from the treatment of acid mine drainage on mined lands.

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