

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4013

**FISCAL
NOTE**

By Delegates J. Cannon, Akers, Kyle, D. Cannon, T.

Howell, Worrell, Drennan, Jeffries, Hornby, Hott, and

Mallow

[Introduced January 15, 2026; referred to the

Committee on Finance]

1 A BILL amend the Code of West Virginia, 1931, as amended, by adding a new article, designated
2 §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-6, §11-
3 13NN-7, §11-13NN-8, §11-13NN-9, §11-13NN-10, §11-13NN-11, §11-13NN-12, §11-
4 13NN-13, §11-13NN-14, §11-13NN-15, §11-13NN-16, §11-13NN-17, §11-13NN-18, and
5 §11-13NN-19, relating to the Mountaineer Flexible Tax Credit Act of 2026; establishing a
6 short title; setting out legislative findings and purpose; defining terms; creating the
7 application process; calculating the tax incentive award; reporting requirements; requiring
8 audits and interagency cooperation; jurisdiction; permitting rule making; creating record
9 keeping requirements; statutory construction; creating the burden of proof; applying this
10 article to the West Virginia Tax Crimes and Penalties Act; providing for severability; and
11 setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. MOUNTAINEER FLEXIBLE TAX CREDIT ACT OF 2026.

§11-13NN-1. Short title.

1 This article may be cited as the Mountaineer Flexible Tax Credit Act of 2026.

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

1 The Legislature finds that the encouragement of economic development through business
2 tax incentives is in the public interest and promotes the general welfare of the people of this state.
3 There is hereby enacted this flexible tax credit act to encourage greater investment in businesses
4 in this state and thereby increase economic opportunity.

§11-13NN-3. Definitions.

1 As used in this article, or in the application of this article, unless the context clearly requires
2 a different meaning:

3 "Affiliated group" means any affiliated group within the meaning of section 1504(a) of the
4 Internal Revenue Code, or any similar group defined under a similar provision of state, local, or
5 foreign law, except that section 1504 of Internal Revenue Code shall be applied by substituting

6 "more than 50 percent" for "at least 80 percent" each place it appears in that section.

7 "Authority" means the West Virginia Department of Commerce or a designated division
8 thereof.

9 "Annual report" means the report described in §11-13NN-8 of this code.

10 "Applicable accounting rules" shall mean the accounting principles generally recognized
11 as applicable to a qualified business or industry and pursuant to which such qualified business or
12 industry regularly prepares and maintains its financial and accounting books and records, and
13 which specifically incorporate Generally Accepted Accounting Principles or International Financial
14 Reporting Standards, as appropriate.

15 "Applicant" means any corporation, limited liability company, partnership, person or sole
16 proprietorship, business trust, or other legal entity and subunit or affiliate thereof that applies to the
17 authority, in the manner prescribed by this article, seeking (i) certification by the authority that such
18 applicant is a qualified business or industry and that its proposed new project or expansion of an
19 existing business or industrial operation is a qualified economic development project, and (ii) an
20 award in connection therewith of an mountaineer flex tax incentive.

21 "Average state or county wage" shall mean, as of the project certification date, the lesser of
22 the most recently published average annual wage per person as determined and published by
23 Work Force West Virginia and/or the authority for the state or the county in which the qualified
24 project is or will be located; *Provided That*, if a qualified project is or will be located in two or more
25 counties, the average state or county wage shall mean, as of the project certification date, only the
26 most recently published average annual wage per person for the state.

27 "Average employer wage" means the qualified annual payroll for all new full-time jobs
28 created in the state by a qualified business or industry divided by the number of new full-time jobs
29 thereof for which such qualified annual payroll was paid or is otherwise payable.

30 "Base full-time job" means a job:

31 (1) For which an employee was already hired by the qualified business or industry before,

and is employed as of, the project certification date;

(2) That offers a minimum of 1,820 hours of an employee's time per year (i.e., 35 hours per week on average) for a normal four consecutive quarter period of the qualified business or industry's operations or a job for which the employee was hired before, and is employed as of, the project certification date and is compensated based on 1,820 hours for such annual period (including in each case an employee who, after hiring, elects to take unpaid time off or is on short-term or long-term disability); and

(3) That employee holding such job receives salary or wages subject to state income tax withholdings. The term "base full-time job" also means a base-leased employee. Part-time jobs may not be combined to add up to a base full-time job.

"Base-leased employee" means a non-temporary employee:

(1) Who was leased by the qualified business or industry before the project certification date from another business or enterprise that is (i) in the business of leasing employees, and (ii) is registered with the Office of the Secretary of State and qualified to do business in the state;

(2) Who is leased as of the project certification date;

(3) Who is not otherwise an employee of such qualified business or industry;

(4) Who, as of the project certification date, was already performing services for, and under the supervision of, the qualified business or industry pursuant to a leasing agreement between the qualified business or industry and such other employee leasing firm;

(5) Whose job-performing services for the qualified business or industry offers a minimum of 1,820 hours of an employee's time per year (i.e., 35 hours per week on average) for an entire normal work year of the qualified business or industry's operations or a job for which the employee is leased before the project certification date and is compensated based on 1,820 hours for such annual period (including in each case an employee who, after being leased, elects to take unpaid time off or is on short-term or long-term disability); and

(6) Whose job receives salary or wages subject to state income tax withholdings.

Individuals employed by an independent contractor performing one or more services for the qualified business or industry pursuant to a services or management agreement (e.g., security services, landscaping services, and cafeteria management and food services) shall not be considered as base-leased employees.

"Manufacturing machinery" is to be broadly defined and interpreted to mean machinery owned or leased for use in manufacturing tangible personal property for subsequent distribution in commerce for consideration including, without limitation, conveyors and similar items for use in transporting the unfinished product, laboratory machinery for testing and quality control, equipment used in the processing of waste materials and pollution, computer equipment, machinery used for maintenance and repair, storage warehouse machinery, safety equipment, and other equipment and supplies of like character.

"Mountaineer flex agreement" means the written agreement entered between a qualified business or industry and the authority in accordance with §11-13NN-5 of this code.

"Mountaineer flex tax incentive" means the tax incentive authorized by this article to be calculated and awarded by the authority, and thereafter applied as a credit to offset state taxes, in accordance with, and subject to, this article.

"Minimum job creation requirement" means the creation by the qualified business or industry, following the project certification date, of at least 10 new full-time jobs in the state.

"Minimum qualified investment" means a qualified investment of not less than \$2.5 million.

"New full-time job" means a job:

(1) For which an employee is hired by the qualified business or industry after the project certification date;

(2) That offers a minimum of 1,820 hours of an employee's time per year (i.e., 35 hours per week on average) for a normal four consecutive quarter period of the qualified business or industry's operations or a job for which the employee is hired after the project certification date and is compensated based on 1,820 hours for such annual period (including in each case an employee

who, after hiring, elects to take unpaid time off or is on short-term or long-term disability); and

(3) That employee holding such job receives salary or wages subject to state income tax withholdings. The term "new full-time job" also means new-leased employee. Part-time jobs may not be combined to add up to a new full-time job.

"New-leased employee" means a non-temporary employee:

(1) Who is leased by the qualified business or industry after the project certification date from another business or enterprise that is (i) in the business of leasing employees, and (ii) is registered with the Office of the Secretary of State and qualified to do business in the state;

(2) Who is not otherwise an employee of such qualified business or industry;

(3) Who performs services for the qualified business or industry pursuant to a leasing agreement between the qualified business or industry and such other employee-leasing firm;

(4) Whose job-performing services for the qualified business or industry offers a minimum of 1,820 hours of an employee's time per year (i.e., 35 hours per week on average) for an entire normal work year of the qualified business or industry's operations or a job for which the employee is leased after the project certification date and is compensated based on 1,820 hours for such annual period (including in each case an employee who, after being leased, elects to take unpaid time off or is on short-term or long-term disability); and

(5) Whose job receives salary or wages subject to state income tax withholdings. Individuals employed by an independent contractor performing one or more services for the qualified business or industry pursuant to a services or management agreement (e.g., security services, landscaping services, cafeteria management, and food services) shall not be considered as new-leased employees.

"Nonmanufacturing equipment" means all tangible personal property that is not manufacturing machinery, including, but not limited to, office furniture, fixtures, office computers, communications equipment, and warehouse equipment such as racking and shelving.

"Part-time job" means a job:

110 (1) For which an employee is hired by the qualified business or industry that requires fewer
111 than 1,820 hours of an employee's time per year (i.e., requires fewer than 35 hours per week on
112 average) for an entire normal work year of the qualified business or industry's operations or a job
113 for which the employee is hired and is compensated based on fewer than 1,820 hours for such
114 annual period; and

115 (2) For which the employee holding such job receives salary or wages subject to state
116 income tax withholdings.

117 "Project certification date" means the actual date of the authority's certification, or the
118 effective date of certification determined and prescribed by the authority, of the qualified business
119 or industry and its qualified economic development project as eligible for the state tax credits
120 determined and awarded by the authority, as authorized by, and in accordance with, this article.

121 "Qualified annual payroll" means the sum of the annual salary and wages for new full-time
122 jobs of the qualified business or industry, excluding the amount or value of any benefits that are not
123 subject to state income taxes.

124 "Qualified business or industry" means any corporation, limited liability company,
125 partnership, person or sole proprietorship, business trust, or other legal entity and subunit or
126 affiliate thereof, which makes or causes to be made the minimum qualified investment in, and/or
127 satisfies or causes to be satisfied the minimum job creation requirement for, a qualified economic
128 development project.

129 "Qualified economic development project" or "qualified project" means the location in the
130 state of one or more of the following enumerated enterprises for which a corporation, limited
131 liability company, partnership, sole proprietorship, business trust, or other legal entity, or subunit or
132 affiliate thereof, makes or causes to be made the minimum qualified investment and/or satisfies or
133 causes to be satisfied the minimum job creation requirement:

134 (1) A new warehouse and/or distribution enterprise or an expansion of an existing
135 warehouse and/or distribution enterprise; *Provided*, That in any such instance, such warehouse

and/or distribution enterprise or expansion thereof is certified by the authority to qualify as such;

(2) A new manufacturing, remanufacturing, assembly, processing and/or refinery enterprise or an expansion of an existing manufacturing, remanufacturing, assembly, processing and/or refinery enterprise; *Provided*, That in any such instance, such manufacturing, remanufacturing, assembly, processing and/or refinery enterprise or expansion thereof is certified by the authority to qualify as such;

(3) A new research or research and development enterprise or an expansion of an existing research or research and development enterprise; *Provided*, That in any such instance, such research and development enterprise or an expansion thereof is certified by the authority to qualify as such;

(4) A new regional or national headquarters of the qualified business or industry or an expansion of an existing regional or national headquarters of the qualified business or industry; *Provided*, That in any such instance, such regional or national headquarters or expansion thereof is certified by the authority to qualify as such;

(5) An air transportation, repair, or maintenance enterprise or an expansion of an existing air transportation, repair, or maintenance enterprise; *Provided*, That in either instance, such air transportation, repair, or maintenance enterprise or expansion thereof is certified by the authority to qualify as such;

(6) A ship or barge transportation, repair, and/or maintenance enterprise or an expansion of an existing ship or barge transportation, repair, and/or maintenance enterprise; *Provided*, That in either instance, the ship or barge transportation, repair, and/or maintenance enterprise or expansion thereof is certified by the authority to qualify as such;

(7) A new data/information processing enterprise or an expansion of an existing new data/information processing enterprise; *Provided*, That in any such instance such data/information processing enterprise or expansion thereof is certified by the authority to qualify as such;

(8) A new technology intensive enterprise or an expansion of an existing technology

intensive enterprise including, without limitation, a business or enterprise primarily engaged in creating computer programming codes to develop applications, websites, and/or software; *Provided*, That in any such instance such technology intensive enterprise or expansion thereof is certified by the authority to qualify as such;

(9) A new telecommunications enterprise principally engaged in the creation, display, management, storage, processing, transmission, or distribution, for compensation, of images, text, voice, video or data by wire or by wireless means, or engaged in the construction, design, development, manufacture, maintenance, or distribution for compensation of devices, products, software, or structures used in the above activities, or an expansion of an existing telecommunications enterprise as herein described; *Provided*, That, in any such instance, any such telecommunications enterprise or expansion thereof is certified by the authority to qualify as such; *Provided, however*, That commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprise";

(10) A new data center enterprise principally engaged in the utilization of hardware, software, technology, infrastructure, or workforce, to store, manage, or manipulate digital data, or an expansion of an existing data center enterprise as herein described; *Provided* That, in such instance, any such data center enterprise or expansion thereof is certified by the authority to qualify as such.

"Qualified investment" means any expenditures made or caused to be made by the qualified business or industry following the project certification date for construction, installation, equipping, and operation of a qualified economic development project from any source or combination of sources, excluding any funds contributed by the state or any agency or other political subdivision thereof, or by any local government or any agency or other political subdivision thereof, to the extent such expenditures can be capitalized under applicable accounting rules or otherwise by the Internal Revenue Code, whether or not the qualified business

or industry elects to capitalize the same, as reflected in its financial statements, including, but not limited to, all costs associated with the acquisition, installation, or construction of, or capital leasehold interest in, any buildings and other real property improvements, fixtures, equipment, machinery, landscaping, fire protection, depreciable fixed assets, engineering, and design costs; *Provided*, That "qualified investment" shall not include the acquisition or development of natural resources, including, but not limited to, all forms of minerals, such as rock, limestone, coal, gravel, sand, clay, natural gas, oil, and natural gas liquids, which are contained in or on the soils or waters of this state, and standing timber.

"Reporting year" means the twelve-month period ending on the last day of the month during which the annual anniversary of a project certification date occurs, and for which an annual report must be filed with the authority by a qualified business or industry in accordance with §11-13NN-8 of this code.

"State" means the State of West Virginia.

"State tax" means:

(1) Any sales and use tax imposed on, and payable directly to the Tax Department by the qualified business or industry in accordance §11-15-1 *et seq.*, §11-15A-1 *et seq.*, or §11-15B-1 *et seq.*, of this code;

(2) All income tax imposed pursuant to §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code on income earned by the qualified business or industry;

(3) Any business and franchise tax imposed pursuant to §11-13-1 *et seq.* of this code; and

(4) Withholding of state taxes required to be deducted and withheld from employee wages pursuant to §11-21-1 *et seq.* of this code.

§11-13NN-4. Application for the mountaineer flex tax incentive.

Business or industrial enterprises wishing to apply for the mountaineer flex tax incentive authorized by this article shall make application to the authority, on a form prescribed thereby; provided that the application shall, at a minimum, contain:

4 (a) A brief overview of the applicant's business or industry, including its formation type
5 (e.g., corporation, limited liability company, limited partnership, etc.), its date of incorporation or
6 formation, and the location of its principal headquarters, together with its principal place of
7 business in the state, if the applicant already has one or more facilities located in the state;

8 (b) The location of the selected project site;

9 (c) A description of the proposed project;

10 (d) The amount of the proposed qualified investment to be made as a result of the
11 proposed project, including a breakout of projected expenditures for manufacturing machinery,
12 nonmanufacturing equipment, and component building materials to establish and equip the
13 proposed project;

14 (e) If the proposed project will be an expansion of an existing business or industrial
15 operation, the current number of base full-time jobs;

16 (f) The number of new full-time jobs to be created as a result of the proposed project;

17 (g) The average employer wage proposed to be paid by the applicant for new full-time jobs;

18 (h) A description of benefits, including but not limited to, health, dental, and/or vision
19 insurance, retirement savings account, etc. made available to employees, as well as a description
20 of any employees to whom such benefits are not made available (e.g., part-time employees);

21 (i) The length of time necessary for the applicant to meet its qualified investment and new
22 full-time job creation projections;

23 (j) A list of all affiliates of the qualified business or industry known at the time of the
24 application, including the Federal Employer Identification Number for each such affiliate, which
25 have or are expected to have any state tax liability that may be offset by all or some portion of the
26 mountaineer flex tax incentives awarded to the qualified business or industry;

27 (k) An acknowledgment that the applicant, if awarded an mountaineer flex tax incentive
28 pursuant to this article, will be required to provide the annual report prescribed §11-13NN-8 of this
29 code to demonstrate the actual amount of its qualified investment, including actual expenditures

on manufacturing machinery, nonmanufacturing equipment, component building materials, and the number of new full-time jobs created and maintained as a result of the project; and

(l) Any other information as may be requested by the authority.

§11-13NN-5. Certification and award of mountaineer flex tax incentive, terms of incentive, nontransferability of certification and incentive; mandatory and permissive conditions to certifications and incentive awards.

(a) The authority shall evaluate each application to determine whether the applicant's proposed project is a qualified economic development project and whether it is eligible for an award by the authority of a mountaineer flex tax incentive to be calculated in accordance with this article.

(b) Upon approval of an applicant's application, the authority shall facilitate the execution of a mountaineer flex agreement and issue a certification, which certification shall:

(1) Designate the applicant's project as a "qualified economic development project" eligible for the mountaineer flex tax incentive authorized by this article;

(2) Award the initial mountaineer flex tax incentive calculated pursuant to §11-13NN-6 of this code; and

(3) Impose those mandatory conditions pursuant to this article and any discretionary conditions imposed by the authority.

(c) Upon the issuance of the certification and execution of the mountaineer flex agreement by a qualified business or industry and the authority, the qualified business or industry may apply the amount of its mountaineer flex tax incentive as a credit to offset those state taxes specified herein (except for withholding tax required to be deducted and withheld from employee wages pursuant to §11-21-1 *et seq.* of this code.), as incurred, up to the full amount of the mountaineer flex tax incentive awarded by the authority for the associated qualified economic development project, *Provided*, That up to 20 percent of the mountaineer flex tax incentive amount may be applied as a credit during the course of any reporting year to offset withholding tax deducted and

withheld from employee wages pursuant to §11-21-1 et seq. of this code; *Provided, however,* That the amount of the mountaineer flex tax incentive available to be applied as a credit to offset such state taxes shall be subject to any subsequent adjustments made by the authority to such award pursuant to §11-13NN-8 of this code, and any performance requirements set out in the mountaineer flex agreement. The amount of the mountaineer flex tax incentive available to be applied as a credit to offset state taxes, described in §11-13NN-3 of this code, shall be limited to those taxes payable directly by the qualified business or industry to the Tax Department. The amount of the mountaineer flex tax incentive available to be applied as a credit to offset state taxes may not be applied as a credit to offset state taxes incurred prior to the issuance of the certification by the authority and execution of the mountaineer flex agreement by the qualified business or industry and the authority.

(d) The following conditions shall apply to each such certification made and each mountaineer flex tax incentive awarded by the authority in accordance with this article:

(1) Any certification and mountaineer flex tax incentive award issued by the authority under this article is nontransferable and cannot be applied, used, or assigned to any other person, business, or tax account without prior written approval of the authority, except for the one or more affiliates of the qualified business or industry disclosed on its application or disclosed in a subsequent annual report submitted to the authority in accordance with this article;

(2) No qualified business or industry may claim or use the mountaineer flex tax incentive awarded under this article unless the qualified business or industry is in full compliance with all state and local laws, ordinances, permits, and other applicable governmental approvals; and

(3) Each qualified business or industry must enter into an mountaineer flex agreement with the authority which sets out, at a minimum,

(A) The obligation of the business or industry to provide an annual report to the authority pursuant to §11-13NN-8 of this code that demonstrates the actual amount of its qualified investment including actual expenditures on manufacturing machinery, nonmanufacturing

equipment, and component building materials, the number of new full-time jobs created and maintained as a result of the project, and any other relevant information as may be required by the authority; and

(B) Terms for readjustment or recapture of all or a portion of the mountaineer flex tax incentive awarded thereto if the applicant:

(i) Fails to satisfy the minimum job creation requirement if certification of the project is predicated on satisfaction of the minimum job creation requirement and not the minimum qualified investment;

(ii) Fails to satisfy the minimum qualified investment if certification of the project is predicated on satisfaction of the minimum qualified investment and not the minimum job creation requirement; or

(iii) Fails to otherwise satisfy any other additional conditions and requirements of the qualified business or industry or its qualified economic development project that are imposed by the authority.

(4) In addition to those mandatory conditions prescribed by this article that apply to each certification and award of a mountaineer flex tax incentive made by the authority, the authority is authorized to impose any other conditions upon any certification and award of an mountaineer flex tax incentive as it shall find best promotes economic development in the state.

(5) Upon certifying a qualified business or industry as eligible for, and awarding, an mountaineer flex tax incentive under this article, the authority shall forward the certification along with any other necessary information to the Tax Department so that the mountaineer flex tax incentive awarded to the qualified business or industry can be recorded by the Tax Department and used to verify each state tax credit subsequently applied by the qualified business or industry.

(6) Within 30 days following the end of each calendar year or immediately upon request, the authority shall provide to the Governor and the Joint Committee on Government and Finance

copies of certifications, together with corresponding mountaineer flex agreements approved and executed, during the immediately preceding calendar year or other period if requested.

§11-13NN-6. Calculation and application of mountaineer flex tax incentive award.

The total amount of the initial mountaineer flex tax incentive determined and awarded by the authority to the certified applicant shall be calculated as follows:

(a) One and one-half percent of the total purchase, sales price, or value, including any installation costs thereof, as applicable, of all manufacturing or processing machinery acquired, leased, or otherwise moved into the state following the project certification date to establish and equip the qualified economic development project; plus

(b) Seven percent of the total purchase, sales price, or value, including any installation costs thereof, as applicable, of all nonmanufacturing equipment, other than tagged over-the-road vehicles, acquired, leased, or otherwise moved into the state following the project certification date to establish and equip the qualified economic development project; plus

(c) Two percent of the total contract price or compensation paid to any contractor pursuant to any construction contract entered into following the project certification date by the qualified business or industry or any affiliate thereof, to construct, build, erect, repair, or add to any building, facility, structure, or other improvement to real property to establish and construct the qualified economic development project; plus, if applicable;

(d) To the extent that the average employer wage is equal to or more than 75 percent of the average state or county wage, then an additional 15 percent of the product derived by multiplying the average employer wage by the number of new full-time jobs; plus;

(1)(A) If the qualified economic development project is an enterprise enumerated in §11-13NN-3 of this code; and

(B) The number of new full-time jobs total 50 or more;

(C) The qualified investment totals [\\$10 million](#) or more;

(D) The average employer wage is equal to or more than 110 percent of the average state

24 or county wage; and.

25 (E) All full-time employees are eligible for and offered health insurance coverage funded in
26 whole or at least 50 percent by the qualified business or industry (or by a leasing company with
27 respect to leased employees), then an additional 30 percent of the product derived by multiplying
28 the average employer wage by the number of new full-time jobs; or

29 (2)(A) If subdivision (1) does not apply, but the number of new full-time jobs totals 25 or
30 more;

31 (B) The average employer wage is equal to or more than 125 percent of the average state
32 or county wage; and

33 (C) All full-time employees are eligible for and offered health insurance coverage funded in
34 whole or at least 50 percent by the qualified business or industry (or by a leasing company with
35 respect to leased employees), then an additional 30 percent of the product derived by multiplying
36 the average employer wage by the number of new full-time jobs.

37 (e) The initial mountaineer flex tax incentive award amount determined and awarded on
38 the project certification date shall be based upon estimates provided by the qualified business or
39 industry to the authority with respect to paragraphs (a) through (d) of this section, which estimates
40 shall be memorialized as project performance measures agreed to by the qualified business or
41 industry in the mountaineer flex agreement; *Provided*, That such initial award amount shall be
42 subject to any subsequent adjustments made by the authority pursuant to §11-13NN-8 of this
43 code.

§11-13NN-7. Exclusive utilization of mountaineer flex tax incentive.

1 (a) A qualified business or industry awarded a mountaineer flex tax incentive by the
2 authority for its qualified economic development project shall not be eligible for, nor shall it apply
3 for or claim, any one or more other tax credits, tax exemptions, or tax incentives for any qualified
4 project once certified by the authority.

5 (b) Notwithstanding subsection (a) of this section, a qualified business or industry shall not

6 be prohibited from applying for or receiving any other tax credits, tax exemptions, or tax incentives
7 for any project or expansion which is not certified by the authority as a qualified economic
8 development project and for which no mountaineer flex tax incentive is awarded, notwithstanding
9 the fact the qualified business or industry is awarded an mountaineer flex tax incentive by the
10 authority for a specific qualified economic development project undertaken thereby.

§11-13NN-8. Taxpayer annual performance reporting, and reviews; subsequent
adjustments to mountaineer flex tax incentive award; deadline for mountaineer flex
tax incentive utilization.

1 (a) Each qualified business or industry shall file an annual report to the authority for each
2 qualified economic development project which has been certified and for which any mountaineer
3 flex tax incentive has been awarded.

4 (b) Each annual report shall be due to the authority no later than the last business day of
5 the month following the quarter during which the annual anniversary of its project certification date
6 occurred. Each annual report shall include the information set forth in this section, together with
7 any other information required to be provided pursuant to its mountaineer flex agreement, for the
8 immediately preceding twelve-month period ending on the last day of the month during which the
9 annual anniversary of its project certification date occurred.

10 (c) Each annual report submitted to the authority shall, at a minimum, contain the following
11 information:

12 (1) The total qualified investment made between the project certification date through the
13 end of the reporting year, including a breakout of actual expenditures made by the qualified
14 business or industry for manufacturing machinery, nonmanufacturing equipment, and component
15 building materials to establish and equip the qualified economic development project;

16 (2) The incremental qualified investment made during the reporting year, including a
17 breakout of actual expenditures made by the qualified business or industry for machinery,
18 equipment, and materials to establish and equip the qualified economic development project;

19 (3) If applicable, the total number of base full-time jobs;

20 (4) The total number of people employed in new full-time jobs as of the last day of the year
21 preceding the reporting year;

22 (5) The total number of people employed in new full-time jobs as of the last day of the
23 reporting year;

24 (6) The average employer wage for the reporting year;

25 (7) The percentage and number, as of the last day of the reporting year, of new full-time
26 employees who are eligible for and offered health insurance coverage funded in whole or at least
27 50 percent by the qualified business or industry (or by a leasing company with respect to leased
28 employees);

29 (8) A description of employee benefits, including, but not limited to, health, dental and/or
30 vision insurance, retirement savings account, etc. made available to employees, as well as a
31 description of any employees to whom the benefits are not made available (e.g., part-time
32 employees);

33 (9) The total amount of the mountaineer flex tax incentive awarded, which the qualified
34 business or industry has already applied and taken as a credit to offset state taxes through the end
35 of the reporting period;

36 (10) A list of all affiliates of the qualified business or industry, including the Federal
37 Employer Identification Number for each affiliate, for which any state tax liability thereof has been
38 or is expected to be offset by all or some portion of the mountaineer flex tax incentives awarded to
39 the qualified business or industry, which list shall further identify:

40 (A) Any affiliate of the qualified business or industry that was not disclosed as such on its
41 application or annual report submitted for the prior reporting period, whichever was more recent,
42 but which has either become an affiliate of the qualified business or industry as of the date the
43 current annual report or which the qualified business or industry desires to utilize all or a portion of
44 its mountaineer flex tax incentive as a credit to offset the affiliate's state tax liability following the

45 date of the current annual report;

46 (B) Any change in the name of any previously disclosed affiliate since the date the qualified
47 business or industry filed its application or annual report for the prior reporting period, whichever
48 was more recent;

49 (C) Any prior affiliate of the qualified business or industry disclosed as such on its
50 application or annual report for the prior reporting period, whichever was more recent, and which is
51 no longer an affiliate of the qualified business or industry as of the date the current annual report;
52 and

53 (D) Any affiliate of the qualified business or industry disclosed as such on its application or
54 annual report for the prior reporting period, whichever was more recent, and which the qualified
55 business or industry no longer desires that the affiliate utilize all or a portion of its mountaineer flex
56 tax incentive as a credit to offset the affiliate's state tax liability following the date of the current
57 annual report.

58 (d) The authority shall prescribe a form or forms for the annual report.

59 (e) Notwithstanding the obligation of a qualified business or industry to file an annual report
60 with the authority for each qualified economic development project which has been certified and
61 for which any mountaineer flex tax incentive has been awarded, the authority is authorized to
62 request from the qualified business or industry at any other time any of the information set forth
63 herein that must be included in an annual report for purposes of determining whether a qualified
64 business or industry has met the project performance measures set forth in its mountaineer flex
65 agreement or before the respective deadlines imposed with respect thereto. Upon any such
66 written request by the authority, the qualified business or industry shall within 30 days after receipt
67 of the request, provide to the authority a certified copy of the information requested.

68 (f) If a qualified business or industry fails to either file an annual report with the authority on
69 or before the deadline or provide any information requested by the authority pursuant to
70 subsection (e) of this section within the time period mandated, the authority shall provide written

notice to the qualified business or industry of the failure to report, and the qualified business or industry shall have 30 additional days to cure the reporting failure following its receipt of the notice. If the qualified business or industry thereafter fails to file its annual report with the authority, or provide such information requested by the authority within the 30 day cure period, the authority is authorized to suspend or revoke, at its discretion, all or a portion of the amount of the mountaineer flex tax incentive previously awarded to the qualified business or industry for its qualified economic development project.

(g) If a qualified business or industry either fails to achieve or exceeds any project performance measure set forth in its mountaineer flex agreement within or for any time period required by such agreement, the authority shall, following its:

(1) Review of any annual report filed by the qualified business or industry or of any certified information provided by the qualified business or industry, and

(2) Verification based upon such information that the qualified business or industry either failed to achieve or exceeded any of the project performance measures set forth in its mountaineer flex agreement within or for any time period required by such agreement, adjust the mountaineer flex tax incentive awarded thereto for its qualified economic development project such that the award is no longer based upon any one or more of the performance measures set forth in its mountaineer flex agreement and may facilitate the execution of a revised agreement.

(h) Until a revised agreement is executed under the certification, the performance measures shall be based upon one or more of the following, as applicable, as of the end of the most recent reporting year for which the annual report was filed:

(1) The actual expenditures made by the qualified business or industry for purposes of the calculation prescribed by §11-13NN-6(a), (b), (c), and (d)(A) of this code;

(2) The actual number of new full-time jobs created by the qualified business or industry, and,

(3) The actual average employer wage associated therewith, for purposes of the

97 calculations prescribed by §11-13NN-6(d) of this code;

98 (i) A qualified business or industry and the authority may, at any time, amend or restate an
99 mountaineer flex agreement in order to modify the performance measures of the qualified
100 business or industry with respect to its qualified economic development project, and in connection
101 with such amendment or amendment and restatement, the authority shall modify the amount of
102 the mountaineer flex tax incentive awarded for the qualified economic development project to
103 comport with the modified performance measures; *Provided*, That the modified award amount
104 shall thereafter be subject to the adjustment requirements of this section.

105 (j) If the authority adjusts any mountaineer flex tax incentive award pursuant to this section,
106 the authority shall issue an amended certification of the corresponding qualified economic
107 development project, which shall specify the amount of mountaineer flex tax incentive award
108 adjustment. The authority shall forward the amended certification, along with any other necessary
109 information, to the Tax Department so that the mountaineer flex tax incentive award adjustment for
110 the qualified business or industry can be recorded by the Tax Department and used to verify each
111 state tax credit subsequently applied by the qualified business or industry.

112 (k) If at any time the authority reduces the mountaineer flex tax incentive award granted for
113 the qualified economic development project to an amount less than the total amount of credits
114 already applied and taken by the qualified business or industry, or by one or more affiliates thereof
115 eligible to utilize such credit, to offset state taxes thereof, the Tax Department shall charge the
116 qualified business or industry, or such affiliate or affiliates, with an assessment for the amount of
117 state taxes for which no mountaineer flex tax incentive is available, following such reduction by the
118 authority, for application as a tax credit, beginning with those state taxes against which the
119 qualified business or industry most recently applied the credit, and such state tax assessment
120 shall be immediately due and payable.

121 (l) Any portion of an mountaineer flex tax incentive awarded to the qualified business or
122 industry by the authority for its qualified economic development project that has not been applied,

123 on or before the 10th annual anniversary of the project certificate date, as a credit by such qualified
124 business or industry, or by one or more affiliates thereof eligible to utilize such credit, to offset state
125 taxes otherwise payable, shall expire.

§11-13NN-10. Audits and interagency cooperation.

1 (a) No provisions of this article shall in any way limit or restrict the authority of the Tax
2 Department to perform audits for all state tax liabilities for any qualified business or industry that is
3 awarded any mountaineer flex tax incentives by the authority.

4 (b) The Tax Department is authorized to provide to the authority any information received,
5 obtained or produced, or findings or determinations made, thereby as a result of the performance
6 by Tax Department of any audit of state tax liabilities of any qualified business or industry that is
7 awarded any mountaineer flex tax incentives by the authority, and any such information, findings
8 or determinations provided to the authority by the Tax Department shall be kept in confidence and
9 exempt from the provisions of West Virginia Freedom of Information Act, §29B-1-1 et seq. of this
10 code.

11 (c) If any audit by the Tax Department results in a reclassification of machinery, equipment,
12 or materials, as previously reported by a qualified business or industry, to a different property
13 classification, or a change in the number of new full-time employees or average employer wage,
14 as previously reported by a qualified business or industry, the authority is authorized to adjust the
15 amount of the mountaineer flex tax incentive awarded to the qualified business or industry for a
16 qualified economic development project to comport with any property reclassification or change in
17 the number of new full-time employees or average employer wage.

18 (d) Work Force West Virginia is authorized to provide to the authority any information
19 received, obtained or produced, or findings or determinations made thereby, with respect to any
20 qualified business or industry that is awarded any mountaineer flex tax incentives by the authority,
21 and any such information, findings or determinations provided to the authority shall be kept in
22 confidence and exempt from the provisions of West Virginia Freedom of Information Act, §29B-1-1

23 et seq. of this code.

§11-13NN-11. Implementation and exclusive jurisdiction.

1 (a) The authority and the Tax Department shall implement the provisions of this article and
2 exercise all powers authorized in this article; however, the application of this article and the
3 offering and awarding of any mountaineer flex tax incentive as to any particular qualified business
4 or industry shall be carried out at the discretion of the authority subject to, and in compliance with,
5 this article.

6 (b) The authority shall have sole and exclusive jurisdiction and authority to determine
7 whether an applicant qualifies as a qualified business or industry, whether an applicant's project
8 qualifies as a qualified economic development project, whether to certify an applicant and its
9 project as a qualified business or industry undertaking a qualified economic development project
10 and the eligibility thereof for the mountaineer flex tax incentive, the initial calculation of any
11 mountaineer flex tax incentive award, any terms or conditions or further requirements to be
12 included in any mountaineer flex agreement, and any subsequent adjustments to any
13 mountaineer flex tax incentive award or any revocation thereof, in all instances, subject to appeals
14 pursuant to the provisions of the West Virginia Administrative Procedures Act.

15 (c) Nothing in this article shall be construed to constitute a guarantee or assumption by the
16 State of West Virginia of any debt of any corporation, limited liability company, partnership, person
17 or sole proprietorship, business trust, or other legal entity and subunit or affiliate thereof nor to
18 authorize the credit of the state to be given, pledged or loaned to any corporation, limited liability
19 company, partnership, person or sole proprietorship, business trust, or other legal entity and
20 subunit or affiliate thereof. Further, nothing in this article gives any right to any qualified business
21 or industry to the tax incentives authorized by this article unless such incentive is awarded by this
22 article.

§11-13NN-12. Rules.

1 The Tax Commissioner and the authority may promulgate such interpretive, legislative,

2 emergency, and procedural rules as they deem to be useful or necessary to carry out the purpose
3 of this article and to implement the intent of the Legislature. All rules shall be promulgated in
4 accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13NN-13. Record keeping.

1 Every taxpayer who claims credit under §11-13NN-1 *et seq.* of this code shall always
2 maintain sufficient records to establish the basis for the application, certification, allowance, and
3 use of tax credit.

§11-13NN-14. 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 §11-13NN-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 §11-13NN-1 *et seq.* of this code shall be reasonably construed to
6 effectuate the legislative intent recited in §11-13NN-2 of this code.

§11-13NN-15. Burden of proof.

1 The burden of proof is on the taxpayer to establish by clear and convincing evidence that
2 the taxpayer is entitled to the benefits allowed by §11-13NN-1 *et seq.* of this code.

§11-13NN-16. 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 §11-13NN-1 *et seq.* of
3 this code, including the confidentiality and disclosure provisions of §11-10-5d of this code, except
4 as otherwise expressly provided in this article, with like effect as if that act were applicable only to
5 the tax credit allowed by §11-13NN-1 *et seq.* of this code and were set forth in extenso in this
6 article.

§11-13NN-17. Crimes and penalties.

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

§11-13NN-18. Severability.

1 (a) If any provision of §11-13NN-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 §11-13NN-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 §11-13NN-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 §11-13NN-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.

§11-13NN-19. Effective date.

1 The credit allowed by this article is allowable for investments in this state made on or after
2 July 1, 2027, subject to the rules promulgated by the authority and Tax Commissioner pursuant to
3 §29A-3-1 *et seq.* of this code.

NOTE: The purpose of this bill is to create the Mountaineer Flexible Tax Credit Act of 2026, encourage economic development through tax incentives, and promote the welfare of the people through investment in businesses.

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