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HB 4005

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4005

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed March 9, 2002

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4005

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 9, 2002; in effect from passage.]

AN ACT to repeal article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter; to repeal section five, article thirteen, chapter twenty-one of said code; to amend article one, chapter five-e, by adding thereto a new section, designated section twenty-two; to amend chapter eight of said code by adding thereto a new article, designated article thirteen-b; to amend and reenact section five-s, article ten, chapter eleven of this code; to amend article ten of said chapter by adding thereto a new section, designated section eleven-a; to amend article thirteen-c of said chapter by adding thereto a new section, designated section sixteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section ten; to amend and reenact section four, article thirteen-n of said

chapter; to further amend said chapter by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; to amend article fifteen of said chapter by adding thereto to three new sections, designated sections nine-b, nine-c and nine-f; to amend article twenty-one of said chapter by adding thereto a new section, designated section eight-h; to amend and reenact sections seven and twenty-four-a, article twenty-three of said chapter; to amend and reenact section twenty-two-a, article twenty-four of said chapter; to amend and reenact section nine-e, article six, chapter twelve of said code; and to amend and reenact sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of said code, all relating generally to economic development for public purposes; repealing the business and occupation tax credit for increased generation of electricity; repealing the business franchise tax credit and the corporation net income tax credit for coal coking facilities; repealing the tax credit for convenience store owners to meet certain requirements of the convenience food stores safety act; terminating new steel manufacturing operations tax credit; terminating the credit for producing value-added products from raw agricultural products; terminating the business investment and jobs investment tax credit; terminating the small business tax credit; terminating corporate headquarters relocation tax credit; preserving certain tax credits for eligible activity occurring prior to termination date; specifying transition rules; establishing economic opportunity tax credit specifying short titles; specifying legislative findings and purpose for new credits; defining terms; specifying activity that qualifies for credits, how amount of allowable credits are determined, how credits may be applied and against what tax liabilities credits may be applied; providing for forfeiture of unused tax credits, redetermination of credits and recapture of credits under certain circumstances; imposing recapture tax, interest and civil money penalty and specifying circumstance when they apply; allowing transfer of qualified investment to successors; requiring identification of investment credit property;

requiring persons claiming credit to keep records and to provide information to tax commissioner; providing rules for interpretation, construction, severability and burden of proof; requiring filing of application for credit as condition precedent to claiming credit and imposing consequences for failure to make timely application; specifying business activity eligible for economic opportunity credit; requiring periodic review of tax credit and performance reports to governor and Legislature; providing internal effective dates and making technical corrections; specifying termination of credits provided in article thirteen-d, chapter eleven, specifying exception for electricity producers; preservation of entitlements; establishing tax credit for manufacturing investment; specifying short title, legislative findings and purpose; setting forth definitions; specifying amount of credit allowed for manufacturing investment; specifying procedures for determining qualified manufacturing investment; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of property purchased for manufacturing investment to successors, requiring identification of investment credit property; specifying treatment for failure to keep records of property purchased for manufacturing investment; requiring tax credit review and accountability; establishing tax credit for qualified research and development credit; specifying short title, legislative findings and purpose; definitions, specifying annual combined qualified research and development expenditure; qualified research and development expenses; amount of credit allowed; application of credit; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of qualified research and development investment to successors; requiring identification of research and development credit property; specifying treatment for failure to keep records of property purchased for research and development investment; requiring tax credit review and accountability; adding new exemption to consumers sales and service tax for purchases of tangible personal property and services for direct use in

research and development, purchased after the thirtieth day of June, two thousand-two; defining certain terms; exempting from the business franchise tax persons and organizations to the extent they provide venture capital to West Virginia businesses; defining terms; specifying effective date of exemption; providing for the decertification of qualified capital companies that are not small business investment companies; specifying effective date therefor; providing an exemption from the consumers sales tax and the use tax for services providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the department of environmental protection or the bureau for public health; requiring disclosure of certain taxpayer information relating to economic opportunity tax credit, strategic research and development tax credit and manufacturing investment tax credit; authorizing municipalities to create special downtown redevelopment districts; describing redevelopment expenditures; providing for treatment of redevelopment expenditures by licensed race tracks; providing for notice and hearing; providing for approval by committee; establishing a downtown redevelopment fund; providing for the Legislature's authorization of establishment of a district; describing ordinance to create district; establishing a board to oversee operations; authorizing special district excise tax; modifications to district boundaries; procedures for abolition and dissolution of district; authorizing issuance of municipal revenue obligations; providing for administration of special district excise tax by tax commissioner; exempting certain sales and services in district from consumers sales and service tax; authorizing bond issuance for improvement projects; authorizing transfer or assignment of qualified rehabilitated building investment tax credit; authorizing nonrecourse loan from the consolidated fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter be repealed; that section five, article thirteen, chapter twenty-one of said code be repealed; that article one, chapter five-e, be amended by adding thereto a new section, designated section twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirteen-b; that section five-s, article ten, chapter eleven of this code be amended and reenacted; that article ten of said chapter be amended by adding thereto a new section, designated section eleven-a; that article thirteen-c of said chapter be amended by adding thereto a new section, designated section sixteen; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section ten; that section four, article thirteen-n of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; that article fifteen of said chapter be amended by adding thereto three new sections, designated sections nine-b, nine-c and nine-f; that article twenty-one of said chapter be amended by adding thereto a new section, designated section eight-h; that sections seven and twenty-four-a, article twenty-three of said chapter be amended and reenacted; that section twenty-two-a, article twenty-four of said chapter be amended and reenacted; that section nine-e, article six, chapter twelve of said code be amended and reenacted; and that sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of this code be amended and reenacted, all to read as follows:

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-22. Decertification of qualified capital companies other than small business investment companies.

1 Notwithstanding any provision in this article to the con-
2 trary, the authority may not hereafter allocate credit to any
3 applicant other than a small business investment company.
4 Every qualified capital company that is not a small business
5 investment company may no longer be considered a qualified
6 capital company and shall, without any further action, be
7 decertified. Each company that has been decertified in accor-
8 dance with the provisions of this section is no longer subject to
9 the provisions of this article. Nothing herein may be construed
10 to limit an investor in a qualified capital company from
11 applying credits previously allocated by the authority including
12 unused credits carried forward pursuant to section eight of this
13 article.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13B. DOWNTOWN REDEVELOPMENT DISTRICTS.

§8-13B-1. Short title.

1 This article is known and may be cited as the "Downtown
2 Redevelopment District Act."

§8-13B-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many downtown business
2 districts within the municipalities of this state are economically
3 depressed. This adversely affects the economic and general
4 well-being of the citizens of those municipalities. Establishment
5 of downtown redevelopment districts within municipalities of
6 the state, in accordance with the purpose and powers set forth
7 in this article, will serve a public purpose, and promote the
8 health, safety, prosperity, security and general welfare of all
9 citizens in the state. It will also promote the vitality of retail
10 business areas within municipalities, while serving as an
11 effective means for restoring and promoting retail and other
12 business activity within the downtown redevelopment districts

13 created herein. This will be of special benefit to the tax base of
14 the downtown municipalities within which any downtown
15 redevelopment district is created under this article and will
16 stimulate economic growth and job creation.

§8-13B-3. Definitions.

1 For purposes of this article, the term:

2 (1) "Committee" or "Council" means the committee
3 established in subdivision (3), subsection (d), section eighteen-
4 a, article twenty-two, chapter twenty nine of this code;

5 (2) "District" means a downtown redevelopment district
6 created pursuant to this article

7 (3) "District board" means a district board created pursuant
8 to section ten of this article;

9 (4) "Downtown property" means any taxable or exempt real
10 property which is classified for ad valorem real property tax
11 purposes as Class IV;

12 (5) "Gross annual district tax revenue amount" means the
13 total amount of consumers sales and service tax actually
14 remitted to the tax commissioner by vendors maintaining places
15 of business within the district with respect to sales made and
16 services rendered by such vendors from a location within the
17 district for the twelve full calendar months immediately
18 preceding the filing of an application pursuant to section seven
19 of this article;

20 (6) "Municipality" means a municipal corporation recog-
21 nized as such in chapter eight of this code; and

22 (7) "Redevelopment expenditures" means payments for
23 governmental functions, programs, activities, facility construc-

24 tion, improvements and other goods and services which a
25 district board is authorized to perform or provide under section
26 five of this article.

§8-13B-4. Authorization.

1 The governing body of any municipality may, in accor-
2 dance with the procedures and subject to the limitations set
3 forth in this article, create one or more downtown redevel-
4 opment districts within the municipality. The municipality may,
5 in accordance with the procedures and subject to the limitations
6 set forth in this article, provide for the administration and
7 financing of redevelopment expenditures within the districts
8 and for the administration and financing of a continuing
9 program of redevelopment expenditures within the districts.

§8-13B-5. Redevelopment expenditures.

1 Any municipality that has established a downtown redevel-
2 opment district under this article may make, or authorize to be
3 made by a district board and other public or private parties,
4 such redevelopment expenditures as will restore or promote the
5 economic vitality of the district and the general welfare of the
6 municipality, including, but not limited to, expenditures for the
7 following purposes:

8 (a) Beautification of the district, by means such as landscap-
9 ing and construction and erection of fountains, shelters,
10 benches, sculptures, signs, lighting, decorations and similar
11 amenities;

12 (b) Provision of special or additional public services, such
13 as sanitation, security for persons and property and the con-
14 struction and maintenance of public facilities, including
15 sidewalks and other public areas;

16 (c) Making payments for principal, interest, issuance costs,
17 any of the costs described in section eighteen of this article and
18 appropriate reserves for bonds and other instruments and
19 arrangements issued or entered into by the municipality for
20 financing the expenditures of the district described in this
21 section and to otherwise implement the purposes of this article;

22 (d) Providing financial support for public transportation and
23 vehicle parking facilities open to the general public, whether or
24 not physically situate within the district's boundaries;

25 (e) Acquiring, demolishing, razing, constructing, repairing,
26 reconstructing, refurbishing, renovating, rehabilitating, expand-
27 ing, altering, otherwise developing, operating and maintaining
28 real property generally, parking facilities, commercial struc-
29 tures and other capital improvements to real property, fixtures
30 and tangible personal property, whether or not physically
31 situate within the district's boundaries;

32 (f) Developing plans for the architectural design of the
33 district and portions thereof, and developing plans and pro-
34 grams for the future development of the district;

35 (g) Developing, promoting and supporting community
36 events and activities open to the general public;

37 (h) Providing the administrative costs for a district manage-
38 ment program;

39 (i) Providing for the usual and customary maintenance and
40 upkeep of all improvements and amenities in the district as may
41 be commercially reasonable and necessary to sustain its
42 economic viability on a permanent basis;

43 (j) Providing any other services which the municipality or
44 district board is authorized to perform and which the municipal-

45 ity does not also perform to the same extent on a municipality-
46 wide basis;

47 (k) Making grants to the owners or tenants of downtown
48 property for the purposes described in this section;

49 (l) Acquiring an interest in any entity or entities that own
50 any portion of the real property situate in the district and
51 contributing capital to any such entity or entities; and

52 (m) To do any and all things necessary, desirable or
53 appropriate to carry out and accomplish the purposes of this
54 article: *Provided*, That notwithstanding anything in this code to
55 the contrary, any redevelopment expenditure made by a
56 licensed race track, as defined in section three, article twenty-
57 two-a, chapter twenty-nine of this code, within thirty days after
58 such redevelopment expenditure shall have been requested in
59 writing by the district board, shall entitle such licensed race
60 track to receive the same recoupment from its capital reinvest-
61 ment fund account as any other capital improvement expendi-
62 ture described in subsection (b), section ten-c, article twenty-
63 two-a, chapter twenty-nine of this code.

§8-13B-6. Notice; hearing.

1 The governing body of a municipality desiring to create a
2 downtown redevelopment district shall conduct a public
3 hearing. A notice of the public hearing shall be published as a
4 Class I-0 legal advertisement in compliance with article three,
5 chapter fifty-nine of this code at least twenty days prior to the
6 scheduled hearing. In addition to the time and place of the
7 hearing, the notice must also state:

8 (a) The purpose of the hearing;

9 (b) The name of the proposed district;

10 (c) The general purpose of the proposed district;

11 (d) The property proposed to be included in the district; and

12 (e) The proposed method of financing any costs involved,
13 including the base and rate of special district excise tax that
14 may be imposed upon any businesses operating and properties
15 situated within the proposed district.

16 At the time and place set forth in the notice, the governing
17 body shall afford the opportunity to be heard to any owner of
18 real property situated in the proposed district and any residents
19 of the municipality.

20 If the governing body of the municipality, following the
21 public hearing, determines it advisable and in the public interest
22 to establish a downtown redevelopment district, it shall apply
23 to the committee for approval of a downtown redevelopment
24 district project pursuant to the procedures provided in section
25 seven of this article.

**§8-13B-7. Application to committee for approval of a downtown
redemption district project.**

1 (a) The committee shall receive and act on applications
2 filed with it by municipalities pursuant to section six of this
3 article. Each such application must contain a copy of the notice
4 described in section six of this article; a general description of
5 the capital improvements, additional or extended services and
6 other proposed redevelopment expenditures to be made in the
7 district; a description of the proposed method of financing such
8 redevelopment expenditures, together with a description of such
9 reserves to be established for financing on-going redevelopment
10 expenditures necessary to permanently maintain the optimum
11 economic viability of the district following its inception:
12 *Provided*, That the amounts of such reserves shall not exceed
13 the amounts that would be required by ordinary commercial

14 capital market considerations; a description of the sources and
15 anticipated amounts of all such financing, including, but not
16 limited to, proceeds from the issuance of any bonds, or other
17 instruments, revenues from the special district excise tax and
18 enhanced revenues from municipal business and occupation
19 taxes, property taxes and fees; a description of the financial
20 contribution of the municipality to the funding of redevelop-
21 ment expenditures, which contribution may include, but not be
22 necessarily limited to, incremental business and occupation
23 taxes generated from district; a description of the financial
24 contribution to the funding of redevelopment expenditures by
25 the county commission of the county in which the district is
26 situate; identification of any entities which the municipality
27 expects to relocate their business locations from the district to
28 another place in the state in connection with the establishment
29 of district: *Provided*, That for purposes of this article, any such
30 entities shall be designated "relocated entities"; a good faith
31 estimate of the aggregate amount of consumers sales and
32 service tax that was actually remitted to the tax commissioner
33 by all relocated entities with respect to their sales made and
34 services rendered from their business locations in the district for
35 the twelve full calendar months next preceding the date of the
36 application: *Provided*, That for purposes of this article, such
37 aggregate amount shall be designated as "the relocated tax
38 revenue amount"; a good faith estimate of the gross annual
39 district tax revenue amount; and the proposed application of
40 any surplus from all funding sources to further the objectives of
41 this article: *Provided*, That the amount of all redevelopment
42 expenditures proposed to be made in the first twenty-four
43 months following the creation of the district shall be not less
44 than fifty million dollars. The committee may establish other
45 criteria for approving such applications: *Provided*, That the
46 committee shall act to approve or not approve any such
47 application within thirty days following the receipt of the
48 application: *Provided, however*, That the committee may not

49 approve mor than one application in the absence of further
50 authorization of the Legislature.

51 (b) If the committee approves a municipality's downtown
52 redevelopment district project application, it shall issue to the
53 municipality a written certificate evidencing such approval:
54 *Provided*, That such certificate shall expressly state a base tax
55 revenue amount which, for purposes of this article shall be the
56 difference between the gross annual district tax revenue amount
57 and the relocated tax revenue amount all of which the council
58 shall have determined with respect to such district's application
59 based on such investigation as it may deem reasonable and
60 necessary, including but not limited to any relevant information
61 the council shall request from the tax commissioner and the tax
62 commissioner shall provide to the council: *Provided, however*,
63 That, in determining the base tax revenue amount, in lieu of
64 confirmation from the tax commissioner of the gross annual
65 district tax revenue amount, the council shall use the estimate
66 of the gross annual district tax revenue amount provided by the
67 municipality pursuant to subsection (a) of this section.

68 (c) The council may promulgate rules to implement the
69 downtown redevelopment district project application approval
70 process and to describe the criteria and procedures it has
71 established in connection therewith. These rules are not subject
72 to the provisions of chapter twenty-nine-a of this code, but shall
73 be filed with the secretary of state.

**§8-13B-8. Establishment of the downtown redevelopment district
fund; Legislature's authorization of establishment
of district.**

1 (a) There is hereby created a special revenue account in the
2 state treasury, designated the "downtown redevelopment district
3 fund," which shall be an interest-bearing account and shall be
4 invested in the manner described in section nine-c, article six,

5 chapter twelve of the code, with the interest income a proper
6 credit of the Fund. A separate and segregated sub-account
7 within the account shall be established for each municipality's
8 downtown redevelopment district, which has been approved by
9 the council and authorized by the Legislature pursuant to
10 subsection (b) of this section. Funds paid into the account for
11 the credit of any such sub-account may also be derived from the
12 following sources:

13 (1) All interest or return on the investment accruing to the
14 sub-account;

15 (2) Any gifts, grants, bequests, transfers, appropriations or
16 donations which may be received from any governmental entity
17 or unit or any person, firm, foundation, or corporation; and

18 (3) Any appropriations by the Legislature which may be
19 made for this purpose.

20 (b) The Legislature may authorize the establishment of a
21 downtown redevelopment district if the district has been
22 approved by the council pursuant to section seven of this
23 article. Once the establishment of the district has been autho-
24 rized by the Legislature, the auditor shall thereafter, upon
25 receipt of a monthly requisition from the district board, issue
26 his warrant on the state treasurer for the funds requested from
27 the district's sub-account as provided in section eleven-a, article
28 ten, chapter eleven of this code, to be applied for the purposes
29 described in section five of this article, and the state treasurer
30 shall pay the warrant out of the sub-account.

**§8-13B-9. Ordinance to create district as approved by council and
authorized by the Legislature.**

1 (a) If a downtown redevelopment district project has been
2 approved by the council, and the establishment of such a district
3 has been authorized by the Legislature, all in accordance with

4 this article, the governing body of the municipality may create
5 the district by ordinance as provided for in article eleven of this
6 chapter: *Provided*, That the governing body may not amend,
7 alter or change in any manner the boundaries of the downtown
8 redevelopment district as approved by the council. In addition
9 to all other requirements, the ordinance shall contain the
10 following:

11 (1) The name of the district and a description of its bound-
12 aries;

13 (2) A summary of any proposed services to be provided and
14 capital improvements to be made within the district and a
15 reasonable estimate of any attendant costs;

16 (3) The base and rate of any special district excise tax that
17 may be imposed upon the businesses for the privilege of
18 operating within the district, which tax shall be passed on to and
19 paid by the consumer, and the manner in which the taxes will
20 be imposed, administered and collected, all of which shall be in
21 conformity with the requirements of this article; and

22 (4) The district board members' terms, their method of
23 appointment and a general description of the district board's
24 powers and duties: *Provided*, That such powers may include the
25 authority to (A) make and adopt all necessary bylaws and rules
26 for its organization and operations not inconsistent with any
27 applicable laws; (B) to elect its own officers, to appoint
28 committees and to employ and fix compensation for personnel
29 necessary for its operations; (C) to enter into contracts with any
30 person, agency, government entity, agency or instrumentality,
31 firm, partnership, limited partnership, limited liability company
32 or corporation, including both public and private corporations,
33 and for-profit and not-for-profit organizations, and generally to
34 do any and all things necessary or convenient for the purpose of
35 promoting, developing and advancing the purposes described in

36 section two of this article; (D) to amend or supplement any
37 contracts or leases or to enter into new, additional or further
38 contracts or leases upon such terms and conditions, for such
39 consideration and for such term of duration, with or without
40 option of renewal, as may be agreed upon by the district board
41 and such person, agency, government entity, agency or instru-
42 mentality, firm, partnership, limited partnership, limited
43 liability company or corporation; (E) unless otherwise provided
44 for in, and subject to the provisions of, such contracts, or leases,
45 to operate, repair, manage, and maintain such buildings and
46 structures and provide adequate insurance of all types, and in
47 connection with the primary use thereof and incidental thereto
48 to provide such services, such as retail stores, and restaurants,
49 and to effectuate such incidental purposes, grant leases, permits,
50 concessions or other authorizations to any person or persons,
51 upon such terms and conditions, for such consideration and for
52 such term of duration as may be agreed upon by the district
53 board and such person, agency, governmental department, firm
54 or corporation; (F) to delegate any authority given to it by law
55 to any of its officers, committees, agents or employees; (G) to
56 apply for, receive and use grants-in-aid, donations and contribu-
57 tions from any source or sources, and to accept and use be-
58 quests, devises, gifts and donations from any person, firm or
59 corporation; (H) to acquire real property by gift, purchase, or
60 construction, or in any other lawful manner, and hold title
61 thereto in its own name and to sell, lease or otherwise dispose
62 of all or part of such real property which it may own, either by
63 contract or at public auction, upon the approval by the district
64 board; (I) to purchase or otherwise acquire, own, hold, sell,
65 lease and dispose of all or part of any personal property which
66 it may own, either by contract or at public auction; (J) pursuant
67 to a determination by the district board that there exists a
68 continuing need for redevelopment expenditures, and that
69 moneys or funds of the district are necessary therefor, to borrow
70 money and execute and deliver the district's negotiable notes

71 and other evidences of indebtedness therefor, on such terms as
72 the district shall determine, and give such security therefor as
73 shall be requisite, including, without limitation, a pledge of the
74 district's rights in its sub-account of the downtown district
75 redevelopment fund; (K) to acquire (either directly or on behalf
76 of the municipality) an interest in any entity or entities that own
77 any real property situate in the district, to contribute capital to
78 such entity or entities and to exercise the rights of an owner
79 with respect thereto; and (L) to expend its funds in the execu-
80 tion of the powers and authority herein given, which expendi-
81 tures, by the means authorized herein, are hereby determined
82 and declared as a matter of legislative finding to be for a public
83 purpose and use, in the public interest, and for the general
84 welfare of the people of West Virginia, to alleviate and prevent
85 economic deterioration and to relieve the existing critical
86 condition of unemployment existing within the state.

87 (b) The ordinance shall also state the general intention of
88 the municipality to redevelop and increase services and to make
89 capital improvements within the district.

§8-13B-10. District board; duties.

1 (a) The governing body of any municipality that has been
2 authorized by the Legislature to establish a downtown redevel-
3 opment district, in accordance with this article, shall provide by
4 ordinance for the appointment of a district board to oversee the
5 operations of the district: *Provided*, That the governing body
6 may, by ordinance in lieu of appointing a separate district
7 board, designate itself to act as the district board. If a separate
8 district board is to be appointed, it shall be made up of at least
9 seven members, two of which shall be owners, or representa-
10 tives of owners, of downtown property situated in the district,
11 and the other five shall be residents of the county within which
12 the municipality is located.

13 (b) The district board, in addition to the duties prescribed
14 by the ordinance creating the improvement district, shall submit
15 an annual report to the governing body and the council contain-
16 ing:

17 (1) An itemized statement of its receipts and disbursements
18 for the preceding fiscal year;

19 (2) A description of its activities for the preceding fiscal
20 year;

21 (3) A recommended program of services to be performed
22 and capital improvements to be made within the district for the
23 coming fiscal year; and

24 (4) A proposed budget to accomplish its objectives.

25 (c) Nothing in this article prohibits any member of the
26 district board from also serving on the board of directors of a
27 nonprofit corporation with which the municipality may contract
28 to provide specified services within the district.

29 (d) Each member of the district board may receive reason-
30 able compensation for services on the board, determined by the
31 governing body of the municipality.

§8-13B-11. Special district excise tax authorized.

1 (a) The governing body of a municipality, authorized by the
2 Legislature to establish a downtown redevelopment district,
3 may, by ordinance, impose a special district excise tax on the
4 privilege of selling tangible personal property and rendering
5 selected services in the district in accordance with this section.

6 (b) The base of a special district excise tax imposed
7 pursuant to this section shall be identical to the base of the
8 consumers sales and service tax imposed pursuant to article

9 fifteen, chapter eleven of this code on sales made and services
10 rendered within the boundaries of the district: *Provided*, That,
11 except for the exemption provided in section nine-f of article
12 fifteen, chapter eleven of this code, all exemptions and excep-
13 tions from the consumers sales and service tax shall also apply
14 to the special district excise tax.

15 (c) The rate of a special district excise tax imposed pursuant
16 to this section shall be provided in an ordinance adopted by the
17 governing body of the municipality and shall be six cents on the
18 dollar of sales and services subject to the tax.

19 (d) The ordinance of a municipality imposing a special
20 district excise tax shall provide procedures for the administra-
21 tion, assessment, collection and enforcement of the tax in
22 conformity with similar provisions and requirements set forth
23 in articles ten and fifteen, chapter eleven of this code, and to
24 those procedures in article ten, chapter eleven of this code, and
25 shall conform with such provisions as they relate to waiver of
26 penalties and additions to tax: *Provided*, That the governing
27 body of the municipality shall, in any such ordinance, also
28 provide that the state tax commissioner shall administer, assess,
29 collect and enforce a special district excise tax on behalf of and
30 as the agent for the municipality as provided in section eleven-
31 a, article ten, chapter eleven of this code.

32 (e) The ordinance of a municipality imposing a special
33 district excise tax shall provide that the tax commissioner shall
34 deposit the net amount of tax collected in the special downtown
35 redevelopment district fund to the credit of the municipality's
36 sub-account therein, and may only be used to pay for develop-
37 ment expenditures provided under this article: *Provided*, That
38 the state treasurer shall withhold from the municipality's sub-
39 account in the downtown redevelopment district fund, and shall
40 deposit in the general revenue fund of this State, on or before
41 the fifteenth day of each calendar month next following the

42 effective date of a special district excise tax, a sum equal to
43 one-twelfth of the base tax revenue amount last certified by the
44 council pursuant to section seven of this article.

45 (f) Any taxes imposed pursuant to the authority of this
46 section shall be effective on the first day of the calendar month
47 that begins on or after the date of adoption of an ordinance
48 imposing such tax, or at such later date expressly designated in
49 the ordinance that begins on the first day of a calendar month.

§8-13B-12. Modification of included area; notice; hearing.

1 (a) The ordinance creating a downtown redevelopment
2 district may be amended to include additional downtown
3 property only after such amendment has been approved by the
4 council in the same manner as an application to approve the
5 establishment of the district is acted upon under section seven
6 of this article.

7 Additional property may not be included in the district
8 unless it is situated within the boundaries of the municipality.

9 (b) The governing body of any municipality desiring to so
10 amend its ordinance shall designate a time and place for a
11 public hearing upon the proposal to include additional property.
12 The notice shall meet the requirements set forth in section six
13 of this article.

14 (c) At the time and place set forth in the notice, the govern-
15 ing body shall afford the opportunity to be heard to any owners
16 of downtown property either currently included in or proposed
17 to be added to the existing district and to any other residents of
18 the municipality.

19 (d) Following such hearing, the governing body may, by
20 resolution, apply to the council to approve inclusion of such
21 additional property in the district.

22 (e) If the council shall approve inclusion of such additional
23 property in the district, the governing body of the municipality
24 may then amend its ordinance accordingly.

25 (f) All businesses and additional property included in a
26 district shall thereafter be subject to all special district excise
27 taxes whether currently existing or thereafter levied.

§8-13B-13. Abolishment and dissolution of district; notice; hearing.

1 (a) Except upon the express written consent of the council
2 and of all the holders or obligees of any indebtedness or other
3 instruments the proceeds of which were applied to any redevelop-
4 opment expenditures or any indebtedness the payment of which
5 is secured by revenues payable into the fund provided under
6 section eight of this article or by any public property, a district
7 may only be abolished by the governing body of the municipal-
8 ity when there is no outstanding indebtedness the proceeds of
9 which were applied to any redevelopment expenditures or the
10 payment of which is secured by revenues payable into the fund
11 provided under section eight of this article, or by any public
12 property, and following a public hearing upon the proposed
13 abolishment. Notice of such hearing must be provided by first
14 class mail to all owners of downtown property within the
15 district and shall be published as a Class I-0 legal advertisement
16 in compliance with article three, chapter fifty-nine of this code
17 at least twenty days prior to the public hearing. Upon the
18 abolishment of any downtown redevelopment district, any
19 funds or other assets, contractual rights or obligations, claims
20 against holders of indebtedness or other financial benefits,
21 liabilities or obligations, existing after full payment has been
22 made on all existing contracts, bonds, notes or other obligations
23 of the district, shall be transferred to and assumed by the
24 municipality. Any funds or other assets so transferred shall be

25 used for the benefit of the area included in the district being
26 abolished.

27 (b) Following abolishment of a district pursuant to this
28 section, its reinstatement shall require compliance with all
29 requirements and procedures set forth in this article for the
30 initial development, approval, establishment and creation of a
31 district. Upon the dissolution of any downtown redevelopment
32 district, any funds or other assets, contractual rights or obliga-
33 tions, claims against holders of indebtedness, or other financial
34 benefits, liabilities or obligations of the district, existing after
35 full payment has been made on all obligations of the district,
36 shall be transferred and assumed by the municipality. Any
37 funds or other assets so transferred shall be used for the benefit
38 of the area included in the district being dissolved.

**§8-13B-14. Bonds issued to finance downtown redevelopment
district projects.**

1 The governing body of a municipality may issue bonds or
2 notes for the purpose of financing redevelopment expenditures,
3 as described in section five of this article, with respect to one or
4 more downtown redevelopment district projects within the
5 municipality. All bonds issued by a municipality under the
6 authority of this article shall be limited obligations of the
7 municipality. No municipality may issue notes, bonds or other
8 instruments for funding district projects or improvements that
9 exceed a repayment schedule of forty years. The principal and
10 interest on such bonds shall be payable out of the funds on
11 deposit in the sub-account established for the downtown
12 redevelopment district pursuant to section eight of this article,
13 including without limitation any funds derived from the special
14 district excise tax imposed by section eleven of this article, or
15 other revenues derived from the downtown redevelopment
16 project to the extent pledged for such purpose by the governing
17 body of the municipality in the resolution authorizing the

18 bonds. To the extent that the average daily amount on deposit
19 in the sub-account established for a district pursuant to section
20 eight of this article exceeds, for more than six consecutive
21 calendar months, the sum of (1) one hundred thousand dollars,
22 plus (2) the amount required to be kept on deposit pursuant to
23 the documents authorizing, securing or otherwise relating to the
24 bonds or notes issued under this section, then such excess shall
25 be used by the district either to redeem the bonds or notes
26 previously issued or shall be remitted to the general fund of this
27 state. The bonds and any interest coupons issued under the
28 authority of this article shall never constitute an indebtedness
29 of the municipality issuing the same within the meaning of any
30 constitutional provision or statutory limitation and shall never
31 constitute or give rise to a pecuniary liability of the municipal-
32 ity issuing the same. Neither shall such bond nor interest
33 thereon be a charge against the general credit or taxing powers
34 of the municipality and such fact shall be plainly stated on the
35 face of each such bond. Such bonds may be executed, issued
36 and delivered at any time and from time to time; may be in such
37 form and denomination; may be of such tenor, must be negotia-
38 ble but may be registered as to the principal thereof or as to the
39 principal and interest thereof; may be payable in such amounts
40 and at such time or times; may be payable at such place or
41 places; may bear interest at such rate or rates payable at such
42 place or places and evidenced in such manner; and may contain
43 such provisions therein not inconsistent herewith, all as shall be
44 provided in the proceedings of the governing body of the
45 municipality whereunder the bonds shall be authorized to be
46 issued. Said bonds may be sold by the governing body of the
47 municipality at public or private sale at, above or below par, as
48 the governing body of the municipality shall authorize.

49 The bonds issued pursuant to this article shall be signed by
50 the mayor or other chief officer thereof and attested by the
51 clerk, recorder or other official custodian of the records of said
52 municipality and under the seal of the municipality. Any

53 coupons attached thereto shall bear the facsimile signature of
54 the mayor or other chief officer of the municipality. In case any
55 of the officials whose signatures appear on the bonds or
56 coupons shall cease to be such officers before the delivery of
57 such bonds, such signatures shall, nevertheless, be valid and
58 sufficient for all purposes to the same extent as if they had
59 remained in office until such delivery.

60 If the proceeds of such bonds, by error of calculation or
61 otherwise, shall be less than the cost of the downtown redevel-
62 opment district project, or if additional real or personal property
63 is to be added to the downtown redevelopment district project
64 or if it is determined that financing is needed for additional
65 redevelopment expenditures, additional bonds may in like
66 manner be issued to provide the amount of the deficiency, or to
67 defray the cost of acquiring or financing such additional real or
68 personal property or such redevelopment expenditures, and
69 unless otherwise provided for in the trust agreement, mortgage
70 or deed of trust, shall be deemed to be of the same issue, and
71 shall be entitled to payment from the same fund, without
72 preference or priority, and shall be of equal priority as to any
73 security.

§8-13B-15. Security for bonds.

1 Unless the governing body of the municipality shall
2 otherwise determine in the resolution authorizing the issuance
3 of the revenue bonds under the authority of this article, there is
4 hereby created a statutory lien upon the sub-account created
5 pursuant to section eight of this article and all special district
6 excise tax revenues collected for the benefit of the district
7 pursuant to section eleven-a, article ten, chapter eleven of this
8 code, for the purpose of securing the principal of said bonds and
9 the interest thereon. The principal of and interest on any bonds
10 issued under the authority of this article shall be secured by a
11 pledge of the special district excise tax revenues derived from

12 the downtown redevelopment district project by the governing
13 body of the municipality issuing such bonds to the extent
14 provided in the resolution adopted by the governing body of the
15 municipality authorizing the issuance of the bonds. In the
16 discretion and at the option of the municipality, such revenue
17 bonds may also be secured by a trust indenture by and between
18 the municipality and a corporate trustee, which may be a trust
19 company or bank having trust powers, within or without the
20 State of West Virginia. The governing body may authorize the
21 issuance of such revenue bonds by resolution. The resolution
22 authorizing the revenue bonds and fixing the details thereof
23 may provide that such trust indenture may contain such
24 provisions for the protection and enforcing the rights and
25 remedies of the bondholders as may be reasonable and proper,
26 not in violation of law, including covenants setting forth the
27 duties of the municipality in relation to the construction,
28 acquisition or financing of a downtown redevelopment district
29 project, or part thereof, or an addition thereto, and the improve-
30 ment, repair, maintenance and insurance thereof, and for the
31 custody, safeguarding and application of all moneys, and may
32 provide that the downtown redevelopment district project shall
33 be constructed and paid for under the supervision and approval
34 of the consulting engineers or architects employed and desig-
35 nated by the governing body or, if directed by the governing
36 body in the resolution, by the district board, and satisfactory to
37 the purchasers of the bonds, their successors, assigns or
38 nominees, who may require the security given by any contractor
39 or any depository of the proceeds of the bonds or the revenues
40 received from the downtown redevelopment district project be
41 satisfactory to such purchasers, their successors, assigns or
42 nominees. Such indenture may set forth the rights and remedies
43 of the bondholders, the municipality or such trustee, and said
44 indenture may provide for accelerating the maturity of the
45 revenue bonds, at the option of the bondholders or the govern-
46 mental body issuing the same, upon default in the payment of

47 the amounts due under the bonds. The governing body may also
48 provide by resolution and in such trust indenture for the
49 payment of the proceeds of the sale of the bonds and the
50 revenues from the downtown redevelopment district project to
51 such depository as it may determine, for the custody and
52 investment thereof and for the method of distribution thereof,
53 with such safeguards and restrictions as it may determine to be
54 necessary or advisable for the protection thereof and upon the
55 filing of a certified copy of such resolution or of the indenture
56 for record in the office of the clerk of the county commission of
57 the county in which a downtown redevelopment district project
58 is located, the same shall have the same effect, as to notice, as
59 the recordation of a deed of trust or other recordable instrument.
60 In the event that more than one such certified resolution or
61 indenture is so recorded, the security interest granted by the
62 first such recorded resolution or indenture shall have priority in
63 the same manner as an earlier filed deed of trust except to the
64 extent such earlier recorded resolution or indenture provides
65 otherwise.

66 In addition to or in lieu of the indenture provided for
67 hereinabove the principal of and interest on said bonds may, but
68 need not, be secured by a mortgage or deed of trust covering all
69 or any part of the downtown redevelopment district project
70 from which the revenues so pledged may be derived, and the
71 same may be secured by an assignment or pledge of the income
72 received from the downtown redevelopment district project.
73 The proceedings under which such bonds are authorized to be
74 issued, when secured by a mortgage or deed of trust, may
75 contain the same terms, conditions and provisions provided for
76 herein when an indenture is entered into between the governing
77 body and a trustee and any such mortgage or deed of trust may
78 contain any agreements and provisions customarily contained
79 in instruments securing bonds, including, without limiting the
80 generality of the foregoing, provisions respecting the fixing and
81 collection of revenues from the downtown redevelopment

82 district project covered by such proceedings or mortgage, the
83 terms to be incorporated in any lease, sale or financing agree-
84 ment with respect to such downtown redevelopment district
85 project, the improvement, repair, maintenance and insurance of
86 such downtown redevelopment district project, the creation and
87 maintenance of special funds from the revenues received from
88 the downtown redevelopment district project and the rights and
89 remedies available in event of default to the bondholders, the
90 governing body, or to the trustee under an agreement, indenture,
91 mortgage or deed of trust, all as the governing body shall deem
92 advisable and as shall not be in conflict with the provisions of
93 this article or any existing law: *Provided*, That in making any
94 such agreements or provisions a municipality shall not have the
95 power to incur original indebtedness by indenture, ordinance,
96 resolution, mortgage or deed of trust, except with respect to the
97 downtown redevelopment district project and the application of
98 the revenues therefrom, and shall not have the power to incur a
99 pecuniary liability or a charge upon its general credit or against
100 its taxing powers unless approved by the voters in accordance
101 with article one, chapter thirteen of this code, or as otherwise
102 permitted by the Constitution of this State. The proceedings
103 authorizing any bonds hereunder and any indenture, mortgage
104 or deed of trust securing such bonds may provide that, in the
105 event of default in payment of the principal of or the interest on
106 such bonds or in the performance of any agreement contained
107 in such proceedings, indenture, mortgage or deed of trust, such
108 payment and performance may be enforced by the appointment
109 of a receiver in equity with power to charge and collect rents or
110 other amounts and to apply the revenues from the downtown
111 redevelopment district project in accordance with such proceed-
112 ings or the provisions of such agreement, indenture, mortgage
113 or deed of trust. Any such agreement, indenture, mortgage or
114 deed of trust may provide also that, in the event of default in
115 such payment or the violation of any agreement contained in the
116 mortgage or deed of trust, the agreement, indenture, mortgage

117 or deed of trust may be foreclosed either by sale at public
118 outcry or by proceedings in equity and may provide that the
119 holder or holders of any of the bonds secured thereby may
120 become the purchaser at any foreclosure sale, if the highest
121 bidder therefor. No breach of any such agreement, indenture,
122 mortgage or deed of trust shall impose any pecuniary liability
123 upon a municipality or any charge upon its general credit or
124 against its taxing powers.

§8-13B-16. Redemption of bonds.

1 The revenue bonds issued pursuant to this article may
2 contain a provision therein to the effect that they, or any of
3 them, may be called for redemption at any time prior to
4 maturity by the municipality, and at such redemption prices, or
5 premiums, which terms shall be stated in the bond.

§8-13B-17. Refunding bonds.

1 Any bonds issued hereunder and at any time outstanding
2 may at any time and from time to time be refunded by a
3 municipality by the issuance of its refunding bonds in such
4 amount as the governing body may deem necessary to refund
5 the principal of the bonds so to be refunded, together with any
6 unpaid interest thereon; to make any improvements or alter-
7 ations in the downtown redevelopment district project; and any
8 premiums and commissions necessary to be paid in connection
9 therewith. Any such refunding may be effected whether the
10 bonds to be refunded shall have then matured or shall thereafter
11 mature, either by sale of the refunding bonds and the applica-
12 tion of the proceeds thereof for the redemption of the bonds to
13 be refunded thereby, or by exchange of the refunding bonds for
14 the bonds to be refunded thereby: *Provided*, That the holders of
15 any bonds so to be refunded shall not be compelled without
16 their consent to surrender their bonds for payment or exchange
17 prior to the date on which they are payable or, if they are called

18 for redemption, prior to the date on which they are by their
19 terms subject to redemption. Any refunding bonds issued under
20 the authority of this article shall be subject to the provisions
21 contained in section fourteen of this article and shall be secured
22 in accordance with the provisions of section fifteen of this
23 article.

§8-13B-18. Use of proceeds from sale of bonds.

1 The proceeds from the sale of any bonds issued under
2 authority of this article shall be applied only for the purpose for
3 which the bonds were issued: *Provided*, That any accrued
4 interest received in any such sale shall be applied to the
5 payment of the interest on the bonds sold: *Provided, however*,
6 That if for any reason any portion of such proceeds may not be
7 needed for the purpose for which the bonds were issued, then
8 such unneeded portion of said proceeds may be applied to the
9 purchase of bonds for cancellation or payment of the principal
10 of or the interest on said bonds, or held in reserve for the
11 payment thereof. The costs that may be paid with the proceeds
12 of the bonds include all redevelopment costs described in
13 section five of this article and may also include but not be
14 limited to the following: The cost of acquiring any real estate
15 deemed necessary, the actual cost of the construction of any
16 part of a downtown redevelopment district project which may
17 be constructed, including architects', engineers', financial or
18 other consultants' and legal fees, the purchase price or rental of
19 any part of a downtown redevelopment district project that may
20 be acquired by purchase or lease, all expense incurred in
21 connection with the authorization, sale and issuance of the
22 bonds to finance such acquisition, and the interest on such
23 bonds for a reasonable time prior to construction, during
24 construction, and for not exceeding twelve months after
25 completion of construction and any other costs and expenses
26 reasonably necessary in the establishment and acquisition of

27 such downtown redevelopment district project and the financ-
28 ing thereof.

§8-13B-19. Bonds made legal investments.

1 Bonds issued under the provisions of this article shall be
2 legal investments for banks, building and loan associations, and
3 insurance companies organized under the laws of this State and
4 for a business development corporation organized pursuant to
5 chapter thirty-one, article fourteen of this code.

§8-13B-20. Exemption from taxation.

1 The revenue bonds issued pursuant to this article and the
2 income therefrom shall be exempt from taxation except
3 inheritance, estate and transfer taxes; and the real and personal
4 property which a municipality or district board may acquire
5 pursuant to the provisions of this article, shall be exempt from
6 taxation by the State, or any county, municipality, or other
7 levying body, as public property, so long as the same is owned
8 by such municipality or district board.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* - The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as a
3 protection of taxpayers' privacy rights and to enhance voluntary
4 compliance with the tax law. The Legislature also recognizes
5 the citizens' right to accountable and efficient state government.
6 To accomplish these ends, the Legislature hereby creates
7 certain exceptions to the general principle of confidentiality of
8 taxpayer information.

9 (b) *Exceptions to confidentiality.*

10 (1) Notwithstanding any provision in this code to the
11 contrary, the tax commissioner shall publish in the state register
12 the name and address of every taxpayer, and the amount, by
13 category, of any credit asserted on a tax return under articles
14 thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-
15 q, thirteen-r and thirteen-s of this chapter and article one,
16 chapter five-e of this code. The categories by dollar amount of
17 credit received shall be as follows:

- 18 (A) More than \$1.00, but not more than \$50,000;
- 19 (B) More than \$50,000, but not more than \$100,000;
- 20 (C) More than \$100,000, but not more than \$250,000;
- 21 (D) More than \$250,000, but not more than \$500,000;
- 22 (E) More than \$500,000, but not more than \$1,000,000; and
- 23 (F) More than \$1,000,000.

24 (2) Notwithstanding any provision in this code to the
25 contrary, the tax commissioner shall publish in the state register
26 the following information regarding any compromise of a
27 pending civil tax case that occurs on or after the effective date
28 of this section in which the tax commissioner is required to seek
29 the written recommendation of the attorney general and the
30 attorney general has not recommended acceptance of the
31 compromise or when the tax commissioner compromises any
32 civil tax case for an amount that is more than two hundred fifty
33 thousand dollars less than the assessment of tax owed made by
34 the tax commissioner:

- 35 (A) The names and addresses of taxpayers that are parties
36 to the compromise;
- 37 (B) A summary of the compromise;

38 (C) Any written advice or recommendation rendered by the
39 attorney general regarding the compromise; and

40 (D) Any written advice or recommendation rendered by the
41 tax commissioner's staff.

42 Under no circumstances may the tax return of the taxpayer
43 or any other information which would otherwise be confidential
44 under any other provisions of law be disclosed pursuant to the
45 provisions of this subsection.

46 (3) Notwithstanding any provision in this code to the
47 contrary, the tax commissioner may disclose any relevant return
48 information to the prosecuting attorney for the county in which
49 venue lies for a criminal tax offense when there is reasonable
50 cause, based upon and substantiated by the return information,
51 to believe that a criminal tax law has been or is being violated.

52 (4) Notwithstanding any provision in this code to the
53 contrary, the tax commissioner may enter into written exchange
54 of information agreements with the commissioners of labor,
55 employment security and workers' compensation to disclose
56 and receive return information: *Provided*, That the tax commis-
57 sioner may promulgate rules pursuant to chapter twenty-nine-a
58 of this code regarding further agencies with which written
59 exchange of information agreements may be sought: *Provided*,
60 *however*, That the tax commissioner may not promulgate
61 emergency rules regarding further agencies with which written
62 exchange of information agreements may be sought. The
63 agreements shall be published in the state register and shall
64 only be for the purpose of facilitating premium collection, tax
65 collection and facilitating licensure requirements directly
66 enforced, administered or collected by the respective agencies.
67 The provisions of this subsection shall not be construed to
68 preclude or limit disclosure of tax information authorized by
69 other provisions of this code. Any confidential return informa-

70 tion so disclosed shall remain confidential in the hands of the
71 other division to the extent provided by section five-d of this
72 article and by other applicable federal or state laws.

73 (5) Notwithstanding any provision of this code to the
74 contrary, the tax commissioner may enter into a written
75 agreement with the state treasurer to disclose to the state
76 treasurer the following business registration information:

*del
Parag 2. b of
Code of the State*

77 ^A
78 (X) The names, addresses and federal employer identifica-
79 tion numbers of businesses which have registered to do
business in West Virginia; and

*del
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Code of the State*

80 ^B
81 (Z) The type of business activity and organization of those
82 businesses. Disclosure of this information shall begin as soon
83 as practicable after the effective date of this subsection and may
84 be used only for the purpose of recovery and disposition of
85 unclaimed property in accordance with the provisions of article
86 eight, chapter thirty-six of this code. The provisions of this
87 subsection shall not be construed to preclude or limit disclosure
88 of tax information authorized by other provisions of this code.
89 Any confidential return information disclosed hereunder or
90 thereunder shall otherwise remain confidential to the extent
91 provided by section five-d of this article and by other applicable
federal or state laws.

92 (c) *Tax expenditure reports.* - Beginning on the fifteenth
93 day of January, one thousand nine hundred ninety-two and
94 every fifteenth day of January thereafter, the governor shall
95 submit to the president of the Senate and the speaker of the
96 House of Delegates a tax expenditure report. This report shall
97 expressly identify all tax expenditures. Within three-year
98 cycles, the reports shall be considered together to analyze all
99 tax expenditures by describing the annual revenue loss and
100 benefits of the tax expenditure based upon information avail-
101 able to the tax commissioner. For purposes of this section, the

102 term "tax expenditure" shall mean a provision in the tax laws
103 administered under this article, including, but not limited to,
104 exclusions, deductions, tax preferences, credits and deferrals
105 designed to encourage certain kinds of activities or to aid
106 taxpayers in special circumstances: *Provided*, That the tax
107 commissioner shall promulgate rules setting forth the procedure
108 by which he or she will compile the reports and setting forth a
109 priority for the order in which the reports will be compiled
110 according to type of tax expenditure.

111 (d) *Federal and state return information confidential.* -
112 Notwithstanding any other provisions of this section or of this
113 code, no return information made available to the tax commis-
114 sioner by the Internal Revenue Service or department or agency
115 of any other state may be disclosed to another person in any
116 manner inconsistent with the provisions of Section 6103 of the
117 Internal Revenue Code of 1986, as amended, or of the other
118 states' confidentiality laws.

**§11-10-11a. Administration of special district excise tax; commis-
sion authorized.**

1 (a) Any municipality which, pursuant to section eleven,
2 article thirteen-b, chapter eight of this code, imposes a special
3 district excise tax, shall, by express provision in the ordinance
4 imposing that tax, authorize the state tax commissioner to
5 administer, assess, collect and enforce that tax on behalf of and
6 as its agent. The municipality shall make such authorization by
7 the adoption of a provision in its special district excise tax
8 ordinance stating its purpose and referring to this section, and
9 providing that such ordinance shall be effective on the first day
10 of a month at least sixty days after its adoption. A certified copy
11 of such ordinance shall be forwarded to the tax commissioner
12 so that it will be received within five days after its adoption.

13 (b) Any special district excise tax administered under this
14 section shall be administered and collected by the tax commis-
15 sioner in the same manner and subject to the same interest,
16 additions to tax and penalties as provided for the tax imposed
17 in article fifteen of this chapter.

18 (c) All special district excise tax moneys collected by the
19 tax commissioner under this section shall be paid into the state
20 treasury to the credit of each municipality's sub-account in the
21 downtown redevelopment district fund created pursuant to
22 section eight, article thirteen-b, chapter eight of this code. Such
23 special district excise tax moneys shall be credited to the sub-
24 account of each particular municipality levying a special district
25 excise tax being administered under this section. The credit
26 shall be made to the sub-account of the municipality in which
27 the taxable sales were made and services rendered as shown by
28 the records of the tax commissioner and certified by him or her
29 monthly to the state treasurer, namely, the location of each
30 place of business of every vendor collecting and paying the tax
31 to the tax commissioner without regard to the place of possible
32 use by the purchaser.

33 (d) As soon as practicable after the special district excise
34 tax moneys have been paid into the state treasury in any month
35 for the preceding reporting period, the district board may issue
36 a requisition to the auditor requesting issuance of a state
37 warrant for the proper amount in favor of each municipality
38 entitled to the monthly remittance of its special district excise
39 tax moneys. Upon receipt of the requisition, the auditor shall
40 issue his warrant on the state treasurer for the funds requested,
41 and the state treasurer shall pay the warrant out of the sub-
42 account. If errors are made in any such payment, or adjustments
43 are otherwise necessary, whether attributable to refunds to
44 taxpayers, or to some other fact, the errors shall be corrected
45 and adjustments made in the payments for the next six months
46 as follows: one-sixth of the total adjustment shall be included

47 in the payments for the next six months. In addition, the
48 payment shall include a refund of amounts erroneously not paid
49 to the municipality and not previously remitted during the three
50 years preceding the discovery of the error. A correction and
51 adjustment in payments described in this subsection due to the
52 misallocation of funds by the vendor shall be made within three
53 years of the date of the payment error.

54 (e) Notwithstanding any other provision of this code to the
55 contrary, the tax commissioner shall deduct, and retain for the
56 benefit of his office for expenditure pursuant to appropriation
57 of the Legislature, from each payment into the state treasury as
58 provided in subsection (c) of this section, one percent thereof as
59 a commission to compensate his or her office for the discharge
60 of the duties described in this section.

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX
CREDIT.**

§11-13C-16. Termination of credit; effective date.

1 (a) Notwithstanding any other provision of this article to the
2 contrary, no entitlement to any tax credit under this article may
3 result from, and no credit is available to any taxpayer for,
4 investment placed in service or use after the thirty-first day of
5 December, two thousand two.

6 (b) Notwithstanding the provisions of subsection (a) of this
7 section, the provisions of sections one through fifteen of this
8 article continue to apply to taxpayers that have gained entitle-
9 ment to the credit pursuant to the placement of qualified
10 investment into service or use prior to the first day of January,
11 two thousand three.

12 (c) *Transition rules.* -- The general rule stated in subsection
13 (a) of this section does not apply:

14 (1) To qualified investment property placed in service or
15 use prior to the first day of January, two thousand three.

16 (2) To property purchased or leased for business expansion
17 that is placed in service or use on or after the first day of
18 January, two thousand three, if at least one of the following
19 clauses applies to the property:

20 (A) The new or expanded business facility was constructed,
21 reconstructed or erected, pursuant to a written construction
22 contract executed prior to the first day of January, two thousand
23 three, as limited to the provisions of the contract as of that date
24 then binding on the taxpayer, but only to the extent the new or
25 expanded business facility is placed in service or use prior to
26 the first day of January, two thousand four;

27 (B) The new or expanded business facility that is part of a
28 project described in subdivision (1), subsection (a), section
29 four-b of this article, was constructed, reconstructed or erected,
30 pursuant to a written construction contract executed prior to the
31 first day of January, two thousand three, as limited to the
32 provisions of the contract as of that date then binding on the
33 taxpayer: *Provided*, That only that portion of the contract price
34 attributable to that percentage of the construction contract
35 completed prior to the first day of January, two thousand four,
36 (determined under principles set forth in section 460(b) of the
37 Internal Revenue Code of 1986, as in effect before the first day
38 of January, two thousand three), which is placed in service or
39 use prior to the first day of January, two thousand four, may be
40 treated as property purchased for business expansion under
41 section six of this article;

42 (C) The new or expanded business facility was purchased
43 or leased pursuant to a written contract executed prior to the
44 first day of January, two thousand three, as limited to the
45 provisions then binding on the taxpayer as of that date, but only

46 to the extent the new or expanded business facility is placed in
47 service or use prior to the first day of January, two thousand
48 four; or

49 (D) The machinery or equipment or other tangible personal
50 property purchased or leased for business expansion at a new or
51 expanded business facility was purchased or leased by the
52 taxpayer pursuant to a written contract to purchase or lease
53 identifiable tangible personal property executed before the first
54 day of January, two thousand three, as limited to the provisions
55 of the written contract then binding on the taxpayer, but only to
56 the extent the tangible personal property purchased or leased
57 under the contract is placed in service or use before the first day
58 of January, two thousand four.

59 (d) *Notice of election required.* – Any person intending to
60 claim credit under one or more of the transition rules provided
61 in subsection (c) of this section shall file written notice of his or
62 her intention with the tax commissioner on or before the thirty-
63 first day of December, two thousand two. In the case of a
64 multiparticipant project, this notice may be filed by the manag-
65 ing project participant on behalf of all participants in the
66 project. Notice is to be in a form prescribed by the tax commis-
67 sioner and all information required by the form is to be pro-
68 vided.

69 (e) *Failure to file notice.* — If any person fails to timely file
70 the notice required by subsection (d) of this section, that person
71 is precluded from claiming credit under article thirteen-c for
72 investment property placed in service or use after the thirty-first
73 day of December, two thousand two, and may claim credit
74 under article thirteen-q of this chapter to the extent credit is
75 allowable under that article.

**ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND
REVITALIZATION, RESEARCH AND DEVELOPMENT
PROJECTS, CERTAIN HOUSING DEVELOPMENT**

PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS, AND AEROSPACE INDUSTRIAL FACILITY INVESTMENTS.

§11-13D-10. Termination of credit, exception for electricity producers, preservation of entitlements.

1 (a) Except for persons taxable under section two-o, article
2 thirteen of this chapter as described in subsection (b) of this
3 section and persons described in subsection (c) of this section,
4 no credit is available to any taxpayer under this article after the
5 thirty-first day of December, two thousand two.

6 (b) Persons taxable under section two-o, article thirteen of
7 this chapter that make eligible investment that qualifies for
8 credit in accordance with the provisions of subdivision (e),
9 section three of this article in property used in the business
10 activity taxable under section two-o, article thirteen of this
11 chapter, are entitled to the credit determined under subdivision
12 (e), section three of this article, in accordance with the require-
13 ments and limitations of this article, without regard to whether
14 such investment is made or credit claimed after the thirty-first
15 day of December, two thousand two.

16 (c) Taxpayers who gained entitlement to any tax credit
17 pursuant to the terms of this article prior to the first day of
18 January, two thousand three, retain that entitlement, and may
19 apply the credit in due course pursuant to the requirements and
20 limitations of this article until the original ten-year entitlement
21 has been exhausted or otherwise terminated.

ARTICLE 13N. TAX CREDIT FOR NEW STEEL MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

§11-13N-4. Amount of credit allowed; expiration of the credit.

1 (a) *Credit allowable.* — The amount of annual credit
2 allowable under this article to an eligible taxpayer is two
3 hundred fifty dollars for each new job at a new value-added
4 steel product manufacturing facility located in this state, or at
5 a new value-added steel product line of an existing manufactur-
6 ing facility located in this state, that is filled by a full-time
7 employee of the eligible taxpayer during the taxable year,
8 subject to the following:

9 (1) When the new value-added steel product manufacturing
10 facility, or the new steel product line of an existing value-added
11 steel product manufacturing facility, is in operation for less than
12 twelve months of the taxable year in which it is placed in
13 service, the credit allowed by subsection (a) of this section shall
14 be prorated by the ratio that the number of months in the
15 taxpayer's taxable year during which the new value-added steel
16 products facility, or the new products line of an existing
17 value-added steel product manufacturing facility, was in service
18 bears to twelve.

19 (2) When the eligible taxpayer stops manufacturing
20 value-added steel products at the new value-added steel product
21 manufacturing facility, or at the new steel product line of an
22 existing value-added steel product manufacturing facility,
23 during the taxable year, the credit allowed by subsection (a) of
24 this section shall be prorated by the ratio that the number of
25 months in the taxpayer's taxable year during which the new
26 value-added steel products facility, or the new products line of
27 an existing value-added steel product manufacturing facility,
28 was in operation manufacturing value-added steel product bears
29 to twelve.

30 (3) When determining the number of full-time employees
31 who fill new jobs at the new value-added steel product manu-
32 facturing facility located in this state, or who fill new jobs at a
33 new value-added steel product line of an existing manufacturing

34 facility located in this state, the eligible taxpayer may not
35 include any position occupied by any employee of the eligible
36 taxpayer, or of a related person, which existed in this state as of
37 the first day of the second calendar month preceding the
38 calendar month in which the new value-added steel product
39 manufacturing facility, or a new value-added steel product line
40 at an existing value-added steel products manufacturing facility
41 first becomes operational, whether the positions are filled by
42 permanent, seasonal, temporary or part-time employees.

43 (4) The amount of credit allowable each taxable year is
44 calculated annually based upon the number of new jobs filled
45 by full-time employees during the taxable year: *Provided*, That
46 the credit provided for in this article may only be taken one
47 time for each new job created, and once claimed in a tax year
48 for a new job the credit may not be claimed in a subsequent
49 year for that position.

50 (b) *Expiration of credit.* — This credit expires on the first
51 day of July, two thousand two. When the first day of July in the
52 year two thousand two falls during the taxable year of the
53 eligible taxpayer, the amount of credit allowable for that
54 taxable year shall be limited to that portion of the amount of
55 credit that would have been allowable had the credit not expired
56 multiplied by the ratio of the number of months during taxpay-
57 ers taxable year ending before the first day of July, two thou-
58 sand two, bears to twelve.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-1. Short title.

1 This article may be cited as the “West Virginia Economic
2 Opportunity Tax Credit Act.”

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

1 The Legislature finds that the encouragement of economic
2 opportunity in this state is in the public interest and promotes
3 the general welfare of the people of this state. In order to
4 encourage greater capital investment in businesses in this state
5 and thereby increase economic opportunity in this state, there
6 is hereby enacted the economic opportunity tax credit.

§11-13Q-3. Definitions.

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

6 (b) *Terms defined.*

7 (1) *Business.* -- The term "business" means any activity
8 which is engaged in by any person in this state which is taxable
9 under article thirteen, twenty-one, twenty-three or twenty-four
10 of this chapter (or any combination of those articles of this
11 chapter).

12 (2) *Business expansion.* -- The term "business expansion"
13 means capital investment in a new or expanded business facility
14 in this state.

15 (3) *Business facility.* -- The term "business facility" means
16 any factory, mill, plant, refinery, warehouse, building or
17 complex of buildings located within this state, including the
18 land on which it is located, and all machinery, equipment and
19 other real and personal property located at or within the facility,
20 used in connection with the operation of the facility, in a
21 business that is taxable in this state, and all site preparation and
22 start-up costs of the taxpayer for the business facility which it
23 capitalizes for federal income tax purposes.

24 (4) *Commissioner or tax commissioner.* -- The terms
25 "commissioner" and "tax commissioner" are used interchange-
26 ably herein and mean the tax commissioner of the state of West
27 Virginia, or his or her designee.

28 (5) *Compensation.* -- The term "compensation" means
29 wages, salaries, commissions and any other form of remunera-
30 tion paid to employees for personal services.

31 (6) *Controlled group.* -- The term "controlled group"
32 means one or more chains of corporations connected through
33 stock ownership with a common parent corporation if stock
34 possessing at least fifty percent of the voting power of all
35 classes of stock of each of the corporations is owned directly or
36 indirectly by one or more of the corporations; and the common
37 parent owns directly stock possessing at least fifty percent of
38 the voting power of all classes of stock of at least one of the
39 other corporations.

40 (7) *Corporation.* -- The term "corporation" means any
41 corporation, joint-stock company or association, and any
42 business conducted by a trustee or trustees wherein interest or
43 ownership is evidenced by a certificate of interest or ownership
44 or similar written instrument.

45 (8) *Designee.* -- The term "designee" in the phrase "or his
46 designee," when used in reference to the commissioner, means
47 any officer or employee of the state tax department duly
48 authorized by the commissioner directly, or indirectly by one or
49 more redelegations of authority, to perform the functions
50 mentioned or described in this article.

51 (9) *Eligible taxpayer.* -- The term "eligible taxpayer"
52 means any person who makes qualified investment in a new or
53 expanded business facility located in this state and creates at
54 least the required number of new jobs and who is subject to any

55 of the taxes imposed by articles thirteen, twenty-one, twenty-
56 three and twenty-four of this chapter (or any combination of
57 those articles). "Eligible taxpayer" shall also include an
58 affiliated group of taxpayers if the group elects to file a
59 consolidated corporation net income tax return under article
60 twenty-four of this chapter.

61 (10) *Expanded facility.* -- The term "expanded facility"
62 means any business facility (other than a new or replacement
63 business facility) resulting from the acquisition, construction,
64 reconstruction, installation or erection of improvements or
65 additions to existing property if the improvements or additions
66 are purchased on or after the first day of January, two thousand
67 three, but only to the extent of the taxpayer's qualified invest-
68 ment in the improvements or additions.

69 (11) *Includes and including.* -- The terms "includes" and
70 "including," when used in a definition contained in this article,
71 shall not be considered to exclude other things otherwise within
72 the meaning of the term defined.

73 (12) *Leased property.* -- The term "leased property" does
74 not include property which the taxpayer is required to show on
75 its books and records as an asset under generally accepted
76 principles of financial accounting. If the taxpayer is prohibited
77 from expensing the lease payments for federal income tax
78 purposes, the property shall be treated as purchased property
79 under this section.

80 (13) *New business facility.* -- The term "new business
81 facility" means a business facility which satisfies all the
82 requirements of paragraphs (A), (B), (C) and (D) of this
83 subdivision.

84 (A) The facility is employed by the taxpayer in the conduct
85 of a business the net income of which is or would be taxable

86 under article twenty-one or twenty-four of this chapter. The
87 facility is not considered a new business facility in the hands of
88 the taxpayer if the taxpayer's only activity with respect to the
89 facility is to lease it to another person or persons.

90 (B) The facility is purchased by, or leased to, the taxpayer
91 on or after the first day of January, two thousand three.

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

96 (D) The facility was not in service or use during the ninety
97 days immediately prior to transfer of the title to the facility, or
98 prior to the commencement of the term of the lease of the
99 facility: *Provided*, That this ninety-day period may be waived
100 by the commissioner if the commissioner determines that
101 persons employed at the facility may be treated as "new
102 employees" as that term is defined in this subsection.

103 (14) *New employee.* –

104 (A) The term "new employee" means a person residing and
105 domiciled in this state, hired by the taxpayer to fill a position or
106 a job in this state which previously did not exist in the tax-
107 payer's business enterprise in this state prior to the date on
108 which the taxpayer's qualified investment is placed in service
109 or use in this state. In no case may the number of new employ-
110 ees directly attributable to the investment for purposes of this
111 credit exceed the total net increase in the taxpayer's employ-
112 ment in this state: *Provided*, That the commissioner may
113 require that the net increase in the taxpayer's employment in
114 this state be determined and certified for the taxpayer's con-
115 trolled group: *Provided, however*, That persons filling jobs
116 saved as a direct result of taxpayer's qualified investment in

117 property purchased or leased for business expansion may be
118 treated as new employees filling new jobs if the taxpayer
119 certifies the material facts to the commissioner and the commis-
120 sioner expressly finds that:

121 (i) But for the new employer purchasing the assets of a
122 business in bankruptcy under chapter seven or eleven of the
123 United States bankruptcy code and the new employer making
124 qualified investment in property purchased or leased for
125 business expansion, the assets would have been sold by the
126 United States bankruptcy court in a liquidation sale and the jobs
127 saved would have been lost; or

128 (ii) But for the taxpayer's qualified investment in property
129 purchased or leased for business expansion in this state, the
130 taxpayer would have closed its business facility in this state and
131 the employees of the taxpayer located at the facility would have
132 lost their jobs: *Provided*, That the commissioner may not make
133 this certification unless the commissioner finds that the
134 taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that
135 the taxpayer's business facility was destroyed, in whole or in
136 significant part, by fire, flood or other act of God.

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

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

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

145 (II) "Permanent employment" does not include employment
146 that is temporary or seasonal and therefore the wages, salaries
147 and other compensation paid to the temporary or seasonal

148 employees will not be considered for purposes of sections five
149 and seven of this article; or

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

154 (15) *New job*. — The term “new job” means a job which
155 did not exist in the business of the taxpayer in this state prior to
156 the taxpayer’s qualified investment being made, and which is
157 filled by a new employee.

158 (16) *New property*. — The term “new property” means:

159 (A) Property, the construction, reconstruction or erection of
160 which is completed on or after the first day of January, two
161 thousand three, and placed in service or use after that date; and

162 (B) Property leased or acquired by the taxpayer that is
163 placed in service or use in this state on or after the first day of
164 January, two thousand three, if the original use of the property
165 commences with the taxpayer and commences after that date.

166 (17) *Original use*. — The term “original use” means the
167 first use to which the property is put, whether or not the use
168 corresponds to the use of the property by the taxpayer.

169 (18) *Partnership and partner*. — The term “partnership”
170 includes a syndicate, group, pool, joint venture or other
171 unincorporated organization through or by means of which any
172 business, financial operation or venture is carried on, and which
173 is not a trust or estate, a corporation or a sole proprietorship.
174 The term “partner” includes a member in such a syndicate,
175 group, pool, joint venture or other organization.

176 (19) *Person.* -- The term "person" includes any natural
177 person, corporation or partnership.

178 (20) *Property purchased or leased for business expansion.*

179 (A) *Included property.* -- Except as provided in paragraph
180 (B), the term "property purchased or leased for business
181 expansion" means real property and improvements thereto, and
182 tangible personal property, but only if the real or personal
183 property was constructed, purchased, or leased and placed in
184 service or use by the taxpayer, for use as a component part of a
185 new or expanded business facility as defined in this section,
186 which is located within the state of West Virginia. This term
187 includes only:

188 (1) Real property and improvements thereto having a useful
189 life of four or more years, placed in service or use on or after
190 the first day of January, two thousand three, by the taxpayer.

191 (2) Real property and improvements thereto, acquired by
192 written lease having a primary term of ten or more years and
193 placed in service or use by the taxpayer on or after the first day
194 of January, two thousand three.

195 (3) Tangible personal property placed in service or use by
196 the taxpayer on or after the first day of January, two thousand
197 three, with respect to which depreciation, or amortization in lieu
198 of depreciation, is allowable in determining the personal or
199 corporation net income tax liability of the business taxpayer
200 under article twenty-one or twenty-four of this chapter, and
201 which has a useful life, at the time the property is placed in
202 service or use in the state, of four or more years.

203 (4) Tangible personal property acquired by written lease
204 having a primary term of four years or longer, that commenced
205 and was executed by the parties thereto on or after the first day
206 of January, two thousand three, if used as a component part of

207 a new or expanded business facility, shall be included within
208 this definition.

209 (5) Tangible personal property owned or leased, and used
210 by the taxpayer at a business location outside the state which is
211 moved into the state of West Virginia on or after the first day of
212 January, two thousand three, for use as a component part of a
213 new or expanded business facility located in the state: *Provided,*
214 That if the property is owned, it must be depreciable or amortiz-
215 able personal property for income tax purposes, and have a
216 useful life of four or more years remaining at the time it is
217 placed in service or use in the state, and if the property is
218 leased, the primary term of the lease remaining at the time the
219 leased property is placed in service or use in the state, must be
220 four or more years.

221 (B) *Excluded property.* – The term “property purchased or
222 leased for business expansion” does not include:

223 (i) Property owned or leased by the taxpayer and for which
224 the taxpayer was previously allowed tax credit under article
225 thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax
226 credits allowed by this article.

227 (ii) Property owned or leased by the taxpayer and for which
228 the seller, lessor, or other transferor, was previously allowed tax
229 credit under article thirteen-c, thirteen-d or thirteen-e of this
230 chapter, or the tax credits allowed by this article.

231 (iii) Repair costs, including materials used in the repair,
232 unless for federal income tax purposes the cost of the repair
233 must be capitalized and not expensed.

234 (iv) Airplanes.

235 (v) Property which is primarily used outside the state, with
236 use being determined based upon the amount of time the
237 property is actually used both within and outside the state.

238 (vi) Property which is acquired incident to the purchase of
239 the stock or assets of the seller, unless for good cause shown,
240 the commissioner consents to waiving this requirement.

241 (vii) Natural resources in place.

242 (viii) Purchased or leased property, the cost or consider-
243 ation for which cannot be quantified with any reasonable degree
244 of accuracy at the time the property is placed in service or use:
245 *Provided*, That when the contract of purchase or lease specifies
246 a minimum purchase price or minimum annual rent the amount
247 thereof shall be used to determine the qualified investment in
248 the property under section eight of this article if the property
249 otherwise qualifies as property purchased or leased for business
250 expansion.

251 (21) *Purchase*. -- The term "purchase" means any acquisi-
252 tion of property, but only if:

253 (A) The property is not acquired from a person whose
254 relationship to the person acquiring it would result in the
255 disallowance of deductions under section 267 or 707 (b) of the
256 United States Internal Revenue Code of 1986, as amended, and
257 in effect on the first day of January, two thousand three.

258 (B) The property is not acquired by one component member
259 of a controlled group from another component member of the
260 same controlled group. The commissioner can waive this
261 requirement if the property was acquired from a related party
262 for its then fair market value; and

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

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

268 (ii) Under Section 1014 (e) of the United States Internal
269 Revenue Code of 1986, as amended, and in effect on the first
270 day of January, two thousand two.

271 (22) *Qualified activity*. — The term “qualified activity”
272 means any business or other activity subject to any of the taxes
273 imposed by article thirteen, twenty-one, twenty-three or
274 twenty-four of this chapter (or any combination of those articles
275 of this chapter), but does not include the activity of severance
276 or production of natural resources.

277 (23) *Related person*. — The term “related person” means:

278 (A) A corporation, partnership, association or trust con-
279 trolled by the taxpayer;

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

282 (C) A corporation, partnership, association or trust con-
283 trolled by an individual, corporation, partnership, association or
284 trust that is in control of the taxpayer; or

285 (D) A member of the same controlled group as the tax-
286 payer.

287 For purposes of this section, “control,” with respect to a
288 corporation, means ownership, directly or indirectly, of stock
289 possessing fifty percent or more of the total combined voting
290 power of all classes of the stock of the corporation entitled to

291 vote. "Control," with respect to a trust, means ownership,
292 directly or indirectly, of fifty percent or more of the beneficial
293 interest in the principal or income of the trust. The ownership
294 of stock in a corporation, of a capital or profits interest in a
295 partnership or association or of a beneficial interest in a trust is
296 determined in accordance with the rules for constructive
297 ownership of stock provided in section 267 (c) of the United
298 States Internal Revenue Code of 1986, as amended, other than
299 paragraph (3) of that section.

300 (24) *Replacement facility.* — The term "replacement
301 facility" means any property (other than an expanded facility)
302 that replaces or supersedes any other property located within
303 this state that:

304 (A) The taxpayer or a related person used in or in connec-
305 tion with any activity for more than two years during the period
306 of five consecutive years ending on the date the replacement or
307 superseding property is placed in service by the taxpayer; or

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

312 (25) *Research and development.* -- The term "research and
313 development" means systematic scientific, engineering or
314 technological study and investigation in a field of knowledge in
315 the physical, computer or software sciences, often involving the
316 formulation of hypotheses and experimentation, for the purpose
317 of revealing new facts, theories or principles, or increasing
318 scientific knowledge, which may reveal the basis for new or
319 enhanced products, equipment or manufacturing processes.

320 (A) Research and development includes, but is not limited
321 to, design, refinement and testing of prototypes of new or

322 improved products, or design, refinement and testing of
323 manufacturing processes before commercial sales relating
324 thereto have begun. For purposes of this section, commercial
325 sales includes, but is not limited to, sales of prototypes or sales
326 for market testing.

327 (B) Research and development does not include:

328 (i) Market research;

329 (ii) Sales research;

330 (iii) Efficiency surveys;

331 (iv) Consumer surveys;

332 (v) Product market testing;

333 (vi) Product testing by product consumers or through
334 consumer surveys for evaluation of consumer product perfor-
335 mance or consumer product usability;

336 (vii) The ordinary testing or inspection of materials or
337 products for quality control (quality control testing);

338 (viii) Management studies;

339 (ix) Advertising;

340 (x) Promotions;

341 (xi) The acquisition of another's patent, model, production
342 or process or investigation or evaluation of the value or
343 investment potential related thereto;

344 (xii) Research in connection with literary, historical, or
345 similar activities;

346 (xiii) Research in the social sciences, economics, humani-
347 ties or psychology and other nontechnical activities; and

348 (xiv) The providing of sales services or any other service,
349 whether technical service or nontechnical service.

350 (26) *Taxpayer*. — The term “taxpayer” means any person
351 subject to any of the taxes imposed by article thirteen,
352 twenty-one, twenty-three or twenty-four of this chapter (or any
353 combination of those articles of this chapter).

354 (27) *This code*. — The term “this code” means the code of
355 West Virginia, one thousand nine hundred thirty-one, as
356 amended.

357 (28) *This state*. — The term “this state” means the state of
358 West Virginia.

359 (29) *Used property*. — The term “used property” means
360 property acquired after the thirty-first day of December, two
361 thousand two, that is not “new property.”

§11-13Q-4. Amount of credit allowed.

1 (a) *Credit allowed*. — Eligible taxpayers are allowed a
2 credit against the portion of taxes imposed by this state that are
3 attributable to and the consequence of the taxpayer’s qualified
4 investment in a new or expanded business in this state, which
5 results in the creation of new jobs. The amount of this credit is
6 determined and applied as provided in this article.

7 (b) *Amount of credit*. — The amount of credit allowable is
8 determined by multiplying the amount of the taxpayer’s
9 “qualified investment” (determined under section five or eight,
10 or both) in “property purchased or leased for business expan-
11 sion” (as defined in section three) by the taxpayer’s new jobs
12 percentage (determined under section nine). The product of this

13 calculation establishes the maximum amount of credit allow-
14 able under this article due to the qualified investment.

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

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

30 (1) The taxable year in which, under the taxpayer's depreci-
31 ation practice, the period for depreciation with respect to the
32 property begins; or

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

**§11-13Q-5. Credit allowed for locating corporate headquarters in
this state.**

1 (a) *Credit allowed.* — A corporation that presently has its
2 corporate headquarters located outside this state that relocates
3 its corporate headquarters in this state and employs, on a
4 full-time basis, at its new corporate headquarters location, at
5 least fifteen people, who are domiciled in this state, is allowed
6 credit under this article, the amount of which is determined as

7 provided in subsection (b) of this section. The restrictions set
8 forth in subsection (a), section nineteen of this article do not
9 apply to the credit for corporate headquarters relocations
10 allowed under this section.

11 (b) *Determination of credit.* — The amount of credit
12 allowed by subsection (a) is determined, at the election of the
13 taxpayer:

14 (1) By multiplying the taxpayer's adjusted qualified
15 investment by its new jobs percentage (as determined under
16 section nine of this article); or

17 (2) By multiplying the taxpayer's adjusted qualified
18 investment by ten percent.

19 (c) *Corporate headquarters relocations after December 31,*
20 *2002.* — For purposes of corporate headquarters relocations
21 occurring on or after the first day of January, two thousand
22 three, and notwithstanding any other provision of this article to
23 the contrary:

24 (1) New jobs created in this state by relocation of a corpo-
25 rate headquarters may include jobs created in this state within
26 twelve months before or after the month in which the qualified
27 investment in the corporate headquarters relocation is placed
28 into service or use in this state by:

29 (A) Relocation or transfer of employees of the corporation
30 or employees of a related corporation or related person from an
31 out-of-state location to the relocated corporate headquarters in
32 this state, who: (i) Are or become employees of the corporation
33 within twelve months before or after the month in which the
34 qualified investment in the corporate headquarters is placed into
35 service or use in this state; and (ii) whose regular place of work
36 is in the corporate headquarters; or

37 (B) New employees of the corporation whose regular place
38 of work is in the corporate headquarters.

39 (2) Multiple year projects certified under section six of this
40 article may be allowed for corporate headquarters relocations
41 under this section.

42 (d) *Application of credit.* — The credit allowed by this
43 section is applied in the manner prescribed in section seven of
44 this article: *Provided*, That the amount of corporation net
45 income taxes against which the credit allowed by this section
46 may be applied is the sum of the corporation net income tax due
47 on adjusted federal taxable income allocated to this state under
48 section seven, article twenty-four of this chapter, plus that
49 portion of the corporation net income tax due on adjusted
50 federal taxable income apportioned to this state under section
51 seven, article twenty-four of this chapter, that is further
52 apportioned to the qualified investment using the payroll factor
53 provided in subdivision (1), subsection (h), section seven of this
54 article or an alternative means of apportionment as prescribed
55 by the commissioner under section seven of this article. For all
56 other purposes, the credit allowed by this section is treated as
57 credit allowed by section four of this article.

58 (e) *Definitions.* — For purposes of this section:

59 (1) *Adjusted qualified investment.* — The term “adjusted
60 qualified investment” means the taxpayer’s qualified invest-
61 ment in the corporate headquarters as determined under section
62 eight of this article and rules of the commissioner, plus the cost
63 of the reasonable and necessary expenses it incurred to relocate
64 its corporate headquarters at a location in this state from its
65 prior location outside this state.

66 (2) *Corporate headquarters.* — The term “corporate
67 headquarters” means the place at which the corporation has its

68 commercial domicile and from which the business of the
69 corporation is primarily conducted.

70 (3) *Reasonable and necessary expenses incurred to relocate*
71 *corporate headquarters.* — The phrase “reasonable and
72 necessary expenses incurred to relocate corporate headquarters”
73 means only those expenses incurred and paid by the corpora-
74 tion, to unrelated third parties, to move its corporate headquar-
75 ters and its corporate headquarters employees to this state that
76 are, upon application by the corporation, determined by the
77 commissioner to have been both reasonable and necessary to
78 effectuate the move.

79 (4) *The corporation.* — For purposes of this section, the
80 term “the corporation” means the corporation for which the
81 corporate headquarters is relocated.

§11-13Q-6. Credit allowable for certified projects.

1 (a) *In general.* — A multiple year project certified by the
2 commissioner is eligible for the credit allowable by this article.
3 A project eligible for certification under this section is one
4 where the qualified investment under this article creates at least
5 the required minimum number of new jobs but the qualified
6 investment is placed in service or use over a period of up to
7 three successive tax years: *Provided,* That the qualified
8 investment is made pursuant to a written business facility
9 development plan of the taxpayer providing for an integrated
10 project for investment at one or more new or expanded business
11 facilities, a copy of which must be attached to the taxpayer’s
12 application for project certification and approved by the
13 commissioner, and the qualified investment placed in service or
14 use during the first tax year would not have been made without
15 the expectation of making the qualified investment placed in
16 service or use during the next two succeeding tax years;

17 (b) *Application for certification.* — The application for
18 certification of a project under this section shall be filed with
19 and approved by the commissioner prior to any credit being
20 claimed or allowed for the project's qualified investment and
21 new jobs created as a direct result of the qualified investment.
22 This application shall be approved in writing and contain the
23 information as the commissioner may require to determine
24 whether the project should be certified as eligible for credit
25 under this article.

26 (c) *Taking of credit.* — The participant or participants
27 claiming the credit for qualified investments in a certified
28 project shall annually file with their income tax returns filed
29 under this chapter:

30 (A) Certification that the participant's qualified investment
31 property continues to be used in the project and if disposed of
32 during the tax year, was not disposed of prior to expiration of
33 its useful life;

34 (B) Certification that the new jobs created by the project's
35 qualified investment continue to exist and are filled by persons
36 who are residents of this state; and

37 (C) Any other information the commissioner requires to
38 determine continuing eligibility to claim the annual credit
39 allowance for the project's qualified investment.

§11-13Q-7. Application of annual credit allowance.

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

4 (1) The one-tenth part allowed under section four of this
5 article for qualified investment placed into service or use during
6 a prior taxable year; plus

7 (2) The one-tenth part allowed under section four of this
8 article for qualified investment placed into service or use during
9 the current taxable year; plus

10 (3) The one-tenth part allowed under section five of this
11 article for locating corporate headquarters in this state; or the
12 amount allowed under section ten of this article of the taxable
13 year.

14 (b) *Application of current year annual credit allowance.* --
15 The amount determined under subsection (a) of this section is
16 allowed as a credit against eighty percent of that portion of the
17 taxpayer's state tax liability which is attributable to and the
18 direct result of the taxpayer's qualified investment, and applied
19 as provided in subsections (c) through (f), both inclusive, of this
20 section, and in that order: *Provided*, That if the median salary
21 of the new jobs is higher than the statewide average nonfarm
22 payroll wage, as determined annually by the West Virginia
23 bureau of employment programs, the amount determined under
24 subsection (a) of this section is allowed as a credit against one
25 hundred percent of that portion of the taxpayers state tax
26 liability which is attributable to and the direct result of the
27 taxpayer's qualified investment, and shall be applied, as
28 provided in subsections (c) through (f), both inclusive, of this
29 section, and in that order.

30 (c) *Business and occupation taxes.* -- That portion of the
31 allowable credit attributable to qualified investment in a
32 business or other activity subject to the taxes imposed by article
33 thirteen of this chapter under section two-o of article thirteen
34 must first be applied to reduce the taxes imposed or payable
35 under section two-o, article thirteen of this chapter, for the
36 taxable year (determined before application of allowable credits
37 against tax and the annual exemption). In no case may the credit
38 allowed under this article be applied to reduce any tax imposed

39 or payable under section two-f, or under any other section of
40 article thirteen of this chapter except section two-o.

41 (1) If the taxes due under section two-o, article thirteen of
42 this chapter are not solely attributable to and the direct result of
43 the taxpayer's qualified investment in a business or other
44 activity taxable under section two-o, article thirteen of this
45 chapter, the amount of those taxes that are attributable is
46 determined by multiplying the amount of taxes due under
47 section two-o, article thirteen of this chapter, for the taxable
48 year (determined before application of any allowable credits
49 against tax and the annual exemption), by a fraction, the
50 numerator of which is all wages, salaries and other compensa-
51 tion paid during the taxable year to all employees of the
52 taxpayer employed in this state, whose positions are directly
53 attributable to the qualified investment in a business or other
54 activity taxable under section two-o, article thirteen of this
55 chapter. The denominator of the fraction shall be the wages,
56 salaries and other compensation paid during the taxable year to
57 all employees of the taxpayer employed in this state, whose
58 positions are directly attributable to the business or other
59 activity of the taxpayer that is taxable under article thirteen of
60 this chapter.

61 (2) The annual exemption allowed by section three, article
62 thirteen of this chapter, plus any credits allowable under articles
63 thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter,
64 shall be applied against and reduce only the portion of article
65 thirteen taxes not apportioned to the qualified investment under
66 this article: *Provided*, That any excess exemption or credits may
67 be applied against the amount of article thirteen taxes appor-
68 tioned to the qualified investment under this article, that is not
69 offset by the amount of annual credit against the taxes allowed
70 under this article for the taxable year, unless their application
71 is otherwise prohibited by this chapter.

72 (d) *Business franchise tax.* --

73 (1) After application of subsection (c) of this section, any
74 unused allowable credit is next applied to reduce the taxes
75 imposed by article twenty-three of this chapter for the taxable
76 year (determined after application of the credits against tax
77 provided in section seventeen of article twenty-three of this
78 chapter, but before application of any other allowable credits
79 against tax).

80 (2) If the taxes due under article twenty-three of this
81 chapter are not solely attributable to and the direct result of the
82 taxpayer's qualified investment in a business or other activity
83 taxable under article twenty-three of this chapter for the taxable
84 year, the amount of the taxes which are so attributable are
85 determined by multiplying the amount of taxes due (determined
86 after application of the credits against tax as provided in section
87 seventeen of article twenty-three of this chapter, but before
88 application of any other allowable credits), by a fraction, the
89 numerator of which is all wages, salaries and other compensa-
90 tion paid during the taxable year to all employees of the
91 taxpayer employed in this state, whose positions are directly
92 attributable to the qualified investment in a business or other
93 activity taxable under article twenty-three of this chapter. The
94 denominator of the fraction is wages, salaries and other
95 compensation paid during the taxable year to all employees of
96 the taxpayer employed in this state, whose positions are directly
97 attributable to the business or other activity of the taxpayer that
98 is taxable under article twenty-three of this chapter.

99 (3) Any credits allowable under articles thirteen-d, thir-
100 teen-e, thirteen-r and thirteen-s of this chapter are applied
101 against and reduce only the portion of article twenty-three taxes
102 not apportioned to the qualified investment under this article:
103 *Provided*, That any excess exemption or credits may be applied
104 against the amount of article twenty-three taxes apportioned to

105 the qualified investment under this article that is not offset by
106 the amount of annual credit against those taxes allowed under
107 this article for the taxable year, unless their application is
108 otherwise prohibited by this chapter.

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

110 (1) After application of subsections (c) and (d) of this
111 section, any unused credit is next applied to reduce the taxes
112 imposed by article twenty-four of this chapter for the taxable
113 year (determined before application of allowable credits against
114 tax).

115 (2) If the taxes due under article twenty-four of this chapter
116 (determined before application of allowable credits against tax)
117 are not solely attributable to and the direct result of the tax-
118 payer's qualified investment, the amount of the taxes that is
119 attributable are determined by multiplying the amount of taxes
120 due under article twenty-four of this chapter for the taxable year
121 (determined before application of allowable credits against tax),
122 by a fraction, the numerator of which is all wages, salaries and
123 other compensation paid during the taxable year to all employ-
124 ees of the taxpayer employed in this state whose positions are
125 directly attributable to the qualified investment. The denomina-
126 tor of the fraction is the wages, salaries and other compensation
127 paid during the taxable year to all employees of the taxpayer
128 employed in this state.

129 (3) Any credits allowable under article twenty-four of this
130 chapter are applied against and reduce only the amount of
131 article twenty-four taxes not apportioned to the qualified
132 investment under this article: *Provided*, That any excess credits
133 may be applied against the amount of article twenty-four taxes
134 apportioned to the qualified investment under this article that is
135 not offset by the amount of annual credit against such taxes

136 allowed under this article for the taxable year, unless their
137 application is otherwise prohibited by this chapter.

138 (f) *Personal income taxes.* —

139 (1) If the person making the qualified investment is an
140 electing small business corporation (as defined in section 1361
141 of the United States Internal Revenue Code of 1986, as
142 amended), a partnership, a limited liability company that is
143 treated as a partnership for federal income tax purposes or a
144 sole proprietorship, then any unused credit (after application of
145 subsections (c), (d) and (e) of this section) is allowed as a credit
146 against the taxes imposed by article twenty-one of this chapter
147 on the income from business or other activity subject to tax
148 under article thirteen or twenty-three of this chapter or on
149 income of a sole proprietor attributable to the business.

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

155 (3) If the amount of taxes due under article twenty-one of
156 this chapter (determined before application of allowable credits
157 against tax) that is attributable to business, is not solely
158 attributable to and the direct result of the qualified investment
159 of the electing small business corporation, limited liability
160 company, partnership, other unincorporated organization or sole
161 proprietorship, the amount of the taxes that are so attributable
162 are determined by multiplying the amount of taxes due under
163 article twenty-one of this chapter (determined before applica-
164 tion of allowable credits against tax), that is attributable to
165 business by a fraction, the numerator of which is all wages,
166 salaries and other compensation paid during the taxable year to
167 all employees of the electing small business corporation,

168 limited liability company, partnership, other unincorporated
169 organization or sole proprietorship employed in this state,
170 whose positions are directly attributable to the qualified
171 investment. The denominator of the fraction is the wages,
172 salaries and other compensation paid during the taxable year to
173 all employees of the taxpayer.

174 (4) No credit is allowed under this section against any
175 employer withholding taxes imposed by article twenty-one of
176 this chapter.

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

183 (1) Separate accounting or identification;

184 (2) Adjustment to the wages, salaries and other compensa-
185 tion fraction formula to reflect all components of the tax
186 liability;

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

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

194 In order to effectuate the purposes of this subsection, the
195 commissioner may propose for promulgation rules, including
196 emergency rules, in accordance with article three, chapter
197 twenty-nine-a of this code.

198 (h) *Unused credit.* — If any credit remains after application
199 of subsection (b) of this section, the amount thereof is carried
200 forward to each ensuing tax year until used or until the expira-
201 tion of the third taxable year subsequent to the end of the initial
202 ten year credit application period. If any unused credit remains
203 after the thirteenth year, the amount thereof is forfeited. No
204 carryback to a prior taxable year is allowed for the amount of
205 any unused portion of any annual credit allowance.

§11-13Q-8. Qualified investment.

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

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

9	If useful life is:	The applicable percentage is:
10	Less than 4 years	0%
11	4 years or more but less than 6 years	33 1/3%
12	6 years or more but less than 8 years	66 2/3%
13	8 years or more	100%

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

19 (c) *Cost.* — For purposes of subsection (a), the cost of each
20 property purchased for business expansion is determined under
21 the following rules:

22 (1) *Trade-ins*. — Cost does not include the value of
23 property given in trade or exchange for the property purchased
24 for business expansion.

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

30 (3) *Rental property*. —

31 (A) The cost of real property acquired by written lease for
32 a primary term of ten years or longer is one hundred percent of
33 the rent reserved for the primary term of the lease, not to exceed
34 twenty years.

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

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

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

41 (iii) Eight years, or longer, is one hundred percent of the
42 rent reserved for the primary term of the lease, not to exceed
43 twenty years: *Provided*, That in no event may rent reserved
44 include rent for any year subsequent to expiration of the book
45 life of the equipment, determined using the straight-line method
46 of depreciation.

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

51 (5) *Transferred property.* — The cost of property used by
52 the taxpayer out-of-state and then brought into this state, is
53 determined based on the remaining useful life of the property
54 at the time it is placed in service or use in this state, and the cost
55 is the original cost of the property to the taxpayer less straight
56 line depreciation allowable for the tax years or portions thereof
57 the taxpayer used the property outside this state. In the case of
58 leased tangible personal property, cost is based on the period
59 remaining in the primary term of the lease after the property is
60 brought into this state for use in a new or expanded business
61 facility of the taxpayer, and is the rent reserved for the remain-
62 ing period of the primary term of the lease, not to exceed
63 twenty years, or the remaining useful life of the property
64 (determined as aforesaid), whichever is less.

§11-13Q-9. New jobs percentage.

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

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

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

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

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

13 (c) *Applicable percentage.* —

14 For the purpose of subsection (a) of this section, the
 15 applicable new jobs percentage is determined under the
 16 following table:

17		If number of
18	The applicable	new jobs
19	percentage is:	is at least:
20	20%	20
21	25%	280
22	30%	520

23 (d) *Certification of new jobs.* — With the annual return for
 24 the applicable taxes filed for the taxable year in which the
 25 qualified investment is first placed in service or use in this state,
 26 the taxpayer shall estimate and certify the number of new jobs
 27 reasonably projected to be created by it in this state within the
 28 period prescribed in subsection (f), that are, or will be, directly
 29 attributable to the qualified investment of the taxpayer. For
 30 purposes of this section, “applicable taxes” means the taxes
 31 imposed by articles thirteen, twenty-one, twenty-three and
 32 twenty-four of this chapter against which this credit is applied.

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

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

43 (1) If the actual number of jobs created would result in a
 44 higher new jobs percentage, the credit allowed under this article

45 shall be redetermined and amended returns filed for the first
46 and second taxable years that the qualified investment was in
47 service or use in this state.

48 (2) If the actual number of jobs created would result in a
49 lower new jobs percentage, the credit previously allowed under
50 this article shall be redetermined and amended returns filed for
51 the first and second taxable years. In applying the amount of
52 redetermined credit allowable for the two preceding taxable
53 years, the redetermined credit shall first be applied to the extent
54 it was originally applied in the prior two years to personal
55 income taxes, then to corporation net income taxes, then to
56 business franchise taxes, and lastly to business and occupation
57 taxes. Any additional taxes due under this chapter shall be
58 remitted with the amended returns filed with the commissioner,
59 along with interest, as provided in section seventeen, article ten
60 of this chapter, and a ten percent penalty determined on the
61 amount of taxes due with the amended return, which may be
62 waived by the commissioner if the taxpayer shows that the
63 overclaimed amount of the new jobs percentage was due to
64 reasonable cause and not due to willful neglect.

§11-13Q-10. Credit for small business.

1 (a) *Small business defined.* — For purposes of this section,
2 the term “small business” means a business which has annual
3 gross receipts of not more than seven million dollars (including
4 the gross receipts of any affiliates in its controlled group):
5 *Provided,* That beginning the first day of January, two thousand
6 four, and on the first day of January of each year thereafter, the
7 commissioner shall prescribe an amount that shall apply in lieu
8 of the seven million dollar amount during that calendar year.
9 This amount is prescribed by increasing the seven million dollar
10 amount by the cost-of-living adjustment for that calendar year.
11 The requirements for annual gross receipts, once met by a given
12 taxpayer in that taxable year when qualified investment is first

13 placed in service or use, may not again be applied to that same
14 taxpayer in subsequent years to defeat the small business credit
15 to which the taxpayer gained entitlement in that year.

16 (1) *Cost-of-living adjustment.* — For purposes of subsection
17 (a), the cost-of-living adjustment for any calendar year is the
18 percentage (if any) by which the consumer price index for the
19 preceding calendar year exceeds the consumer price index for
20 the calendar year two thousand two.

21 (2) *Consumer price index for any calendar year.* — For
22 purposes of subdivision (1) of this subsection, the consumer
23 price index for any calendar year is the average of the federal
24 consumer price index as of the close of the twelve-month period
25 ending on the thirty-first day of August of that calendar year.

26 (3) *Consumer price index.* — For purposes of subdivision
27 (2) above, the term “Federal Consumer Price Index” means the
28 most recent consumer price index for all urban consumers
29 published by the United States department of labor.

30 (4) *Rounding.* — If any increase under subdivision (1)
31 above is not a multiple of fifty dollars, the increase shall be
32 rounded to the next lowest multiple of fifty dollars.

33 (b) *Amount of credit allowed.*

34 (1) *Credit allowed.* — An eligible small business taxpayer
35 is allowed a credit against the portion of taxes imposed by this
36 state that are attributable to and the direct consequence of the
37 eligible small business taxpayer’s qualified investment in a new
38 or expanded business in this state which results in the creation
39 of at least ten new jobs within twelve months after placing
40 qualified investment into service. The amount of this credit is
41 determined as provided in subdivision (2) of this subsection.

42 (2) *Amount of credit.* — The annual amount of credit
43 allowable under this subsection is determined by dividing the
44 amount of the eligible small business taxpayer’s “qualified
45 investment” (determined under section eight of this article) in
46 “property purchased for business expansion” (as defined in
47 section three of this article) by ten. The amount of qualified
48 investment so apportioned to each year of the ten-year credit
49 period is the annual measure against which taxpayer’s annual
50 new jobs percentage (determined under subsection (d) of this
51 section,) is applied. The product of this calculation establishes
52 the maximum amount of credit allowable each year for ten
53 consecutive years under this section due to the qualified
54 investment.

55 (3) *Application of credit.* — The annual credit allowance
56 must be taken beginning with the taxable year in which the
57 taxpayer places the qualified investment into service or use in
58 this state, unless the taxpayer elects to delay the beginning of
59 the ten-year credit period until the next succeeding taxable year.
60 This election is made in the annual income tax return filed
61 under this chapter by the taxpayer for the taxable year in which
62 the qualified investment is first placed in service or use. Once
63 made, this election cannot be revoked. The annual credit
64 allowance shall be taken and applied in the manner prescribed
65 in section seven of this article.

66 (c) *New jobs.* — The term “new jobs” has the meaning
67 ascribed to it in section three of this article.

68 (1) The term “new employee” has the meaning ascribed to
69 it in section three of this article: *Provided*, That this term does
70 not include employees filling new jobs who:

71 (A) Are related individuals, as defined in subsection (i),
72 section 51 of the Internal Revenue Code of 1986, or a person
73 who owns ten percent or more of the business with such

74 ownership interest to be determined under rules set forth in
75 subsection (b), section 267 of said Internal Revenue Code; or

76 (B) Worked for the taxpayer during the six-month period
77 ending on the date the taxpayer's qualified investment is placed
78 in service or use and is rehired by the taxpayer during the
79 six-month period beginning on the date taxpayer's qualified
80 investment is placed in service or use.

81 (2) *When a job is attributable.* — An employee's position
82 is directly attributable to the qualified investment if:

83 (A) The employee's service is performed or his or her base
84 of operations is at the new or expanded business facility;

85 (B) The position did not exist prior to the construction,
86 renovation, expansion or acquisition of the business facility and
87 the making of the qualified investment; and

88 (C) But for the qualified investment, the position would not
89 have existed.

90 (d) *New jobs percentage.* — The annual new jobs percent-
91 age is based on the number of new jobs created in this state by
92 the taxpayer directly attributable to taxpayer's qualified
93 investment.

94 (1) If at least ten new jobs are created and filled during the
95 taxable year in which the qualified investment is placed in
96 service or use, the applicable new jobs percentage is ten
97 percent.

98 (2) During each of the remaining nine years of the ten-year
99 credit period, the annual new jobs percentage is based on the
100 average number of new jobs filled during that taxable year:
101 *Provided*, That for purposes of estimating the new jobs percent-
102 age that will be applicable for each subsequent credit year, the

103 taxpayer shall use the new jobs percentage allowable for the
104 taxable year immediately prior thereto, and in the annual
105 income tax return filed under this chapter for the then current
106 tax year, the taxpayer shall redetermine his or her allowable
107 new jobs percentage for that year based on the average number
108 of new employees employed in new jobs during that year
109 (determined on a monthly basis) created as the direct result of
110 the taxpayer's qualified investment.

111 (e) *Certification of new jobs.* — With the annual income tax
112 return filed under this chapter for each taxable year during the
113 ten-year credit period, the taxpayer shall certify:

114 (1) The new jobs percentage for that taxable year;

115 (2) The amount of the credit allowance for that year;

116 (3) If the business is a partnership, limited liability com-
117 pany or electing small business corporation, the amount of
118 credit allocated to the partners, members or shareholders, as the
119 case may be for that year;

120 (4) That qualified investment property continue to be used
121 in the business, or if any of it was disposed of during the year
122 the date of disposition and that the property was not disposed of
123 prior to expiration of its useful life, as determined under section
124 eight of this article; and

125 (5) That the new jobs created by the qualified investment
126 continue to exist and are filled by persons who meet the
127 definition of new employee (as defined in this section).

128 (f) *Small business project.* — A small business may apply
129 to the commissioner under section six of this article for
130 certification as a project if that project will create at least ten
131 new jobs.

132 (g) *Rules.* — The commissioner may prescribe such rules
133 as he or she determines necessary in order to determine the
134 amount of credit allowed under this section to a taxpayer; to
135 verify a taxpayer's continued entitlement to claim the credit;
136 and to verify proper application of the credit allowed.

137 (h) The commissioner may require a taxpayer intending to
138 claim credit under this section to file with the commissioner a
139 notice of intent to claim this credit, before the taxpayer begins
140 reducing his or her monthly or quarterly installment payments
141 of estimated tax for the credit provided in this section.

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

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

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section eight of this article; or

6 (2) Ceases to be used in an eligible business of the taxpayer
7 in this state prior to the end of its useful life, as determined
8 under section eight of this article, then the unused portion of the
9 credit allowed for the property is forfeited for the taxable year
10 and all ensuing years. Additionally, except when the property
11 is damaged or destroyed by fire, flood, storm or other casualty,
12 or is stolen, the taxpayer shall redetermine the amount of credit
13 allowed in all earlier years by reducing the applicable percent-
14 age of cost of the property allowed under section eight of this
15 article, to correspond with the percentage of cost allowable for
16 the period of time that the property was actually used in this
17 state in the new or expanded business of the taxpayer. The
18 taxpayer shall then file a reconciliation statement for the year
19 in which the forfeiture occurs and pay any additional taxes

20 owed due to reduction of the amount of credit allowable for the
21 earlier years, plus interest and any applicable penalties. The
22 reconciliation statement shall be filed with the annual return for
23 the primary tax for which the taxpayer is liable under articles
24 thirteen and twenty-three of this chapter.

25 (b) *Cessation of operation of business facility.* — If during
26 any taxable year the taxpayer ceases operation of a business
27 facility in this state for which credit was allowed under this
28 article, before expiration of the useful life of property with
29 respect to which tax credit has been allowed under this article,
30 then the unused portion of the allowed credit is forfeited for the
31 taxable year and for all ensuing years. Additionally, except
32 when the cessation is due to fire, flood, storm or other casualty,
33 the taxpayer shall redetermine the amount of credit allowed in
34 earlier years by reducing the applicable percentage of cost of
35 the property allowed under section eight of this article, to
36 correspond with the percentage of cost allowable for the period
37 of time that the property was actually used in this state in a
38 business of the taxpayer that is taxable under article thirteen,
39 twenty-three or twenty-four of this chapter, or in the case of a
40 sole proprietorship, article twenty-one of this chapter. The
41 taxpayer shall then file a reconciliation statement with the
42 annual return for the primary tax for which the taxpayer is
43 liable under articles thirteen, twenty-one or twenty-three of this
44 chapter, for the year in which the forfeiture occurs, and pay any
45 additional taxes owed due to the reduction of the amount of
46 credit allowable for the earlier years, plus interest and any
47 applicable penalties.

48 (c) *Reduction in number of employees.* — If during any
49 taxable year subsequent to the taxable year in which the new
50 jobs percentage is redetermined as provided in section nine of
51 this article, the average number of employees of the taxpayer,
52 for the then current taxable year, employed in positions created
53 because of and directly attributable to the qualified investment

54 falls below the minimum number of new jobs created upon
55 which the taxpayer's annual credit allowance is based, the
56 taxpayer shall calculate what his or her annual credit allowance
57 would have been had his or her new jobs percentage been
58 determined based upon the average number of employees, for
59 the then current taxable year, employed in positions created
60 because of and directly attributable to the qualified investment.
61 The difference between the result of this calculation and the
62 taxpayer's annual credit allowance for the qualified investment
63 as determined under section four of this article, is forfeited for
64 the then current taxable year, and for each succeeding taxable
65 year unless for a succeeding taxable year the taxpayer's average
66 employment in positions directly attributable to the qualified
67 investment once again meets the level required to enable the
68 taxpayer to utilize its full annual credit allowance for that
69 taxable year.

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

1 (a) *When recapture tax applies.* —

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

17 ment property was placed in service or use, the person shall pay
18 the recapture tax imposed by subsection (b) of this section.

19 (2) This section does not apply when section thirteen of this
20 article applies. However, the successor, or the successors, and
21 the person, or persons, who previously claimed credit under this
22 article with respect to the qualified investment property and the
23 new jobs attributable thereto, are jointly and severally liable for
24 payment of any recapture tax subsequently imposed under this
25 section with respect to the qualified investment property and
26 new jobs.

27 (b) *Recapture tax imposed.* —

28 The recapture tax imposed by this subsection is the amount
29 determined as follows:

30 (1) *Full recapture.* — If the taxpayer prematurely removes
31 qualified investment property placed in service (when consid-
32 ered as a class) from economic service in the taxpayer's
33 qualified investment business activity in this state, and the
34 number of employees filling the new jobs created by the person
35 falls below the number of new jobs required to be created in
36 order to qualify for the amount of credit being claimed, the
37 taxpayer shall recapture the amount of credit claimed under
38 section seven of this article for the taxable year, and all preced-
39 ing taxable years, on qualified investment property which has
40 been prematurely removed from service. The amount of tax due
41 under this subdivision is an amount equal to the amount of
42 credit that is recaptured under this subdivision.

43 (2) *Partial recapture.* — If the taxpayer prematurely
44 removes qualified investment property from economic service
45 in the taxpayer's qualified investment business activity in this
46 state, and the number of employees filling the new jobs created
47 by the person remains twenty or more, but falls below the

48 number necessary to sustain continued application of credit
49 determined by use of the new job percentage upon which the
50 taxpayer's one-tenth annual credit allowance was determined
51 under section four or section ten of this article, taxpayer shall
52 recapture an amount of credit equal to the difference between:
53 (A) The amount of credit claimed under section seven of this
54 article for the taxable year, and all preceding taxable years; and
55 (B) the amount of credit that would have been claimed in those
56 years if the amount of credit allowable under section four or ten
57 of this article had been determined based on the qualified
58 investment property which remains in service using the average
59 number of new jobs filled by employees in the taxable year for
60 which recapture occurs. The amount of tax due under this
61 subdivision is an amount equal to the amount of credit that is
62 recaptured under this subdivision.

63 (3) *Additional recapture.* — If after a partial recapture
64 under subdivision (2) of this subsection, the taxpayer further
65 reduces the number of employees filling new jobs, the taxpayer
66 shall recapture an additional amount determined as provided
67 under subdivision (1) of this subsection. The amount of tax due
68 under this subdivision is an amount equal to the amount of
69 credit that is recaptured under this subdivision.

70 (c) *Recapture of credit allowed for projects.* — The
71 commissioner may file in the West Virginia register an emer-
72 gency legislative rule explaining how the provisions of this
73 section are applied in the case of projects certified under section
74 six of this article.

75 (d) *Payment of recapture tax.* — The amount of tax
76 recaptured under this section is due and payable on the day the
77 person's annual return is due for the taxable year in which this
78 section applies, under article twenty-one or twenty-four of this
79 chapter. When the employer is a partnership, limited liability
80 company or S corporation for federal income tax purposes, the

81 recapture tax shall be paid by those persons who are partners in
82 the partnership, members in the company, or shareholders in the
83 S corporation, in the taxable year in which recapture occurs
84 under this section.

85 (e) *Rules.* — The commissioner may promulgate such rules
86 as may be useful or necessary to carry out the purpose of this
87 section and to implement the intent of the Legislature. Rules
88 shall be promulgated in accordance with the provisions of
89 article three, chapter twenty-nine-a of this code.

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

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

11 (b) *Transfer or sale to successor.* — Property is not treated
12 as disposed of under section eleven of this article by reason of
13 any transfer or sale to a successor business which continues to
14 operate the business facility in this state. Upon transfer or sale,
15 the successor shall acquire the amount of credit that remains
16 available under this article for each subsequent taxable year and
17 the transferor business is not required to redetermine the
18 amount of credit allowed in earlier years.

§11-13Q-14. Identification of investment credit property.

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

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

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

9 (5) The amount of credit taken; and

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

**§11-13Q-15. Failure to keep records of investment credit prop-
erty.**

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

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

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

15 be treated as having placed the returned property in service in
16 the next most recent year.

§11-13Q-16. Interpretation and construction.

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

7 (b) The provisions of this article shall be reasonably
8 construed in order to effectuate the legislative intent recited in
9 section two of this article.

§11-13Q-17. Severability.

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

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

§11-13Q-18. Burden of proof; application required; failure to make timely application.

1 (a) The burden of proof is on the taxpayer to establish by
2 clear and convincing evidence that the taxpayer is entitled to the
3 benefits allowed by this article.

4 (b) *Application for credit required.*

5 (1) *Application required.* — Notwithstanding any provision
6 of this article to the contrary, no credit is allowed or applied
7 under this article for any qualified investment property placed
8 in service or use until the person asserting a claim for the
9 allowance of credit under this article makes written application
10 to the commissioner for allowance of credit as provided in this
11 subsection. An application for credit shall be filed no later than
12 the last day of the due date for filing the tax returns required
13 under article twenty-one or twenty-four of this chapter for the
14 taxable year in which the property to which the credit relates is
15 placed in service or use and all information required by the
16 form is provided.

17 (2) *Failure to make timely application.* — The failure to
18 timely apply for the credit results in the forfeiture of fifty
19 percent of the annual credit allowance otherwise allowable
20 under this article. This penalty applies annually until the
21 application is filed.

§11-13Q-19. Business eligible for credit entitlements.

1 (a) Notwithstanding any other provision of this article to the
2 contrary, except as provided in section five of this article, no
3 entitlement to the economic opportunity tax credit may result
4 from, and no credit is available to any taxpayer for, investment
5 placed in service or use except for taxpayers engaged in the
6 following industries or business activities:

7 (1) Manufacturing, including, but not limited to, chemical
8 processing and chemical manufacturing, manufacture of wood
9 products and forestry products, manufacture of aluminum,
10 manufacture of paper, paper processing, recyclable paper
11 processing, food processing, commercial hydroponic growing
12 of food crops, manufacture of aircraft or aircraft parts, manu-
13 facture of automobiles or automobile parts, and all other
14 manufacturing activities, but not timbering or timber severance
15 or timber hauling, or mineral severance, hauling, processing or
16 preparation, or coal severance, hauling, processing or prepara-
17 tion or synthetic fuel manufacturing taxable under section two-
18 f, article thirteen of this chapter;

19 (2) Information processing, including, but not limited to,
20 telemarketing, information processing, systems engineering,
21 back office operations and software development;

22 (3) The activity of warehousing, including, but not limited
23 to, commercial warehousing and the operation of regional
24 distribution centers by manufacturers, wholesalers or retailers;

25 (4) The activity of goods distribution (exclusive of retail
26 trade);

27 (5) Destination-oriented recreation and tourism; and

28 (6) Research and development, as defined in section three
29 of this article.

30 (b) Notwithstanding the fact that a company, entity or
31 taxpayer is engaged in an industry or business activity enumer-
32 ated in subsection (a) of this section, the company, entity or
33 taxpayer must qualify for the economic opportunity tax credit
34 by fulfilling the qualified investment, jobs creation and other
35 credit entitlement requirements of this article in order to obtain
36 entitlement to any credit under this article. Failure to fulfill the

37 statutory requirements of this article results in a partial or
38 complete loss of the tax credit.

§11-13Q-20. Tax credit review and accountability.

1 (a) Beginning on the first day of February, two thousand six
2 and every third year thereafter, the commissioner shall submit
3 to the governor, the president of the Senate and the speaker of
4 the House of Delegates a tax credit review and accountability
5 report evaluating the cost effectiveness of the economic
6 opportunity credit during the most recent three-year period for
7 which information is available. The criteria to be evaluated
8 shall include, but not be limited to, for each year of the three-
9 year period:

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

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

13 (3) The cost of the credit;

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

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

17 (b) Taxpayers claiming the credit shall provide any
18 information the tax commissioner may require to prepare the
19 report: *Provided*, That the information provided is subject to the
20 confidentiality and disclosure provisions of sections five-d and
21 five-s, article ten of this chapter.

**§11-13Q-21. Effective date; election; notice of claim or election
under transition rules.**

1 (a) The credit allowed by this article is allowed for quali-
2 fied investment placed in service or use on or after the first day

3 of January, two thousand three, subject to the rules contained in
4 this section.

5 (b) *Election.* — Notwithstanding the general rule stated in
6 subsection (a), the taxpayer may elect to apply the credit
7 allowed under article thirteen-c of this chapter in lieu of the
8 credit allowed by this article to property purchased or leased for
9 business expansion that is placed in service or use on or after
10 the first day of January, two thousand three, if at least one of
11 the following subdivisions applies to the property:

12 (1) The new or expanded business facility was constructed,
13 reconstructed or erected, pursuant to a written construction
14 contract executed prior to the first day of January, two thousand
15 three, as limited to the provisions of the contract as of that date
16 then binding on the taxpayer, but only to the extent the new or
17 expanded business facility is placed in service or use prior to
18 the first day of January, two thousand four;

19 (2) The new or expanded business facility that is part of a
20 project described in subsection (a), section six of this article,
21 was constructed, reconstructed or erected, pursuant to a written
22 construction contract executed prior to the first day of January,
23 two thousand three, as limited to the provisions of such contract
24 as of such date then binding on the taxpayer;

25 (3) The new or expanded business facility was purchased or
26 leased pursuant to a written contract executed prior to the first
27 day of January, two thousand three, as limited to the provisions
28 then binding on the taxpayer as of that date, but only to the
29 extent the new or expanded business facility is placed in service
30 or use prior to the first day of January, two thousand four; or

31 (4) The machinery or equipment or other tangible personal
32 property purchased or leased for business expansion at a new or
33 expanded business facility was purchased or leased by the

34 taxpayer pursuant to a written contract to purchase or lease
35 identifiable tangible personal property executed before the first
36 day of January, two thousand three, as limited to the provisions
37 of the written contract then binding on the taxpayer, but only to
38 the extent the tangible personal property purchased or leased
39 under the contract is placed in service or use before the first day
40 of January, two thousand four.

41 (c) *Notice of election required.* — Any person intending to
42 make the election allowed in subsection (b) of this section shall
43 file written notice of his or her intention with the tax commis-
44 sioner on or before the thirty-first day of December, two
45 thousand two. In the case of a multiparticipant project, this
46 notice may be filed by the managing project participant on
47 behalf of all participants in the project. The notice shall be in a
48 form prescribed by the tax commissioner and all information
49 required by the form shall be provided.

50 (d) *Failure to file notice.* — If any person fails to timely
51 file the notice required by subsection (c) of this section, that
52 person is precluded from claiming credit under article thirteen-c
53 of this chapter for property placed in service or use after the
54 thirty-first day of December, two thousand two, and may claim
55 credit under this article to the extent the credit is allowable
56 under this article.

**ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX
CREDIT.**

§11-13R-1. Short title.

1 This article may be cited as the “West Virginia Strategic
2 Research and Development Tax Credit Act.”

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

1 The Legislature finds that the encouragement of research
2 and development in this state is in the public interest and
3 promotes economic growth and development and the general
4 welfare of the people of this state. In order to encourage
5 research and development in this state and thereby increase
6 employment and economic development, there is hereby
7 provided a strategic research and development tax credit.

§11-13R-3. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-
2 tration of this article, terms defined in subsection (b) of this
3 section have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by either the
5 context in which the term is used, or by specific definition, in
6 this article.

7 (b) *Terms defined.*

8 (1) “Base amount” means

9 (A) The average annual combined qualified research and
10 development expenditure for the three taxable years immedi-
11 ately preceding the taxable year for which a credit is claimed
12 under this article;

13 (B) For a taxpayer that has filed a tax return under article
14 twenty-three of this chapter for fewer than three but at least one
15 prior taxable year, determined on the basis of all filings by the
16 taxpayer’s controlled group, the base amount is the average
17 annual combined qualified research and development expendi-
18 ture for the number of immediately preceding taxable years,
19 other than short taxable years, during which the taxpayer has
20 filed a tax return under article twenty-three of this chapter; or

21 (C) For a taxpayer that has not filed a tax return under
22 article twenty-three of this chapter for at least one taxable year,

23 determined on the basis of all filings by the taxpayer's con-
24 trolled group, the base amount is zero.

25 (2) "Commissioner" and "tax commissioner" are used
26 interchangeably herein and mean the tax commissioner of the
27 state of West Virginia, or his or her delegate.

28 (3) "Controlled group" means a controlled group as defined
29 by section 1563 of the Internal Revenue Code of 1986, as
30 amended.

31 (4) "Corporation" means any corporation, limited liability
32 company, joint-stock company or association, and any business
33 conducted by a trustee or trustees wherein interest or ownership
34 is evidenced by a certificate of interest or ownership or similar
35 written instrument.

36 (5) "Delegate" in the phrase "or his or her delegate," when
37 used in reference to the tax commissioner, means any officer or
38 employee of the state tax division of the department of tax and
39 revenue duly authorized by the tax commissioner directly, or
40 indirectly by one or more redelegations of authority, to perform
41 the functions mentioned or described in this article.

42 (6) "Eligible taxpayer" means any person that is subject to
43 the tax imposed by article twenty-three or article twenty-four of
44 this chapter that is engaged in qualified research and develop-
45 ment that has paid or incurred investment in qualified research
46 and development credit property or that has paid or incurred
47 qualified research and development expenses as defined in
48 section four of this article. In the case of a sole proprietorship
49 subject to neither the tax imposed by article twenty-three nor
50 the tax imposed by article twenty-four, the term "eligible
51 taxpayer" means any sole proprietor who is subject to the tax
52 imposed by article twenty-one of this chapter and who is
53 engaged in qualified research and development that has paid or

54 incurred investment in qualified research and development
55 credit property or that has paid or incurred qualified research
56 and development expenses as defined in section four of this
57 article.

58 (7) "Partnership" includes a syndicate, group, pool, joint
59 venture or other unincorporated organization through or by
60 means of which any business, financial operation or venture is
61 carried on, and which is not a trust or estate, a corporation or a
62 sole proprietorship. The term "partner" includes a member in
63 such a syndicate, group, pool, joint venture or other organiza-
64 tion.

65 (8) "Person" includes any natural person, corporation,
66 limited liability company or partnership.

67 (9) "Qualified research and development credit property"
68 means depreciable property purchased for the conduct of
69 qualified research and development.

70 (10) "Research and development" means systematic
71 scientific, engineering or technological study and investigation
72 in a field of knowledge in the physical, computer or software
73 sciences, often involving the formulation of hypotheses and
74 experimentation, for the purpose of revealing new facts,
75 theories or principles, or increasing scientific knowledge, which
76 may reveal the basis for new or enhanced products, equipment
77 or manufacturing processes.

78 (A) Research and development includes, but is not limited
79 to, design, refinement and testing of prototypes of new or
80 improved products, or design, refinement and testing of
81 manufacturing processes before commercial sales relating
82 thereto have begun. For purposes of this section, commercial
83 sales includes, but is not limited to, sales of prototypes or sales
84 for market testing.

- 85 (B) Research and development does not include:
- 86 (i) Market research;
- 87 (ii) Sales research;
- 88 (iii) Efficiency surveys;
- 89 (iv) Consumer surveys;
- 90 (v) Product market testing;
- 91 (vi) Product testing by product consumers or through
92 consumer surveys for evaluation of consumer product perfor-
93 mance or consumer product usability;
- 94 (vii) The ordinary testing or inspection of materials or
95 products for quality control (quality control testing);
- 96 (viii) Management studies;
- 97 (ix) Advertising;
- 98 (x) Promotions;
- 99 (xi) The acquisition of another's patent, model, production
100 or process or investigation or evaluation of the value or
101 investment potential related thereto;
- 102 (xii) Research in connection with literary, historical or
103 similar activities;
- 104 (xiii) Research in the social sciences, economics, humani-
105 ties or psychology and other non-technical activities; and
- 106 (xiv) The providing of sales services or any other service,
107 whether technical service or non-technical service.

108 (11) "Related person" means:

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

111 (B) An individual, corporation, limited liability company,
112 partnership, association or trust that is in control of the tax-
113 payer;

114 (C) A corporation, limited liability company, partnership,
115 association or trust controlled by an individual, corporation,
116 partnership, association or trust that is in control of the tax-
117 payer; or

118 (D) A member of the same controlled group as the tax-
119 payer.

120 For purposes of this article, "control," with respect to a
121 corporation, means ownership, directly or indirectly, of stock
122 possessing fifty percent or more of the total combined voting
123 power of all classes of the stock of the corporation entitled to
124 vote. "Control," with respect to a trust, means ownership,
125 directly or indirectly, of fifty percent or more of the beneficial
126 interest in the principal or income of the trust. The ownership
127 of stock in a corporation, of a capital or profits interest in a
128 partnership or association or of a beneficial interest in a trust is
129 determined in accordance with the rules for constructive
130 ownership of stock provided in section 267(c) of the United
131 States Internal Revenue Code of 1986, as amended, other than
132 paragraph (3) of that section.

133 (12) "Taxpayer" means any person subject to the tax
134 imposed by article twenty-three or twenty-four of this chapter
135 or both. In the case of a sole proprietorship subject to neither
136 the tax imposed by article twenty-three nor the tax imposed by
137 article twenty-four, the term "taxpayer" means any sole

138 proprietor who is subject to the tax imposed by article twenty-
139 one of this chapter.

140 (13) "This code" means the code of West Virginia, one
141 thousand nine hundred thirty-one, as amended.

142 (14) "This state" means the state of West Virginia.

**§11-13R-4. Annual combined qualified research and development
expenditure, qualified research and development
expenses.**

1 (a) *General.* — The annual combined qualified research
2 and development expenditure is the sum of the applicable
3 percentage of the cost of depreciable property purchased for the
4 conduct of a qualified research and development activity, which
5 is placed in service or use in this state during the taxable year,
6 plus the amount of qualified research and development ex-
7 penses (as defined in this section) deducted by the eligible
8 taxpayer, for federal income tax purposes for the taxable year.

9 (b) *Applicable percentage of the cost of depreciable*
10 *property.* — For the purpose of subsection (a), the applicable
11 percentage of the cost of depreciable property is determined
12 under the following table:

13	If useful life is:	The applicable percentage is:
14	Less than 4 years	33 1/3
15	4 years or more but less than 6 years	66 2/3
16	6 years or more	100

17 The useful life of any property for purposes of this section
18 is determined by those methods as the tax commissioner may
19 require as of the date the property is first placed in service or
20 use in this state by the taxpayer.

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

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

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

30 (d) *Cost of property.* — For purposes of subsection (a) of
31 this section, the cost of each property purchased for the conduct
32 of a qualified research and development activity is determined
33 under the following rules:

34 (1) *Trade-ins.* — Cost does not include the value of
35 property given in trade or exchange for the property purchased
36 for conduct of the research and development activity.

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

42 (3) *Rental property.* — The cost of property acquired by
43 lease for a term of ten years or longer shall be one hundred
44 percent of the rent reserved for the primary term of the lease,
45 not to exceed twenty years.

46 (4) *Property purchased for multiple use.* — The cost of
47 property purchased for multiple business use, including direct
48 use in the conduct of a qualified research and development
49 activity, together with some other business or activity not
50 eligible under this section, shall be apportioned between such

51 activities. The amount apportioned to the conduct of the
52 qualified research and development activity is considered to be
53 eligible investment subject to the conditions and limitations of
54 this section.

55 (5) *Self-constructed property.* — In the case of
56 self-constructed property, the cost thereof is the amount
57 properly charged to the capital account for depreciation in
58 accordance with federal income tax law.

59 (e) *Qualified research and development expenses.* — For
60 purposes of this section:

61 (1) “Qualified research and development expenses” means
62 the sum of in-house and contract research and development
63 expenses for qualified research and development allocated to
64 this state, which are paid or incurred by the eligible taxpayer
65 during the taxable year. In no event does “qualified research
66 and development expenses” include:

67 (A) Any expense that must be capitalized and depreciated
68 for federal income tax purposes, or any expenditure paid or
69 incurred for the purpose of ascertaining the existence, location,
70 extent or quality of any deposit of coal, limestone or other
71 natural resource, including oil and natural gas; or

72 (B) Any wage or salary expense for wages or salary
73 reported on form W-2 for federal income tax purposes on which
74 the personal income tax is imposed under article twenty-one of
75 this chapter, and against which tax the credit allowed under this
76 article is applied.

77 (2) “In-house research and development expenses” means:

78 (A) Wages paid or incurred to an employee for qualified
79 services performed in this state by the employee;

80 (B) Amounts paid or incurred for supplies used in the
81 conduct of qualified research and development in this state; or

82 (C) Amounts paid or incurred to another person for the right
83 to use personal property in the conduct of qualified research and
84 development in this state.

85 (3) "Qualified services" means services consisting of:

86 (A) Engaging in qualified research and development;

87 (B) Engaging in the direct supervision or direct support of
88 qualified research and development; or

89 (C) If substantially all of the services performed by an
90 individual for the taxpayer during the taxable year consist of
91 services meeting the requirements of paragraph (A) or (B) of
92 this subdivision, the term "qualified services" means all
93 services performed by the individual for the taxable year.

94 (4) "Supplies" means any tangible property other than:

95 (A) Land or improvements to land; or

96 (B) Property of a character subject to depreciation for
97 federal income tax purposes.

98 (5) "Wages" has the meaning given to that term by section
99 3401(a) of the Internal Revenue Code of 1986, as amended. In
100 the case of self-employed individuals and owner-employees
101 (within the meaning of section 401(c)(1) of the Internal
102 Revenue Code), the term "wages" includes the earned income
103 (as defined in section 401(c)(2) of the Internal Revenue Code)
104 of the employee. The term "wages" shall not include any
105 amount taken into account in determining the federal targeted
106 jobs credit under section 51(a) of the Internal Revenue Code.

107 (6) "Contract research and development expenses" means:

108 (A) In general, sixty-five percent of any amount paid or
109 incurred by the taxpayer to any person (other than an employee
110 of the taxpayer) for qualified research and development; and

111 (B) If any contract research and development expenses paid
112 or incurred during any taxable year are attributable to qualified
113 research and development to be conducted after the close of the
114 taxable year, that amount is treated as paid or incurred during
115 the taxable year during which the qualified research and
116 development is conducted.

117 (7) "Qualified research and development" means research
118 and development that occurs in West Virginia.

119 (8) *Excluded property.* — Any property owned or leased by
120 the taxpayer, the cost of which was the basis of a credit against
121 tax taken under any other article of this chapter, does not
122 qualify as property purchased for the conduct of a qualified
123 research and development activity for purposes of this article.

124 (9) *Excluded expense.* — Any expense paid or incurred by
125 the taxpayer, which was the basis of a credit against tax taken
126 under any other article of this chapter, does not qualify as a
127 qualified research and development expense for purposes of this
128 article.

129 (f) *Research and development by colleges, universities and*
130 *certain research and development organizations.* — In general,
131 sixty-five percent of the amount paid or incurred by a taxpayer
132 to a research institution as defined in this section for research
133 and development to be performed by the research institution is
134 treated as contract research and development expenses. The
135 preceding sentence applies only if the amount is paid or
136 incurred pursuant to a written research and development
137 agreement between the taxpayer and the research institution.

138 For purposes of this section, the term “research institution”
139 means any nonprofit educational organization which is an
140 institution of higher education (as defined in section 3304(f) of
141 the Internal Revenue Code of 1986, as amended), a West
142 Virginia institution of higher education subject to the jurisdic-
143 tion of a board described in article two-a, chapter eighteen-b of
144 this code, or any other nonprofit organization exempt from
145 federal income taxes which is organized and operated primarily
146 to conduct scientific research and is not a private foundation for
147 federal income tax purposes.

148 (g) *Standards for determining qualified research and*
149 *development expenses.* — In prescribing standards for deter-
150 mining which research and development expenses are consid-
151 ered to be qualified research and development expenses for
152 purposes of this section, the tax commissioner may consider:
153 (1) The place where the services are performed; (2) the resi-
154 dence or business location of the person or persons performing
155 the services; (3) the place where research and development
156 supplies are consumed; and (4) other factors that the tax
157 commissioner believes relevant in determining whether or not
158 the research and development expenses were made for qualified
159 research and development, and depreciable property was
160 purchased and used for qualified research and development,
161 during the taxable year

162 (h) *Depreciable property.* — Purchases of depreciable
163 property for the conduct of qualified research qualify as part of
164 the annual combined qualified research and development
165 expenditure for purposes of this article only if:

166 (1) The property is not acquired from a person whose
167 relationship to the person acquiring it would result in the
168 disallowance of deductions under section 267 or 707(b) of the
169 United States Internal Revenue Code of 1986, as amended:

170 (2) The property is not acquired from a related person or by
171 one component member of a controlled group from another
172 component member of the same controlled group. The tax
173 commissioner may waive this requirement if the property was
174 acquired from a related party for its then fair market value; and

175 (3) The basis of the property for federal income tax
176 purposes, in the hands of the person acquiring it, is not deter-
177 mined:

178 (A) In whole or in part by reference to the federal adjusted
179 basis of such property in the hands of the person from whom it
180 was acquired; or

181 (B) Under section 1014(e) of the United States Internal
182 Revenue Code of 1986, as amended.

§11-13R-5. Amount of credit allowed.

1 The allowable credit is the greater of:

2 (1) Three percent of the annual combined qualified research
3 and development expenditure, or

4 (2) Ten percent of the excess of the annual combined
5 qualified research and development expenditure over the base
6 amount.

§11-13R-6. Application of credit.

1 (a) *Credit allowed.* — Beginning in the year that the annual
2 combined qualified research and development expenditure is
3 paid or incurred, eligible taxpayers and owners of eligible
4 taxpayers described in subsections (d) and (f) of this section are
5 allowed a credit against the taxes imposed by articles
6 twenty-three, twenty-four and twenty-one of this chapter, in that
7 order, as specified in this section.

8 (b) *Business franchise tax.* — The credit is first applied to
9 reduce the taxes imposed by article twenty-three of this chapter
10 for the taxable year (determined after application of the credits
11 against tax provided in section seventeen of said article, but
12 before application of any other allowable credits against tax).

13 (c) *Corporation net income taxes.* — After application of
14 subsection (b) of this section, any unused credit is next applied
15 to reduce the taxes imposed by article twenty-four of this
16 chapter for the taxable year (determined before application of
17 allowable credits against tax).

18 (d) If the eligible taxpayer is a limited liability company,
19 small business corporation, or a partnership, then any unused
20 credit (after application of subsections (b) and (c) of this
21 section) is allowed as a credit against the taxes imposed by
22 article twenty-four of this chapter on owners of the eligible
23 taxpayer on the conduit income directly derived from the
24 eligible taxpayer by its owners. Only those portions of the tax
25 imposed by article twenty-four of this chapter that are imposed
26 on income directly derived by the owner from the eligible
27 taxpayer are subject to offset by this credit.

28 (1) Small business corporations, limited liability compa-
29 nies, partnerships and other unincorporated organizations shall
30 allocate the credit allowed by this article among their members
31 in the same manner as profits and losses are allocated for the
32 taxable year.

33 (2) No credit is allowed under this article against any
34 withholding tax imposed by, or payable under, article twenty-
35 one of this chapter.

36 (e) *Personal income tax taxes.* — After application of
37 subsections (b), (c) and (d) of this section, any unused credit is
38 next applied to reduce the taxes imposed by article twenty-one

39 of this chapter for the taxable year (determined before applica-
40 tion of allowable credits against tax) of the eligible taxpayer.

41 (f) If the eligible taxpayer is a limited liability company,
42 small business corporation, or a partnership, then any unused
43 credit (after application of subsections (b), (c), (d) and (e) of
44 this section) is allowed as a credit against the taxes imposed by
45 article twenty-one of this chapter on owners of the eligible
46 taxpayer on the conduit income directly derived from the
47 eligible taxpayer by its owners. Only those portions of the tax
48 imposed by article twenty-one of this chapter that are imposed
49 on income directly derived by the owner from the eligible
50 taxpayer are subject to offset by this credit.

51 (1) Small business corporations, limited liability compa-
52 nies, partnerships and other unincorporated organizations shall
53 allocate the credit allowed by this article among their members
54 in the same manner as profits and losses are allocated for the
55 taxable year.

56 (2) No credit is allowed under this article against any
57 withholding tax imposed by, or payable under, article twenty-
58 one of this chapter.

59 (g) The total amount of tax credit that may be used in any
60 taxable year by any eligible taxpayer in combination with the
61 owners of the eligible taxpayer under subsections (d) and (f) of
62 this section may not exceed two million dollars.

63 (h) *Unused credit carry forward.* — If the credit allowed
64 under this article in any taxable year exceeds the sum of the
65 taxes enumerated in subsections (b), (c), (d), (e) and (f) of this
66 section for that taxable year, the eligible taxpayer and owners
67 of eligible taxpayers described in subsections (d) and (f) of this
68 section may apply the excess as a credit against those taxes, in

69 the order and manner stated in this section, for succeeding
70 taxable years until the earlier of the following:

71 (1) The full amount of the excess credit is used; or

72 (2) The expiration of the tenth taxable year after the taxable
73 year in which the annual combined qualified research and
74 development expenditure was paid or incurred. Credit remain-
75 ing thereafter is forfeited.

76 (i) *Application for certification.* — No credit is allowed or
77 may be applied under this article until the person seeking to
78 claim the credit has filed a written application for certification
79 of the proposed research and development program or project
80 with the tax commissioner, and has received certification of the
81 research and development program or project from the tax
82 commissioner pursuant to that written application. The certifi-
83 cation of the program or project must be received by the
84 eligible taxpayer from the tax commissioner prior to any credit
85 being claimed or allowed for any annual combined qualified
86 research and development expenditure for any research activity
87 or project.

88 (1) In the case of owners of eligible taxpayers described in
89 subsections (d) or (f) of this section, the application for certifi-
90 cation filed under this section by the limited liability company,
91 small business corporation or partnership owned by the person
92 is considered to be filed on behalf of the owner, and no separate
93 filing of the application is required of the owner.

94 (2) *Form of application.* — The application for certification
95 must be filed in the form as the tax commissioner may pre-
96 scribe, and shall contain the information as the tax commis-
97 sioner may require, to determine whether the project should be
98 certified as eligible for credit under this article.

99 (3) *Time period covered by certification.* — The application
100 may request certification of the research and development
101 program for one taxable year or multiple taxable years, as
102 applicable, based on the nature and character of the program or
103 project plan for the particular research and development project
104 or activity.

105 (4) *Requirements for application.* — The application shall
106 specifically set forth a written research and development
107 program plan generally describing the nature of the research
108 and development to be undertaken, the projected time period
109 over which the research and development shall be carried out,
110 the period of time for which the applicant seeks certification of
111 the program or project, and such other information as the tax
112 commissioner may require.

113 (5) *Certification.* — The tax commissioner may issue
114 certification of a research and development program or project
115 if it appears to the tax commissioner that the applicant intends
116 to engage in a bona fide research and development activity, as
117 described in this article, and will otherwise comply with the
118 requirements of this article and all rules and requirements
119 applicable thereto.

120 (6) *Time period covered by certification.* — The tax
121 commissioner may issue certification for the period of time for
122 which the eligible taxpayer seeks certification, or a different
123 period of time, within the discretion of the tax commissioner.
124 In his or her discretion, the tax commissioner may require that
125 a separate application be filed for each tax year in which
126 qualified research and development activity is to be undertaken
127 or in which qualified research and development property is to
128 be placed in service or use.

129 (7) *Failure to file.* — The failure to timely file the applica-
130 tion for certification of a research and development program or

131 project under this section results in forfeiture of one hundred
132 percent of the annual credit otherwise allowable under this
133 article. This penalty applies annually until such application is
134 filed.

135 (8) *Research and development undertaken without certifica-*
136 *tion.* — If a person has filed an application for certification of
137 a research and development program or project, and has failed
138 to receive certification of the plan or program from the tax
139 commissioner, no credit is allowed under this article for the
140 research and development activity or investment relating
141 thereto.

142 (9) *Failure to comply with terms of certification.* — If a
143 person has filed an application for certification of a research
144 and development program or project, and has received certifica-
145 tion of the plan or program from the tax commissioner, but fails
146 to conform to the terms of the certification, no credit is allowed
147 under this article for the research and development activity or
148 for investment in the research and development activity by the
149 eligible taxpayer. This restriction may be waived by the tax
150 commissioner upon a finding that the research and development
151 undertaken was within the requirements of this article, and that
152 there was no intent to defraud the state or willful neglect in the
153 applicant's failure to conform to the terms of the certification.

154 (10) *Failure to comply with certification time restrictions.*
155 — If a person has filed an application for certification of a
156 research and development program or project, and has received
157 certification of the plan or program from the tax commissioner,
158 but fails to conform to the time periods specified therein for the
159 certified research and development program or project, or fails
160 to renew the certification so as to cover ongoing or subsequent
161 research and development activity, the research and develop-
162 ment activity is out of compliance with the terms of the
163 certification, and no credit is allowed under this article for, or

164 relating to, the research and development activity by any person
165 or taxpayer. This restriction may be waived by the tax commis-
166 sioner upon a finding that the research and development thus
167 undertaken was within the requirements of this article, and that
168 there was no intent to defraud the state or willful neglect in the
169 applicant's failure to conform to the terms of the certification.

**§11-13R-7. Forfeiture of unused tax credits; redetermination of
credit allowed.**

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

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section four of this article; or

6 (2) Ceases to be used in a qualified research and develop-
7 ment activity of the taxpayer in this state prior to the end of its
8 useful life, as determined under section four of this article, then
9 the unused portion of the credit allowed for such property is
10 forfeited for the taxable year and all ensuing years. Except
11 when the property is damaged or destroyed by fire, flood, storm
12 or other casualty, or is stolen, the taxpayer shall redetermine the
13 amount of credit allowed in all earlier years by reducing the
14 applicable percentage of cost of such property allowed under
15 section four of this article, to correspond with the percentage of
16 cost allowable for the period of time that the property was
17 actually used in the qualified research and development activity
18 of the taxpayer. The taxpayer shall then file a reconciliation
19 statement with its annual return filed under article twenty-three
20 of this chapter, for the year in which the forfeiture occurs and
21 pay any additional taxes owed due to reduction of the amount
22 of credit allowable for such earlier years, plus interest and any
23 applicable penalties.

§11-13R-8. Transfer of qualified research and development investment to successors.

1 (a) *Mere change in form of business.* — Property may not
2 be treated as disposed of under section seven of this article, by
3 reason of a mere change in the form of conducting the business
4 as long as the property is retained in a business in this state for
5 use in qualified research and development, and the taxpayer
6 retains a controlling interest in the successor business. In this
7 event, the successor business is allowed to claim the amount of
8 credit still available with respect to the property transferred, and
9 the taxpayer (transferor) may not be required to redetermine the
10 amount of credit allowed in earlier years.

11 (b) *Transfer or sale to successor.* — Property may not be
12 treated as disposed of under section seven of this article by
13 reason of any transfer or sale to a successor business which
14 continues to use the property in qualified research and develop-
15 ment. Upon transfer or sale, the successor shall acquire the
16 amount of credit that remains available under this article for
17 each subsequent taxable year, and the taxpayer (transferor) may
18 not be required to redetermine the amount of credit allowed in
19 earlier years.

§11-13R-9. Identification of investment credit property.

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

- 4 (1) Its identity;
- 5 (2) Its actual or reasonably determined cost;
- 6 (3) Its straight-line depreciation life;

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

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 qualified research and development property.

**§11-13R-10. Failure to keep records of qualified research and
development credit property.**

1 A taxpayer who does not keep the records required for
2 identification of qualified research and development credit
3 property, is subject to the following rules:

4 (1) A taxpayer is treated as having disposed of, during the
5 taxable year, any qualified research and development credit
6 property which the taxpayer cannot establish was still on hand
7 and used in qualified research and development activity at the
8 end of that year.

9 (2) If a taxpayer cannot establish when qualified research
10 and development credit property reported for purposes of
11 claiming this credit returned during the taxable year was placed
12 in service, the taxpayer is treated as having placed it in service
13 in the most recent prior year in which similar property was
14 placed in service, unless the taxpayer can establish that the
15 property placed in service in the most recent year is still on
16 hand and used in qualified research and development activity at
17 the end of that year. In that event, the taxpayer will be treated
18 as having placed the returned property in service in the next
19 most recent year.

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

1 (a) Beginning on the first day of February, two thousand six
2 and on the first day of February every third year thereafter, the

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3 commissioner shall submit to the governor, the president of the
4 Senate and the speaker of the House of Delegates a tax credit
5 review and accountability report evaluating the cost effective-
6 ness of the credit allowed under this article during the most
7 recent three-year period for which information is available. The
8 criteria to be evaluated includes, but is not limited to, for each
9 year of the three-year period:

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

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

13 (3) The cost of the credit;

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

15 (5) Comparison of employment trends for the industry and
16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide such
18 information as the tax commissioner may require to prepare the
19 report: *Provided*, That such information shall be subject to the
20 confidentiality and disclosure provisions of sections five-d and
21 five-s, article ten of this chapter of this code.

§11-13R-12. Effective date.

1 The provisions of this article become effective on the first
2 day of January, two thousand three, and apply only to qualified
3 investment made on or after that date.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-1. Short title.

1 This article may be cited as the "West Virginia Manufactur-
2 ing Investment Tax Credit Act."

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

1 The Legislature finds that the encouragement of the
2 location of new industry in this state, and the expansion, growth
3 and revitalization of existing industrial facilities in this state is
4 in the public interest and promotes the general welfare of the
5 people of this state.

§11-13S-3. Definitions.

1 (a) Any term used in this article has the meaning ascribed
2 by this section, unless a different meaning is clearly required by
3 the context of its use or by definition in this article.

4 (b) For purpose of this article, the term:

5 (1) "Eligible taxpayer" means an industrial taxpayer who
6 purchases new property for the purpose of industrial expansion,
7 or for the purpose of industrial revitalization of an existing
8 industrial facility in this state.

9 (2) "Industrial expansion" means capital investment in a
10 new or expanded industrial facility in this state.

11 (3) "Industrial facility" means any factory, mill, plant,
12 refinery, warehouse, building or complex of buildings located
13 within this state, including the land on which it is located, and
14 all machinery, equipment and other real and tangible personal
15 property located at or within the facility primarily used in
16 connection with the operation of the manufacturing business.

17 (4) "Industrial revitalization" or "revitalization" means
18 capital investment in an industrial facility located in this state
19 to replace or modernize buildings, equipment, machinery and
20 other tangible personal property used in connection with the
21 operation of the facility in an industrial business of the tax-

22 payer, including the acquisition of any real property necessary
23 to the industrial revitalization.

24 (5) "Industrial taxpayer" means any taxpayer who is
25 primarily engaged in a manufacturing business.

26 (6) "Manufacturing" means any business activity classified
27 as having a sector identifier, consisting of the first two digits of
28 the six-digit North American Industry Classification System
29 code number, of thirty-one, thirty-two or thirty-three.

30 (7) "Property purchased for manufacturing investment"
31 means real property, and improvements thereto, and tangible
32 personal property, but only if the property was constructed, or
33 purchased, on or after the first day of January, two thousand
34 three, for use as a component part of a new, expanded or
35 revitalized industrial facility. This term includes only that
36 tangible personal property with respect to which depreciation,
37 or amortization in lieu of depreciation, is allowable in determin-
38 ing the federal income tax liability of the industrial taxpayer,
39 that has a useful life, at the time the property is placed in
40 service or use in this state, of four years or more. Property
41 acquired by written lease, for a primary term of ten years or
42 longer, if used as a component part of a new or expanded
43 industrial facility, is included within this definition.

44 (A) "Property purchased for manufacturing investment"
45 does not include:

46 (i) Repair costs including materials used in the repair,
47 unless for federal income tax purposes, the cost of the repair
48 must be capitalized and not expensed;

49 (ii) Motor vehicles licensed by the department of motor
50 vehicles;

51 (iii) Airplanes;

52 (iv) Off-premises transportation equipment;

53 (v) Property which is primarily used outside this state; and

54 (vi) Property which is acquired incident to the purchase of
55 the stock or assets of an industrial taxpayer, which property was
56 or had been used by the seller in his or her industrial business
57 in this state, or in which investment was previously the basis of
58 a credit against tax taken under any other article of this chapter.

59 (B) Purchases or acquisitions of land or depreciable
60 property qualify as purchases of property purchased for
61 manufacturing investment for purposes of this article only if:

62 (i) The property is not acquired from a person whose
63 relationship to the person acquiring it would result in the
64 disallowance of deductions under section 267 or 707(b) of the
65 United States Internal Revenue Code of 1986, as amended;

66 (ii) The property is not acquired from a related person or by
67 one component member of a controlled group from another
68 component member of the same controlled group. The tax
69 commissioner may waive this requirement if the property was
70 acquired from a related party for its then fair market value; and

71 (iii) The basis of the property for federal income tax
72 purposes, in the hands of the person acquiring it, is not deter-
73 mined, in whole or in part, by reference to the federal adjusted
74 basis of the property in the hands of the person from whom it
75 was acquired; or under Section 1014(e) of the United States
76 Internal Revenue Code of 1986, as amended.

77 (9) "Qualified manufacturing investment" means that
78 amount determined under section five of this article as qualified
79 manufacturing investment.

80 (10) "Taxpayer" means any person subject to any of the
81 taxes imposed by article thirteen-a, twenty-three or twenty-four
82 of this chapter (or any combination of those articles of this
83 chapter).

§11-13S-4. Amount of credit allowed for manufacturing investment.

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers
2 and to persons described in subdivision (5), subsection (b) of
3 this section, a credit against the taxes imposed by articles
4 thirteen-a, twenty-three and twenty-four of this chapter. The
5 amount of credit shall be determined as hereinafter provided in
6 this section.

7 (b) *Amount of credit allowable.* — The amount of allowable
8 credit under this article is equal to five percent of the qualified
9 manufacturing investment (as determined in section five of this
10 article), and shall reduce the severance tax, imposed under
11 article thirteen-a of this chapter, the business franchise tax
12 imposed under article twenty-three of this chapter and the
13 corporation net income tax imposed under article twenty-four
14 of this chapter, in that order, subject to the following conditions
15 and limitations:

16 (1) The amount of credit allowable is applied over a ten-
17 year period, at the rate of one-tenth thereof per taxable year,
18 beginning with the taxable year in which the property purchased
19 for manufacturing investment is first placed in service or use in
20 this state;

21 (2) *Severance tax.* — The credit is applied to reduce the
22 severance tax, imposed under article thirteen-a of this chapter
23 (determined before application of the credit allowed by section
24 three, article twelve-b of this chapter and before any other
25 allowable credits against tax and before application of the

26 annual exemption allowed by section ten, article thirteen-a of
27 this chapter). The amount of annual credit allowed may not
28 reduce the severance tax, imposed under article thirteen-a of
29 this chapter, below fifty percent of the amount which would be
30 imposed for such taxable year in the absence of this credit
31 against tax. When in any taxable year the taxpayer is entitled to
32 claim credit under this article and article thirteen-d of this
33 chapter, the total amount of all credits allowable for the taxable
34 year may not reduce the amount of the severance tax, imposed
35 under article thirteen-a of this chapter, below fifty percent of
36 the amount which would be imposed for such taxable year
37 (determined before application of the credit allowed by section
38 three, article twelve-b of this chapter and before any other
39 allowable credits against tax and before application of the
40 annual exemption allowed by section ten, article thirteen-a of
41 this chapter);

42 (3) *Business franchise tax.* — After application of subdivi-
43 sion (2) of this subsection, any unused credit is next applied to
44 reduce the business franchise tax, imposed under article twenty-
45 three of this chapter (determined after application of the credits
46 against tax provided in section seventeen of article twenty-three
47 of this chapter, but before application of any other allowable
48 credits against tax). The amount of annual credit allowed will
49 not reduce the business franchise tax imposed under article
50 twenty-three of this chapter, below fifty percent of the amount
51 which would be imposed for such taxable year in the absence
52 of this credit against tax. When in any taxable year the taxpayer
53 is entitled to claim credit under this article and article thirteen-d
54 of this chapter, the total amount of all credits allowable for the
55 taxable year will not reduce the amount of the business fran-
56 chise tax, imposed under article twenty-three of this chapter,
57 below fifty percent of the amount which would be imposed for
58 the taxable year (determined after application of the credits
59 against tax provided in section seventeen of article twenty-three

60 of this chapter, but before application of any other allowable
61 credits against tax);

62 (4) *Corporation net income tax.* — After application of
63 subdivision (3) of this subsection, any unused credit is next
64 applied to reduce the corporation net income tax, imposed
65 under article twenty-four of this chapter (determined before
66 application of any other allowable credits against tax). The
67 amount of annual credit allowed will not reduce corporation net
68 income tax imposed under article twenty-four of this chapter,
69 below fifty percent of the amount which would be imposed for
70 such taxable year in the absence of this credit against tax. When
71 in any taxable year the taxpayer is entitled to claim credit under
72 this article and article thirteen-d of this chapter, the total
73 amount of all credits allowable for the taxable year may not
74 reduce the amount of the corporation net income tax, imposed
75 under article twenty-four of this chapter, below fifty percent of
76 the amount which would be imposed for the taxable year
77 (determined before application of any other allowable credits
78 against tax);

79 (5) *Pass-through entities.* —

80 (A) If the eligible taxpayer is a limited liability company,
81 small business corporation, or a partnership, then any unused
82 credit (after application of subdivisions (2), (3) and (4) of this
83 subsection) is allowed as a credit against the taxes imposed by
84 article twenty-four of this chapter on owners of the eligible
85 taxpayer on the conduit income directly derived from the
86 eligible taxpayer by its owners. Only those portions of the tax
87 imposed by article twenty-four of this chapter that are imposed
88 on income directly derived by the owner from the eligible
89 taxpayer are subject to offset by this credit.

90 (B) The amount of annual credit allowed will not reduce
91 corporation net income tax imposed under article twenty-four

92 of this chapter, below fifty percent of the amount which would
93 be imposed on the conduit income directly derived from the
94 eligible taxpayer by each owner for such taxable year in the
95 absence of this credit against the taxes (determined before
96 application of any other allowable credits against tax).

97 (C) When in any taxable year the taxpayer is entitled to
98 claim credit under this article and article thirteen-d of this
99 chapter, the total amount of all credits allowable for the taxable
100 year will not reduce the corporation net income tax imposed on
101 the conduit income directly derived from the eligible taxpayer
102 by each owner, below fifty percent of the amount that would be
103 imposed for such taxable year on the conduit income (deter-
104 mined before application of any other allowable credits against
105 tax);

106 (6) Small business corporations, limited liability compa-
107 nies, partnerships and other unincorporated organizations shall
108 allocate any unused credit (after application of subdivisions (2),
109 (3) and (4) of this subsection) among their members in the same
110 manner as profits and losses are allocated for the taxable year;
111 and

112 (7) No credit is allowed under this article against any tax
113 imposed by article twenty-one of this chapter.

114 (c) No carryover to a subsequent taxable year or carryback
115 to a prior taxable year is allowed for the amount of any unused
116 portion of any annual credit allowance. Such unused credit is
117 forfeited.

118 (d) *Application for credit required.* — (1) Application
119 required. - No credit is allowed or applied under this article for
120 any manufacturing investment until the eligible taxpayer makes
121 written application to the tax commissioner for allowance of
122 credit as provided in this section. An application for credit shall

123 be filed, in the form as the tax commissioner shall prescribe,
124 prior to the first date when qualified investment property is first
125 placed in service or use. All information required by the form
126 is provided. A separate application shall be filed for each tax
127 year in which property purchased for manufacturing investment
128 is placed in service or use.

129 (2) *Failure to file.* — The failure to timely apply the
130 application for credit under this section results in forfeiture of
131 fifty percent of the annual credit allowance otherwise allowable
132 under this article. This penalty applies annually until such
133 application is filed.

§11-13S-5. Qualified manufacturing investment.

1 (a) *General.* — The qualified manufacturing investment is
2 the applicable percentage of the cost of property purchased for
3 manufacturing investment, which is placed in service or use in
4 this state, by the eligible taxpayer during the taxable year.

5 (b) *Applicable percentage.* — For the purposes of subsec-
6 tion (a) of this section, the applicable percentage for any
7 property is determined under the following table:

8	If useful life is:	The applicable percentage is:
9	4 years or more but less than 6 years	33 1/3
10	6 years or more but less than 8 years	66 2/3
11	8 years or more	100

12 The useful life of any property for purposes of this section
13 is determined pursuant to the methods as the tax commissioner
14 may require as of the date the property is first placed in service
15 or use in this state by the taxpayer, determined as the tax
16 commissioner may require.

17 (c) *Placed in service or use.* — For purposes of the credit
18 allowed by this article, property is considered placed in service
19 or use in the earlier of the following taxable years:

20 (1) The taxable year in which, under the taxpayer's depreci-
21 ation practice, the period for depreciation with respect to the
22 property begins; or

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

26 (d) *Cost.* — For purposes of this section, the cost of
27 property purchased for manufacturing investment, is deter-
28 mined under the following rules:

29 (1) *Trade-ins.* — Cost will not include the value of property
30 given in trade or exchange for property purchased for manufac-
31 turing investment;

32 (2) *Damaged, destroyed or stolen property.* — If property
33 is damaged or destroyed by fire, flood, storm or other casualty,
34 or is stolen, then the cost of replacement property will not
35 include any insurance proceeds received in compensation for
36 the loss;

37 (3) *Rental property.* -- The cost of property acquired by
38 lease for a term of ten years or longer is one hundred percent of
39 the rent reserved for the primary term of the lease, not to exceed
40 twenty years;

41 (4) *Property purchased for multiple use.* — The cost of
42 property purchased for multiple business use including use as
43 a component part of a new or expanded or revitalized industrial
44 facility, together with some other business or activity not
45 eligible for credit under this article, is apportioned between the
46 businesses and occupations. The amount apportioned to the new

47 or expanded or revitalized industrial facility is considered as a
48 qualified investment, subject to the conditions and limitations
49 of this section; and

50 (5) *Self-constructed property.* — In the case of
51 self-constructed property, the cost thereof shall be the amount
52 properly charged to the capital account for purposes of depreci-
53 ation.

§11-13S-6. Forfeiture of unused tax credits; redetermination of credit allowed.

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

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section five of this article; or

6 (2) Ceases to be used in an industrial facility of the taxpayer
7 in this state prior to the end of its useful life, as determined
8 under section five of this article, then the unused portion of the
9 credit allowed for such property is forfeited for the taxable year
10 and all ensuing years. Except when the property is damaged or
11 destroyed by fire, flood, storm or other casualty, or is stolen, the
12 taxpayer shall redetermine the amount of credit allowed in all
13 earlier years by reducing the applicable percentage of cost of
14 the property allowed under section five of this article, to
15 correspond with the percentage of cost allowable for the period
16 of time that the property was actually used in manufacturing
17 activity as part of an industrial facility of the taxpayer. The
18 taxpayer must then file a reconciliation statement with its
19 annual return filed under article twenty-three of this chapter, for
20 the year in which the forfeiture occurs and pay any additional
21 taxes owed due to reduction of the amount of credit allowable
22 for the earlier years, plus interest and any applicable penalties.

§11-13S-7. Transfer of property purchased for manufacturing investment to successors.

1 (a) *Mere change in form of business.* — Property may not
2 be treated as disposed of under section six of this article, by
3 reason of a mere change in the form of conducting the business
4 as long as the property is retained in a business in this state for
5 use in the activity of manufacturing in an industrial facility in
6 West Virginia, and the taxpayer retains a controlling interest in
7 the successor business. In this event, the successor business is
8 allowed to claim the amount of credit still available with
9 respect to the property or industrial facility transferred, and the
10 taxpayer (transferor) may not be required to redetermine the
11 amount of credit allowed in earlier years.

12 (b) *Transfer or sale to successor.* — Property will not be
13 treated as disposed of under section six of this article by reason
14 of any transfer or sale to a successor business which continues
15 to use the property in manufacturing in an industrial facility in
16 West Virginia. Upon transfer or sale, the successor shall acquire
17 the amount of credit that remains available under this article for
18 each subsequent taxable year, and the taxpayer (transferor) shall
19 not be required to redetermine the amount of credit allowed in
20 earlier years.

§11-13S-8. Identification of investment credit property.

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

- 4 (1) Its identity;
- 5 (2) Its actual or reasonably determined cost;
- 6 (3) Its straight-line depreciation life;

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

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 property purchased for manufacturing investment.

**§11-13S-9. Failure to keep records of property purchased for
manufacturing investment.**

1 A taxpayer who does not keep the records required for
2 property purchased for manufacturing investment, is subject to
3 the following rules:

4 (1) A taxpayer is treated as having disposed of, during the
5 taxable year, any property purchased for manufacturing
6 investment which the taxpayer cannot establish was still on
7 hand and used in manufacturing activity in this state at the end
8 of that year; and

9 (2) If a taxpayer cannot establish when property purchased
10 for manufacturing investment reported for purposes of claiming
11 this credit returned during the taxable year was placed in
12 service, the taxpayer is treated as having placed it in service in
13 the most recent prior year in which similar property was placed
14 in service, unless the taxpayer can establish that the property
15 placed in service in the most recent year is still on hand and
16 used in manufacturing activity at the end of that year. In that
17 event, the taxpayer will be treated as having placed the returned
18 property in service in the next most recent year.

§11-13S-10. Tax credit review and accountability.

1 Beginning on the first day of February, two thousand six,
2 and on the first day of February every third year thereafter, the
3 commissioner shall submit to the governor, the president of the

4 Senate and the speaker of the House of Delegates a tax credit
5 review and accountability report evaluating the cost effective-
6 ness of the credit allowed under this article during the most
7 recent three-year period for which information is available. The
8 criteria to be evaluated includes, but is not limited to, for each
9 year of the three-year period:

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

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

13 (3) The cost of the credit;

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

15 (5) Comparison of employment trends for the industry and
16 for taxpayers within the industry that claim the credit.

17 (b) Taxpayers claiming the credit shall provide the informa-
18 tion as the tax commissioner may require to prepare the report:
19 *Provided*, That the information is subject to the confidentiality
20 and disclosure provisions of sections five-d and five-s, article
21 ten of this chapter of the code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9b. Exemption for purchases of tangible personal prop- erty and services for direct use in research and development.

1 (a) Sales of tangible personal property and services after the
2 thirtieth day of June, two thousand two, directly used or
3 consumed in the activity of research and development are
4 exempt from tax imposed by this article. Any person having a
5 right or claim to the exemption set forth in this section shall
6 first pay to the vendor the tax imposed by this article and then
7 apply to the tax commissioner for a refund or credit or give to

8 the vendor the person's West Virginia direct pay permit number
9 in accordance with the provisions of section nine-d of this
10 article.

11 (b) For purposes of this article:

12 (1) "Directly used or consumed in the activity of research
13 and development" means used or consumed in those activities
14 or operations which constitute an integral and essential part of
15 research and development, as contrasted with and distinguished
16 from those activities or operations which are simply incidental,
17 convenient or remote to research and development.

18 (A) Uses of property or consumption of services which
19 constitute direct use or consumption in the activity of research
20 and development include only:

21 (i) In the case of tangible personal property, physical
22 incorporation of property into tangible personal property that is
23 the subject of, or directly used in, research and development;

24 (ii) Causing a direct physical, chemical or other change
25 upon property that is the subject of, or directly used in, research
26 and development;

27 (iii) Transporting or storing property that is the subject of,
28 or directly used in, research and development;

29 (iv) Measuring or verifying a change in property that is the
30 subject of, or directly used in, research and development;

31 (v) Physically controlling or directing the physical move-
32 ment or operation of property that is the subject of, or directly
33 used in, research and development;

34 (vi) Directly and physically recording the flow of property
35 that is the subject of, or directly used in, research and development;

36 (vii) Producing energy for property that is the subject of, or
37 directly used in, research and development;

38 (viii) Controlling or otherwise regulating atmospheric or
39 other environmental conditions required for research and
40 development;

41 (ix) Serving as an operating supply for property that is the
42 subject of, or directly used in, research and development;

43 (x) Maintenance or repair of property, including mainte-
44 nance equipment, that is directly used in research and develop-
45 ment;

46 (xi) Storage, removal or transportation of economic or other
47 waste resulting from the activity of research and development;

48 (xii) Pollution control or environmental quality or environ-
49 mental protection activity directly relating to the activity of
50 research and development, and personnel, plant, property or
51 community safety or security activity directly relating to the
52 activity of research and development; or

53 (xiii) Otherwise being used as an integral and essential part
54 of research and development.

55 (B) Uses of property or services which do not constitute
56 direct use or consumption in the activity of research and
57 development include, but are not limited to:

58 (i) Heating and illumination of office buildings;

59 (ii) Janitorial or general cleaning activities;

60 (iii) Personal comfort of personnel;

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61 (iv) Planning or scheduling of work or inventory control;

62 (v) Marketing, general management, supervision, finance,
63 training, accounting and administration; or

64 (vi) An activity or function incidental or convenient to
65 research and development, rather than an integral and essential
66 part of these activities.

67 (2) "Research and development" means systematic scien-
68 tific, engineering or technological study and investigation in a
69 field of knowledge in the physical, computer or software
70 sciences, often involving the formulation of hypotheses and
71 experimentation, for the purpose of revealing new facts,
72 theories or principles, or increasing scientific knowledge, which
73 may reveal the basis for new or enhanced products, equipment
74 or manufacturing processes. Research and development
75 includes, but is not limited to, design, refinement and testing of
76 prototypes of new or improved products, or design, refinement
77 and testing of manufacturing processes before commercial sales
78 relating thereto have begun. For purposes of this section
79 commercial sales include, but are not limited to, sales of
80 prototypes or sales for market testing.

81 (A) Research and development does not include:

82 (i) Market research;

83 (ii) Sales research;

84 (iii) Efficiency surveys;

85 (iv) Consumer surveys;

86 (v) Product market testing;

87 (vi) Product testing by product consumers or through
88 consumer surveys for evaluation of consumer product perfor-
89 mance or consumer product usability;

90 (vii) The ordinary testing or inspection of materials or
91 products for quality control (quality control testing);

92 (viii) Management studies;

93 (ix) Advertising;

94 (x) Promotions;

95 (xi) The acquisition of another's patent, model, production
96 or process or investigation or evaluation of the value or
97 investment potential related thereto;

98 (xii) Research in connection with literary, historical or
99 similar projects;

100 (xiii) Research in the social sciences, economics, humani-
101 ties or psychology and other nontechnical activities; and

102 (xiv) The providing of sales services or any other service,
103 whether technical service or nontechnical service.

104 (c) No provision of this section may be interpreted to alter,
105 abrogate or impede application of the exemption for sales of
106 primary opinion research services set forth in section nine of
107 this article.

**§11-15-9c. Exemption for services and materials regarding
technical evaluation for compliance to federal and
state environmental standards provided by envi-
ronmental and industrial consultants.**

1 The service of providing technical evaluations for compli-
2 ance with federal and state environmental standards provided

3 by environmental and industrial consultants who have formal
4 certification through the West Virginia department of environ-
5 mental protection or the West Virginia bureau for public health
6 or both is exempt from the tax imposed by this article. For
7 purposes of this exemption, the service of providing technical
8 evaluations for compliance with federal and state environmental
9 standards includes those costs of tangible personal property
10 directly used in providing the services that are separately billed
11 to the purchaser of the services, and on which the tax imposed
12 by this article has previously been paid by the service provider.

§11-15-9f. Exemption for sales and services subject to special district excise tax.

1 Notwithstanding any provision of this article to the con-
2 trary, any sale or service upon which a special district excise tax
3 is paid, pursuant to the provisions of section eleven, article
4 thirteen-b, chapter eight of this code, shall be exempt from the
5 tax imposed by this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8h. Distribution, sale, transfer or assignment of qualified rehabilitated building investment tax credit.

1 (a) Any person eligible for credit under section eight-a or
2 eight-g of this article may transfer, sell or assign any unused
3 credits. Any person that transfers, sells or assigns any unused
4 portion of a tax credit shall obtain a certificate of approval from
5 the division of culture and history to transfer, sell or assign the
6 stated amount of unused tax credit. The division of culture and
7 history shall, by the last day of January each year provide in an
8 electronic medium acceptable to the tax commissioner, a report
9 listing the name of the transferor, the transferor's tax identifica-
10 tion number, the name of the transferee, the transferee's tax
11 identification number, the amount of credit transferred, sold or
12 assigned and the date of the transfer, sale or assignment for

13 each transfer, sale or assignment approved by the division of
14 culture and history during the preceding calendar year.

15 (b) Credits granted to or acquired by a pass-through entity
16 created or recognized under West Virginia law, or by multiple
17 owners of property, if not transferred, sold or assigned, may be
18 divided among the partners, members, shareholders or owners
19 either according to the distributive shares of income of the
20 entity or pursuant to an executed agreement among the partners,
21 members, shareholders or owners if the agreement documents
22 an alternate method of distribution, as provided in section eight-
23 e of this article.

24 (c) Any transferee, purchaser or assignee of tax credits
25 under this section may use the acquired credits to offset the tax
26 imposed by this article or article twenty-four of this chapter
27 upon the transferee, purchaser or assignee. To claim the tax
28 credit, the transferee, purchaser or assignee shall attach the
29 certificate obtained by the transferor, seller or assignor in
30 accordance with subsection (a) of this section to the tax return
31 against which the credit is claimed when the tax return is filed
32 with the tax commissioner.

33 (d) If the credit allowed under this section exceeds the
34 transferee's, purchaser's or assignee's tax due for the current
35 tax year, the transferee, purchaser or assignee of the tax credit
36 may carry forward the excess in accordance with section eight-e
37 of this article, or section twenty-three-e, article twenty-four of
38 this chapter when the transferee, purchaser or assignee is
39 subject to the tax imposed by that article.

40 (e) The tax commissioner may promulgate procedural rules
41 in accordance with article three, chapter twenty-nine-a of this
42 code, necessary to provide procedures for the distribution,
43 transfer, or assignment and the claiming of the credit allowed
44 by sections eight-a and eight-g of this article.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and other organizations exempt from tax.

1 The following organizations and persons are exempt from
2 the tax imposed by this article to the extent provided in this
3 section:

4 (a) Natural persons doing business in this state that are not
5 doing business in the form of a partnership (as defined in
6 section three of this article) or in the form of a corporation (as
7 defined in section three of this article). Natural persons include
8 persons doing business as sole proprietors, sole practitioners
9 and other self-employed persons;

10 (b) Corporations and organizations which by reason of their
11 purposes or activities are exempt from federal income tax:
12 *Provided*, That this exemption does not apply to that portion of
13 their capital (as defined in section three of this article) which is
14 used, directly or indirectly, in the generation of unrelated
15 business income (as defined in the Internal Revenue Code) of
16 any corporation or organization if the unrelated business
17 income is subject to federal income tax;

18 (c) Insurance companies which pay this state a tax upon
19 premiums;

20 (d) Production credit associations organized under the
21 provisions of the federal "Farm Credit Act of 1933": *Provided*,
22 That this exemption does not apply to corporations or associa-
23 tions organized under the provisions of article four, chapter
24 nineteen of this code;

25 (e) Any trust established pursuant to section one hundred
26 eighty-six, chapter seven, title twenty-nine of the code of the
27 laws of the United States (enacted as section three hundred two
28 (c) of the labor management relations act, one thousand nine

29 hundred forty-seven), as amended prior to the first day of
30 January, one thousand nine hundred eighty-five;

31 (f) Any credit union organized under the provisions of
32 chapter thirty-one, or any other chapter of this code: *Provided*,
33 That this exemption does not apply to corporations or coopera-
34 tive associations organized under the provisions of article four,
35 chapter nineteen of this code;

36 (g) Any corporation organized under this code which is a
37 political subdivision of the state of West Virginia, or is an
38 instrumentality of a political subdivision of this state, and was
39 created pursuant to this code;

40 (h) Any corporation or partnership engaged in the activity
41 of agriculture and farming, as defined in subdivision (8),
42 subsection (b), section three of this article: *Provided*, That if a
43 corporation or partnership is not exclusively engaged in that
44 activity, its tax base under this article is apportioned, in
45 accordance with regulations promulgated by the tax commis-
46 sioner, among its several activities and only that portion
47 attributable to the activity of agriculture and farming is exempt
48 from tax under this article;

49 (i) Any corporation or partnership licensed under article
50 twenty-three, chapter nineteen of this code, to conduct horse or
51 dog racing meetings or a pari-mutuel system of wagering:
52 *Provided*, That if the corporation or partnership is not exclu-
53 sively engaged in this activity, its tax base under this article is
54 apportioned, in accordance with regulations promulgated by the
55 tax commissioner, among its several activities and only that
56 portion attributable to the activity of conducting a horse or dog
57 racing meeting or a pari-mutuel system of wagering is exempt
58 from tax under this article;

59 (j) For those tax years beginning after the thirtieth day of
60 June, one thousand nine hundred ninety-eight, any corporation

61 or partnership operating as a hunting club: *Provided*, That the
62 corporation or partnership distributes no income or dividends
63 to its owners or stockholders. For the purposes of this subsec-
64 tion, a hunting club is a group of persons owning land which is
65 used principally for hunting purposes by the members of the
66 club and guests, and where any charges made for hunting are
67 principally for the purpose of defraying the costs of operating
68 and maintaining the club and club properties or establishing a
69 reasonable reserve to meet the operating and maintenance costs
70 of the club. The tax commissioner shall by legislative rule
71 promulgated in accordance with article three of chapter
72 twenty-nine of this code further prescribe the definition of a
73 hunting club and the manner and method in which this credit
74 may be claimed; and

75 (k) For tax years beginning after the thirty-first day of
76 December, two thousand two, any person or other organization
77 engaged in the activity of providing venture capital to West
78 Virginia businesses: *Provided*, That if the person or organiza-
79 tion is not exclusively engaged in that activity, only that portion
80 of its tax base under this article that is attributable to the
81 providing of venture capital to West Virginia businesses is
82 exempt from tax under this article, and its tax liability under
83 this article is determined by multiplying its pre-credit tax
84 liability by a fraction equal to one minus a fraction, the numera-
85 tor of which is its gross receipts attributable to its venture
86 capital activities in this state and the denominator of which is
87 its total gross receipts from all of its business activities in this
88 state. For purposes of this exemption, a "person or organization
89 engaged in the activity of providing venture capital to West
90 Virginia business" means a certified West Virginia capital
91 company as defined in section four, article one, chapter five-e
92 of this code.

§11-23-24a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

1 (a) Effective for taxable years beginning the first day of
2 July, one thousand nine hundred ninety-seven, notwithstanding
3 any provisions of this code to the contrary, any person, newly
4 and solely engaged in the production of value-added products
5 from raw agricultural products are allowed a credit, in the
6 amount of one thousand dollars for each taxable year against
7 the tax imposed by this article, for a period of five years from
8 the date the person becomes subject to this article. The credit is
9 allowed only against the tax imposed on that capital which is
10 attributable to the value-added production activity in this state.

11 (b) For purposes of this section, "value-added product"
12 means the following products derived from processing a raw
13 agricultural product, whether for human consumption or for
14 other use. The following enterprises qualify as processing raw
15 agricultural products into value-added products: (1) The
16 conversion of lumber into furniture, toys, collectibles and home
17 furnishings; (2) the conversion of fruit into wine; (3) the
18 conversion of honey into wine; (4) the conversion of wool into
19 fabric; (5) the conversion of raw hides into semifinished or
20 finished leather products; (6) the conversion of milk into
21 cheese; (7) the conversion of fruits or vegetables into a dried,
22 canned or frozen product; (8) the conversion of feeder cattle
23 into commonly acceptable marketable retail portions; (9) the
24 conversion of aquatic animals into a dried, canned, cooked or
25 frozen product; and (10) the conversion of poultry into a dried,
26 canned, cooked or frozen product.

27 (c) The tax commissioner may propose rules for promulga-
28 tion in accordance with article three, chapter twenty-nine-a as
29 necessary to effectuate the purposes of this section.

30 (d) No credit is available to any taxpayer under this section
31 after the first day of July, two thousand two: *Provided*, That
32 taxpayers which have gained entitlement to the credit pursuant
33 to the terms of this section prior to the first day of July, two
34 thousand two, shall retain that entitlement and apply the credit
35 in due course pursuant to the requirements and limitations of
36 this section until the original five-year credit entitlement has
37 been exhausted or otherwise terminated.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

1 (a) Effective for taxable years beginning the first day of
2 July, one thousand nine hundred ninety-seven, notwithstanding
3 any provisions of this code to the contrary, any new corporation
4 engaged solely in the production of value-added products from
5 raw agricultural products are allowed a credit, in the amount of
6 one thousand dollars for each taxable year against the tax
7 imposed by this article, for a period of five years from the date
8 the person becomes subject to this article. The credit is allowed
9 only against the tax on taxable income which is attributable to
10 the production of value-added products.

11 (b) Effective for taxable years beginning the first day of
12 July, one thousand nine hundred ninety-seven, any new
13 corporation engaged solely in the production of value-added
14 products in West Virginia is allowed a tax credit, according to
15 the schedule herein, for every one hour spent by a new perma-
16 nent, full-time employee training to learn a skill specific to the
17 production of value-added products as defined in article
18 twenty-one, chapter thirty-one of this code. The tax credit is
19 allowed for a maximum of sixty hours, per company, per year.

20 (c) For purposes of this section, tax credits for hours spent
21 by a new permanent, full-time employee in training is allowed
22 as follows:

23 (1) Corporations which employ up to five new employees
24 is allowed a tax credit of two dollars for every one hour spent
25 by a new employee in training as specified herein;

26 (2) Corporations which employ between six and
27 twenty-five new employees are allowed a tax credit of one
28 dollar and fifty cents for every one hour spent by a new
29 employee in training as specified herein;

30 (3) Corporations which employ between twenty-six and
31 seventy-five new employees are allowed a tax credit of one
32 dollar and twenty-five cents for every one hour spent by a new
33 employee in training as specified herein;

34 (4) Corporations which employ between seventy-six and
35 one hundred and twenty-five new employees are allowed a tax
36 credit of one dollar for every one hour spent by a new employee
37 in training as specified herein; and

38 (5) Corporations which employ more than one hundred
39 twenty-five new employees are allowed a tax credit of sev-
40 enty-five cents for every one hour spent by a new employee in
41 training as specified herein.

42 (d) For purposes of this section, "value-added product"
43 means the following products derived from processing a raw
44 agricultural product, whether for human consumption or for
45 other use. The following enterprises qualify as processing raw
46 agricultural products into value-added products: (1) The
47 conversion of lumber into furniture, toys, collectibles and home
48 furnishings; (2) the conversion of fruit into wine; (3) the
49 conversion of honey into wine; (4) the conversion of wool into
50 fabric; (5) the conversion of raw hides into semifinished or

51 finished leather products; (6) the conversion of milk into
52 cheese; (7) the conversion of fruits or vegetables into a dried,
53 canned or frozen product; (8) the conversion of feeder cattle
54 into commonly acceptable marketable retail portions; (9) the
55 conversion of aquatic animals into a dried, canned, cooked or
56 frozen product; and (10) the conversion of poultry into a dried,
57 canned, cooked or frozen product.

58 (e) The tax commissioner may propose rules for promulga-
59 tion in accordance with the provisions of article three, chapter
60 twenty-nine-a of this code as necessary to effectuate the
61 purposes of this article.

62 (f) No credit is available to any taxpayer under this section
63 subsequent to the first day of July, two thousand two: *Provided*,
64 That taxpayers which have gained entitlement to the credit
65 pursuant to the terms of this section prior to the first day of
66 July, two thousand two, shall retain that entitlement and apply
67 the credit in due course pursuant to the requirements and
68 limitations of this section until the original five-year credit
69 entitlement has been exhausted or otherwise terminated.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state benefit from the creation of jobs and
3 businesses within the state; that a business and industrial
4 development loan program provides for economic growth and
5 stimulation within the state; that loans from pools established
6 in the consolidated fund will assist in providing the needed
7 capital to assist business and industrial development; and that
8 time constraints relating to business and industrial development

9 projects prohibit duplicative review by both the board and the
10 West Virginia economic development authority board. The
11 Legislature further finds and declares that an investment in the
12 West Virginia Enterprise Capital Fund, LLC of moneys in the
13 consolidated fund as hereinafter provided will assist in creating
14 jobs and businesses within the state and providing the needed
15 risk capital to assist business and industrial development. This
16 section is enacted in view of these findings.

17 (b) The board shall make available, subject to cash avail-
18 ability, in the form of a revolving loan, up to one hundred fifty
19 million dollars from the consolidated fund to loan the West
20 Virginia economic development authority for business or
21 industrial development projects authorized by section seven,
22 article fifteen, chapter thirty-one of this code and to consolidate
23 existing loans authorized to be made to the West Virginia
24 economic development authority pursuant to this section and
25 pursuant to section twenty, article fifteen, chapter thirty-one of
26 this code which authorizes a one hundred fifty million dollar
27 revolving loan and article eighteen-b, chapter thirty-one of this
28 code which authorizes a fifty million dollar investment pool:
29 *Provided*, That the West Virginia economic development
30 authority may not loan more than fifteen million dollars for any
31 one business or industrial development project. The revolving
32 loan authorized by this subsection shall be secured by one note
33 at a variable interest rate equal to the twelve-month average of
34 the board's yield on its cash liquidity pool. The rate shall be set
35 on the first day of July and the rate shall be adjusted annually
36 on the same date. The maximum annual adjustment may not
37 exceed one percent. Monthly payments made by the West
38 Virginia economic development authority to the board shall be
39 calculated on a one hundred twenty-month amortization. The
40 revolving loan shall be secured by a security interest that
41 pledges and assigns the cash proceeds of collateral from all
42 loans under this revolving loan pool. The West Virginia
43 economic development authority may also pledge as collateral

44 certain revenue streams from other revolving loan pools which
45 source of funds does not originate from federal sources or from
46 the board.

47 The outstanding principal balance of the revolving loan
48 from the board to the West Virginia economic development
49 authority may at no time exceed one hundred three percent of
50 the aggregate outstanding principal balance of the business and
51 industrial loans from the West Virginia economic development
52 authority to economic development projects funded from this
53 revolving loan pool. This provision shall be certified annually
54 by an independent audit of the West Virginia economic
55 development authority financial records.

56 (c) The interest rates and maturity dates on the loans made
57 by the West Virginia economic development authority for
58 business and industrial development projects authorized by
59 section seven, article fifteen, chapter thirty-one of this code
60 shall be at competitive rates and maturities as determined by the
61 West Virginia economic development authority board.

62 (d) Any and all outstanding loans made by the board, or any
63 predecessor entity, to the West Virginia economic development
64 authority shall be refunded by proceeds of the revolving loan
65 contained in this section and no loans may be made hereafter by
66 the board to the West Virginia economic development authority
67 pursuant to section twenty, article fifteen, chapter thirty-one of
68 this code or article eighteen-b of said chapter.

69 (e) The trustees of the board shall bear no fiduciary
70 responsibility as provided in section eleven [§ 12-6-11] of this
71 article with specific regard to the revolving loan contemplated
72 in this section.

73 (f) Subject to cash availability, the board shall make
74 available to the West Virginia economic development authority
75 from the consolidated fund a non-recourse loan in an amount up

76 to twenty-five million dollars, for the purpose of the West
77 Virginia economic development authority making a loan or
78 loans from time to time to the West Virginia enterprise ad-
79 vancement corporation, an affiliated nonprofit corporation of
80 the West Virginia economic development authority. The
81 respective loans authorized by this subsection by the board to
82 the West Virginia economic development authority and by the
83 West Virginia economic development authority to the West
84 Virginia enterprise advancement corporation shall each be
85 evidenced by one note and shall each bear interest at the rate of
86 three percent per annum. The proceeds of any and all loans
87 made by the West Virginia economic development authority to
88 the West Virginia enterprise advancement corporation pursuant
89 to this subsection shall be invested by the West Virginia
90 enterprise corporation in the West Virginia enterprise capital
91 fund, LLC, the manager of which is the West Virginia enter-
92 prise advancement corporation. The loan to West Virginia
93 economic development authority authorized by this subsection
94 shall be non-revolving, and advances thereunder shall be made
95 at times and in amounts as may be requested or directed by the
96 West Virginia economic development authority, upon reason-
97 able notice to the board, the loan authorized by this subsection
98 is not subject to or included in the limitations set forth in
99 subsection (b) of this section with respect to the fifteen million
100 dollar limitation for any one business or industrial development
101 project and limitation of one hundred three percent of outstand-
102 ing loans, and may not be included in the revolving fund loan
103 principal balance for purposes of calculating the loan amortiza-
104 tion in subsection (b) of this section. The loan authorized by
105 this subsection to the West Virginia economic development
106 authority shall be classified by the board as a long-term, fixed
107 income investment, shall bear interest on the outstanding
108 principal balance thereof at the rate of three percent per annum
109 payable annually on or before the thirtieth day of June of each
110 year, and the principal of which shall be repaid no later than the

111 thirtieth day of June, two thousand twenty-two in annual
112 installments due on or before the thirtieth day of June of each
113 year, which annual installments shall commence no later than
114 the thirtieth day of June, two thousand and three, in annual
115 principal amounts as may be agreed upon between the board
116 and the West Virginia economic development authority, and
117 which annual installments need not be equal. The loan autho-
118 rized by this subsection shall be non-recourse and shall be
119 payable by the West Virginia economic development authority
120 solely from amounts or returns received by the West Virginia
121 economic development authority in respect of the loan autho-
122 rized by this subsection to the West Virginia enterprise ad-
123 vancement corporation, whether in the form of interest,
124 dividends, realized capital gains, return of capital or otherwise,
125 in all of which the board shall have a security interest to secure
126 repayment of the loan to the West Virginia economic develop-
127 ment authority authorized by this subsection. Any and all loans
128 from the West Virginia economic development authority to the
129 West Virginia enterprise advancement corporation made
130 pursuant to this subsection shall also bear interest on the
131 outstanding principal balance thereof at the rate of three percent
132 per annum payable annually on or before the thirtieth day of
133 June of each year, shall be non-recourse and shall be payable by
134 the West Virginia enterprise advancement corporation solely
135 from amounts of returns received by the West Virginia enter-
136 prise advancement corporation in respect of its investment in
137 the West Virginia enterprise capital fund, LLC, whether in the
138 form of interest, dividends, realized capital gains, return of
139 capital or otherwise, in all of which the board shall have a
140 security interest to secure repayment of the loan to the West
141 Virginia economic development authority authorized by this
142 subsection. In the event the amounts or returns received by the
143 West Virginia enterprise corporation in respect of its invest-
144 ment in the West Virginia enterprise capital fund, LLC, are not
145 adequate to pay when due the principal or interest installments,

146 or both, with respect to the loan from the West Virginia
147 economic development authority and, as a result thereof, the
148 West Virginia economic development authority is unable to pay
149 the principal or interest installments, or both, with respect to the
150 loan authorized by this subsection by the board to the West
151 Virginia economic development authority, the principal or
152 interest, or both, as the case may be due on the loan made to the
153 West Virginia economic development authority pursuant to this
154 subsection shall be deferred, and any and all such past-due
155 principal and interest payments shall promptly be paid to the
156 fullest extent possible upon receipt by the West Virginia
157 enterprise advancement corporation of moneys in respect of ^{its} ~~is~~
158 investments in the West Virginia enterprise capital fund, LLC.
159 The trustees or the board shall bear no fiduciary responsibility
160 as provided in section eleven, article six, chapter twelve of this
161 code with regard to the loan authorized by this subsection.

*ok
Amended by the Board
Chair of the Board*

**CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.**

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby continued a special revenue fund in the
2 state treasury which shall be designated and known as the "state
3 lottery fund". The fund consists of all appropriations to the fund
4 and all interest earned from investment of the fund and any
5 gifts, grants or contributions received by the fund. All revenues
6 received from the sale of lottery tickets, materials and games
7 shall be deposited with the state treasurer and placed into the

8 "state lottery fund". The revenue shall be disbursed in the
9 manner provided in this section for the purposes stated in this
10 section and shall not be treated by the auditor and treasurer as
11 part of the general revenue of the state.

12 (b) No appropriation, loan or other transfer of state funds
13 may be made to the commission or lottery fund after the initial
14 appropriation.

15 (c) A minimum annual average of forty-five percent of the
16 gross amount received from each lottery shall be allocated and
17 disbursed as prizes.

18 (d) Not more than fifteen percent of the gross amount
19 received from each lottery may be allocated to and may be
20 disbursed as necessary for fund operation and administration
21 expenses: Provided, That for the period beginning the first day
22 of January, two thousand two, through the thirtieth day of June,
23 two thousand three, not more than seventeen percent of the
24 gross amount received from each lottery shall be allocated to
25 and may be disbursed as necessary for fund operation and
26 administration expenses.

27 (e) The excess of the aggregate of the gross amount
28 received from all lotteries over the sum of the amounts allo-
29 cated by subsections (c) and (d) of this section shall be allo-
30 cated as net profit. In the event that the percentage allotted for
31 operations and administration generates a surplus, the surplus
32 shall be allowed to accumulate to an amount not to exceed two
33 hundred fifty thousand dollars. On a monthly basis, the director
34 shall report to the joint committee on government and finance
35 of the Legislature any surplus in excess of two hundred fifty
36 thousand dollars and remit to the state treasurer the entire
37 amount of those surplus funds in excess of two hundred fifty
38 thousand dollars which shall be allocated as net profit.

39 (f) After first satisfying the requirements for funds dedi-
40 cated to the school building debt service fund in subsection (h)
41 of this section to retire the bonds authorized to be issued
42 pursuant to section eight, article nine-d, chapter eighteen of this
43 code, and then satisfying the requirements for funds dedicated
44 to the education, arts, sciences and tourism debt service fund in
45 subsection (i) of this section to retire the bonds authorized to be
46 issued pursuant to section eleven-a, article six, chapter five of
47 this code, any and all remaining funds in the state lottery fund
48 shall be made available to pay debt service in connection with
49 any revenue bonds issued pursuant to section eighteen-a of this
50 article, if and to the extent needed for such purpose from time
51 to time. The Legislature shall annually appropriate all of the
52 remaining amounts allocated as net profits in subsection (e) of
53 this section, in such proportions as it considers beneficial to the
54 citizens of this state, to: (1) The lottery education fund created
55 in subsection (g) of this section; (2) the school construction
56 fund created in section six, article nine-d, chapter eighteen of
57 this code; (3) the lottery senior citizens fund created in subsec-
58 tion (j) of this section; and (4) the division of natural resources
59 created in section three, article one, chapter twenty of this code
60 and the West Virginia development office as created in section
61 one, article two, chapter five-b of this code, in accordance with
62 subsection (k) of this section. No transfer to any account other
63 than the school building debt service account, the education,
64 arts, sciences and tourism debt service fund, the economic
65 development project fund created under section eighteen, ¹⁻article
66 twenty-two, chapter twenty-nine of this code, or any fund from
67 which debt service is paid under subsection (c), section
68 eighteen-a of this article, may be made in any period of time in
69 which a default exists in respect to debt service on bonds issued
70 by the school building authority, the state building commission,
71 the economic development authority or which are otherwise
72 secured by lottery proceeds. No additional transfer may be
73 made to any account other than the school building debt service

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74 account and the education, arts, sciences and tourism debt
75 service fund when net profits for the preceding twelve months
76 are not at least equal to one hundred fifty percent of debt
77 service on bonds issued by the school building authority and the
78 state building commission which are secured by net profits.

79 (g) There is hereby continued a special revenue fund in the
80 state treasury which shall be designated and known as the
81 "lottery education fund." The fund shall consist of the amounts
82 allocated pursuant to subsection (f) of this section, which shall
83 be deposited into the lottery education fund by the state
84 treasurer. The lottery education fund shall also consist of all
85 interest earned from investment of the lottery education fund
86 and any other appropriations, gifts, grants, contributions or
87 moneys received by the lottery education fund from any source.
88 The revenues received or earned by the lottery education fund
89 shall be disbursed in the manner provided below and may not
90 be treated by the auditor and treasurer as part of the general
91 revenue of the state. Annually, the Legislature shall appropriate
92 the revenues received or earned by the lottery education fund to
93 the state system of public and higher education for these
94 educational programs it considers beneficial to the citizens of
95 this state.

96 (h) On or before the twenty-eighth day of each month, as
97 long as revenue bonds or refunding bonds are outstanding, the
98 lottery director shall allocate to the school building debt service
99 fund created pursuant to the provisions of section six, article
100 nine-d, chapter eighteen of this code, as a first priority from the
101 net profits of the lottery for the preceding month, an amount
102 equal to one tenth of the projected annual principal, interest and
103 coverage ratio requirements on any and all revenue bonds and
104 refunding bonds issued, or to be issued, on or after the first day
105 of April, one thousand nine hundred ninety-four, as certified to
106 the lottery director in accordance with the provisions of section
107 six, article nine-d, chapter eighteen of this code. In no event

108 shall the monthly amount allocated exceed one million eight
109 hundred thousand dollars, nor may the total allocation of the net
110 profits to be paid into the school building debt service fund, as
111 provided in this section, in any fiscal year exceed the lesser of
112 the principal and interest requirements certified to the lottery
113 director or eighteen million dollars. In the event there are
114 insufficient funds available in any month to transfer the amount
115 required to be transferred pursuant to this subsection to the
116 school debt service fund, the deficiency shall be added to the
117 amount transferred in the next succeeding month in which
118 revenues are available to transfer the deficiency. A lien on the
119 proceeds of the state lottery fund up to a maximum amount
120 equal to the projected annual principal, interest and coverage
121 ratio requirements, not to exceed twenty-seven million dollars
122 annually, may be granted by the school building authority in
123 favor of the bonds it issues which are secured by the net lottery
124 profits.

125 When the school improvement bonds, secured by profits
126 from the lottery and deposited in the school debt service fund,
127 mature, the profits shall become available for debt service on
128 additional school improvement bonds as a first priority from the
129 net profits of the lottery or may at the discretion of the authority
130 be placed into the school construction fund created pursuant to
131 the provisions of section six, article nine-d, chapter eighteen of
132 this code.

133 (i) Beginning on or before the twenty-eighth day of July,
134 one thousand nine hundred ninety-six, and continuing on or
135 before the twenty-eighth day of each succeeding month
136 thereafter, as long as revenue bonds or refunding bonds are
137 outstanding, the lottery director shall allocate to the education,
138 arts, sciences and tourism debt service fund created pursuant to
139 the provisions of section eleven-a, article six, chapter five of
140 this code, as a second priority from the net profits of the lottery
141 for the preceding month, an amount equal to one tenth of the

142 projected annual principal, interest and coverage ratio require-
143 ments on any and all revenue bonds and refunding bonds
144 issued, or to be issued, on or after the first day of April, one
145 thousand nine hundred ninety-six, as certified to the lottery
146 director in accordance with the provisions of that section. In no
147 event may the monthly amount allocated exceed one million
148 dollars nor may the total allocation paid into the education, arts,
149 sciences and tourism debt service fund, as provided in this
150 section, in any fiscal year exceed the lesser of the principal and
151 interest requirements certified to the lottery director or ten
152 million dollars. In the event there are insufficient funds
153 available in any month to transfer the amount required pursuant
154 to this subsection to the education, arts, sciences and tourism
155 debt service fund, the deficiency shall be added to the amount
156 transferred in the next succeeding month in which revenues are
157 available to transfer the deficiency. A second-in-priority lien on
158 the proceeds of the state lottery fund up to a maximum amount
159 equal to the projected annual principal, interest and coverage
160 ratio requirements, not to exceed fifteen million dollars
161 annually, may be granted by the state building commission in
162 favor of the bonds it issues which are secured by the net lottery
163 profits.

164 When the bonds, secured by profits from the lottery and
165 deposited in the education, arts, sciences and tourism debt
166 service fund, mature, the profits shall become available for debt
167 service on additional bonds as a second priority from the net
168 profits of the lottery.

169 (j) There is hereby continued a special revenue fund in the
170 state treasury which shall be designated and known as the
171 "lottery senior citizens fund." The fund shall consist of the
172 amounts allocated pursuant to subsection (f) of this section,
173 which amounts shall be deposited into the lottery senior citizens
174 fund by the state treasurer. The lottery senior citizens fund shall
175 also consist of all interest earned from investment of the lottery

176 senior citizens fund and any other appropriations, gifts, grants,
177 contributions or moneys received by the lottery senior citizens
178 fund from any source. The revenues received or earned by the
179 lottery senior citizens fund shall be distributed in the manner
180 provided below and may not be treated by the auditor or
181 treasurer as part of the general revenue of the state. Annually,
182 the Legislature shall appropriate the revenues received or
183 earned by the lottery senior citizens fund to such senior citizens
184 medical care and other programs as it considers beneficial to
185 the citizens of this state.

186 (k) The division of natural resources and the West Virginia
187 development office, as appropriated by the Legislature, may use
188 the amounts allocated to them pursuant to subsection (f) of this
189 section for one or more of the following purposes: (1) The
190 payment of any or all of the costs incurred in the development,
191 construction, reconstruction, maintenance or repair of any
192 project or recreational facility, as these terms are defined in
193 section four, article five, chapter twenty of this code, pursuant
194 to the authority granted to it under article five, chapter twenty
195 of this code; (2) the payment, funding or refunding of the
196 principal of, interest on or redemption premiums on any bonds,
197 security interests or notes issued by the parks and recreation
198 section of the division of natural resources under article five,
199 chapter twenty of this code; or (3) the payment of any advertis-
200 ing and marketing expenses for the promotion and development
201 of tourism or any tourist facility or attraction in this state.

§29-22-18a. State excess lottery revenue fund

1 (a) There is hereby created a special revenue fund within
2 the state lottery fund in the state treasury which shall be
3 designated and known as the "state excess lottery revenue
4 fund". The fund shall consist of all appropriations to the fund
5 and all interest earned from investment of the fund and any
6 gifts, grants or contributions received by the fund. All revenues

7 received under the provisions of sections ten-b and ten-c, article
8 twenty-two-a of this chapter and under article twenty-two-b of
9 this chapter, except the amounts due the commission under
10 section 29-22B-1408(a) (1) of this chapter, shall be deposited
11 in the state treasury and placed into the "state excess lottery
12 revenue fund". The revenue shall be disbursed in the manner
13 provided in this section for the purposes stated in this section
14 and shall not be treated by the auditor and the state treasurer as
15 part of the general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two
17 thousand one, the moneys of the fund established in this section
18 shall be used for the purpose of subsidizing salary increases and
19 associated employee benefits paid from the state general
20 revenue fund as determined by the secretary of administration
21 effective the first day of July, two thousand one or thereafter,
22 including, but not limited, to the salary increase for teachers
23 provided in section two, article four, chapter eighteen-a of this
24 code, by enactment of the Legislature in two thousand one; the
25 salary increase for members of the state police provided in
26 section five, article two, chapter fifteen of this code by enact-
27 ment of the Legislature in two thousand one; and general salary
28 increases for state employees: *Provided*, That effective the first
29 day of October, two thousand one, the full year salary increases
30 for state employees other than correctional officers and mem-
31 bers of the state police equal seven hundred fifty-six dollars for
32 each full-time employee: *Provided, however*, That effective the
33 first day of July, two thousand one, the full year salary in-
34 creases for uniformed correctional officers equal two thousand
35 dollars for each full-time employee; and that the full year salary
36 increases for non-uniformed correctional staff, whose core
37 duties include contact with inmates or juvenile detainees on a
38 regular and frequent basis, equal one thousand two hundred
39 fifty dollars for each full-time employee; but that for all other
40 division of correction and division of juvenile services employ-
41 ees, the full year salary increase equals seven hundred fifty-six

42 dollars for each full-time employee. Until the thirtieth day of
43 June, two thousand two, the lottery commission shall, upon
44 direction from the governor, transfer the moneys of the account
45 to the state general revenue fund in the amounts specified in the
46 governor's official revenue estimates to subsidize the funding
47 of the salary increases described in this subsection. Beginning
48 the first day of July, two thousand two, and thereafter, the
49 transfer authority granted by this subsection is terminated. After
50 first satisfying the funding requirements directed by this
51 subsection, the moneys remaining in the fund shall be disbursed
52 in the manner provided by subsection (c) of this section.

53 (c) For the fiscal year beginning the first day of July, two
54 thousand one, the commission shall deposit: (1) Five million
55 five hundred thousand dollars into the account hereby created
56 in the state treasury to be known as the "education improvement
57 fund" for appropriation by the Legislature to the "promise
58 scholarship fund" created in section seven, article seven,
59 chapter eighteen-c of this code; (2) twenty-five million dollars
60 to the school building debt service fund created in section six,
61 article nine-d, chapter eighteen of this code for the issuance of
62 revenue bonds; (3) twenty-five million dollars in the West
63 Virginia infrastructure fund created in section nine, article
64 fifteen-a, chapter thirty-one of this code to be spent in accor-
65 dance with the provisions of that article; (4) ten million dollars
66 into a separate account within the state lottery fund to be known
67 as the higher education improvement fund for higher education;
68 and (5) nine million dollars into a separate account within the
69 state lottery fund to be known as the state park improvement
70 fund for park improvements. For the fiscal year beginning the
71 first day of July, two thousand two, the commission shall
72 deposit: (1) Sixty-five million dollars into the subaccount of the
73 state excess lottery revenue fund hereby created in the state
74 treasury to be known as the "general purpose account" to be
75 expended pursuant to appropriation of the Legislature; (2) ten
76 million dollars into the education improvement fund for

77 appropriation by the Legislature to the "promise scholarship
78 fund" created in section seven, article seven, chapter eighteen-c
79 of this code; (3) nineteen million dollars into the economic
80 development project fund created in subsection (d) of this
81 section, for the issuance of revenue bonds and to be spent in
82 accordance with the provisions of said subsection; (4) twenty
83 million dollars to the school building debt service fund created
84 in section six, article nine-d, chapter eighteen of this code for
85 the issuance of revenue bonds; (5) forty million dollars in the
86 West Virginia infrastructure fund created in section nine, article
87 fifteen-a, chapter thirty-one of this code to be spent in accor-
88 dance with the provisions of that article; (6) ten million dollars
89 into the higher education improvement fund for higher educa-
90 tion; and (7) five million dollars into the state park improve-
91 ment fund for park improvements. For the fiscal year beginning
92 the first day of July, two thousand three, the commission shall
93 deposit: (1) Sixty-five million dollars into the general purpose
94 account to be expended pursuant to appropriation of the
95 Legislature; (2) seventeen million dollars into the education
96 improvement fund for appropriation by the Legislature to the
97 "promise scholarship fund" created in section seven, article
98 seven, chapter eighteen-c of this code; (3) nineteen million
99 dollars into the economic development project fund created in
100 subsection (d) of this section, for the issuance of revenue bonds
101 and to be spent in accordance with the provisions of said
102 subsection; (4) twenty million dollars to the school building
103 debt service fund created in section six, article nine-d, chapter
104 eighteen of this code for the issuance of revenue bonds; (5)
105 forty million dollars in the West Virginia infrastructure fund
106 created in section nine, article fifteen-a, chapter thirty-one of
107 this code to be spent in accordance with the provisions of that
108 article; (6) ten million dollars into the higher education improve-
109 ment fund for higher education; and (7) five million dollars into
110 the state park improvement fund for park improvements. For
111 the fiscal year beginning the first day of July, two thousand

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112 four, and subsequent fiscal years, the commission shall deposit:
113 (1) Sixty-five million dollars into the general purpose account
114 to be expended pursuant to appropriation of the Legislature; (2)
115 twenty-seven million dollars into the education improvement
116 fund for appropriation by the Legislature to the "promise
117 scholarship fund" created in section seven, article seven,
118 chapter eighteen-c of this code; (3) nineteen million dollars into
119 the economic development project fund created in subsection
120 (d) of this section, for the issuance of revenue bonds and to be
121 spent in accordance with the provisions of said subsection; (4)
122 nineteen million dollars to the school building debt service fund
123 created in section six, article nine-d, chapter eighteen of this
124 code for the issuance of revenue bonds; (5) forty million dollars
125 in the West Virginia infrastructure fund created in section nine,
126 article fifteen-a, chapter thirty-one of this code to be spent in
127 accordance with the provisions of that article; (6) ten million
128 dollars into the higher education improvement fund for higher
129 education; and (7) five million dollars into the state park
130 improvement fund for park improvements. No portion of the
131 distributions made as provided in subsection (c) of this section,
132 except distributions made in connection with bonds issued
133 under subsection (d) of this section, may be used to pay debt
134 service on bonded indebtedness until after the Legislature
135 expressly authorizes issuance of the bonds and payment of debt
136 service on the bonds through statutory enactment or the passage
137 of a concurrent resolution by both houses of the Legislature.
138 Until subsequent legislative enactment or adoption of a resolu-
139 tion that expressly authorizes issuance of the bonds and
140 payment of debt service on the bonds with funds distributed
141 under subsection (c) of this section, except distributions made
142 in connection with bonds issued under subsection (d) of this
143 section, the distributions may be used only to fund capital
144 improvements that are not financed by bonds and only pursuant
145 to appropriation of the Legislature.

*Dr. [unclear]
[unclear]*

146 (d) The Legislature finds and declares that in order to
147 attract new business, commerce and industry to this state, to
148 retain existing business and industry providing the citizens of
149 this state with economic security and to advance the business
150 prosperity of this state and the economic welfare of the citizens
151 of this state, it is necessary to provide public financial support
152 for constructing, equipping, improving and maintaining
153 economic development projects, capital improvement projects
154 and infrastructure which promote economic development in this
155 state.

156 (1) The West Virginia economic development authority
157 created and provided for in article fifteen, chapter thirty-one of
158 this code, shall, by resolution, in accordance with the provisions
159 of this article, and article fifteen, chapter thirty-one of this code,
160 and upon direction of the governor, issue revenue bonds of the
161 economic development authority in no more than two series to
162 pay for all or a portion of the cost of constructing, equipping,
163 improving or maintaining projects under this section or to
164 refund the bonds, at the discretion of the authority. Any revenue
165 bonds issued on or after the first day of July, two thousand two,
166 which are secured by state excess lottery revenue proceeds shall
167 mature at a time or times not exceeding thirty years from their
168 respective dates. The principal of, and the interest and redemp-
169 tion premium, if any, on the bonds shall be payable solely from
170 the special fund provided in this section for the payment.

171 (2) There is hereby created in the state treasury a special
172 revenue fund named the "economic development project fund"
173 into which shall be deposited on and after the first day of July,
174 two thousand two, the amounts to be deposited in said fund as
175 specified in subsection (c), section eighteen-a of this article.
176 The economic development project fund shall consist of all
177 such moneys, all appropriations to the fund, all interest earned
178 from investment of the fund, and any gifts, grants or contribu-
179 tions received by the fund. All amounts deposited in the fund

180 shall be pledged to the repayment of the principal, interest and
181 redemption premium, if any, on any revenue bonds or refunding
182 revenue bonds authorized by this section, including any and all
183 commercially customary and reasonable costs and expenses
184 which may be incurred in connection with the issuance,
185 refunding, redemption or defeasance thereof. The West Virginia
186 economic development authority may further provide in the
187 resolution and in the trust agreement for priorities on the
188 revenues paid into the economic development project fund as
189 may be necessary for the protection of the prior rights of the
190 holders of bonds issued at different times under the provisions
191 of this section. The bonds issued pursuant to this section shall
192 be separate from all other bonds which may be or have been
193 issued from time to time under the provisions of this article.

194 After the West Virginia economic development authority
195 has issued bonds authorized by this section, and after the
196 requirements of all funds have been satisfied, including any
197 coverage and reserve funds established in connection with the
198 bonds issued pursuant to this section, any balance remaining in
199 the economic development project fund may be used for the
200 redemption of any of the outstanding bonds issued under this
201 section which, by their terms, are then redeemable or for the
202 purchase of the outstanding bonds at the market price, but not
203 to exceed the price, if any, at which redeemable, and all bonds
204 redeemed or purchased shall be immediately canceled and shall
205 not again be issued.

206 (3) The West Virginia economic development authority
207 shall expend the bond proceeds from the revenue bond issues
208 authorized and directed by this section of this code for such
209 projects as may be certified under the provision of this subsection:
210 *Provided*, That the bond proceeds shall be expended in
211 accordance with the requirements and provisions of article five-
212 a, chapter twenty-one of this code and either twenty-two or
213 article twenty-two-a, chapter five of this code, as the case may

214 be: *Provided, however,* That if such bond proceeds are ex-
215 pended pursuant to article-twenty-two-a, chapter five of this
216 code, and if the design-build board created under said article
217 determines that the execution of a design-build contract in
218 connection with a project is appropriate pursuant to the criteria
219 set forth in said article, and that a competitive bidding process
220 was used in selecting the design builder and awarding such
221 contract, such determination shall be conclusive for all purposes
222 and shall be deemed to satisfy all the requirements of said
223 article. For the purpose of certifying the projects that will
224 receive funds from the bond proceeds, a committee is hereby
225 established and comprised of the governor, or his or her
226 designee, the secretary of the department of tax and revenue,
227 the executive director of the West Virginia development office,
228 three persons appointed by the governor from a list of five
229 names to be submitted to the governor by the president of the
230 West Virginia senate, and three persons appointed by the
231 governor from a list of five names to be submitted to the
232 governor by the speaker of the West Virginia house of dele-
233 gates. The committee shall meet as often as necessary and take
234 recommendations from any source whatever regarding possible
235 projects to be funded, in whole or in part, and make certifica-
236 tions, from bond proceeds in accordance with this subsection.
237 The committee shall meet within thirty days of the effective
238 date of this section. Prior to making each certification, the
239 committee shall conduct at least one public hearing, which may
240 be held outside of Kanawha County. Notice of the time, place,
241 date and purpose of the hearing shall be published in at least
242 one newspaper in each of the three congressional districts at
243 least fourteen days prior to the date of the public hearing. Prior
244 to the issuance of bonds under this subsection, the committee
245 shall certify to the economic development authority a list of
246 those projects that will receive funds from the proceeds of the
247 bonds. Once certified, the list may not thereafter be altered or
248 amended other than by legislative enactment.

249 (e) If the commission receives revenues in an amount that
250 is not sufficient to fully comply with the requirements of
251 subsection (c) and (h) of this section, the commission shall first
252 make the distribution to the economic development project
253 fund, second, make the distribution or distributions to the other
254 funds from which debt service is to be paid, third, make the
255 distribution to the education improvement fund for appropria-
256 tion by the Legislature to the promise scholarship fund, and
257 fourth, make the distribution to the general purpose account:
258 *Provided*, That, subject to the foregoing, to the extent such
259 revenues are not pledged in support of revenue bonds which are
260 or may be issued from time to time under this section, the
261 aforesaid revenues shall be distributed on a pro rata basis.

262 (f) For the fiscal year beginning on the first day of July, two
263 thousand two, and each fiscal year thereafter, the commission
264 shall, after meeting the requirements of subsections (c) and (h)
265 of this section, and after transferring to the state lottery fund
266 created under section eighteen of this article, an amount equal
267 to any transfer from the state lottery fund to the excess lottery
268 fund pursuant to subsection (f) of said section, deposit fifty
269 percent of the amount by which annual gross revenue deposited
270 in the state excess lottery revenue fund exceeds two hundred
271 twenty-five million dollars in a fiscal year in a separate account
272 in the state lottery fund to be available for appropriation by the
273 Legislature.

274 (g) When bonds are issued for projects under subsection (d)
275 of this section or for the school building authority, infrastruc-
276 ture, higher education or park improvement purposes described
277 in this section that are secured by profits from lotteries depos-
278 ited in the state excess lottery revenue fund, the lottery director
279 shall allocate first, to the economic development project fund
280 an amount equal to one tenth of the projected annual principal,
281 interest and coverage requirements on any and all revenue
282 bonds issued, or to be issued, on or after the first day of July,

283 two thousand two, as certified to the lottery director, and
284 second, to the fund or funds from which debt service is paid on
285 bonds issued under this section for the school building author-
286 ity, infrastructure, higher education and park improvements an
287 amount equal to one tenth of the projected annual principal,
288 interest and coverage requirements on any and all revenue
289 bonds issued, or to be issued, on or after the first day of April,
290 two thousand two, as certified to the lottery director. In the
291 event there are insufficient funds available in any month to
292 transfer the amounts required pursuant to this subsection, the
293 deficiency shall be added to the amount transferred in the next
294 succeeding month in which revenues are available to transfer
295 the deficiency.

296 (h) In fiscal year two thousand four, and thereafter, prior to
297 the distributions provided in subsection (c) of this section, the
298 lottery commission shall deposit into the general revenue fund
299 amounts necessary to provide reimbursement for the refundable
300 credit allowable under section twenty-one, article twenty-one,
301 chapter eleven of this code.

302 (i) (1) The Legislature considers the following as priorities
303 in the expenditure of any surplus revenue funds:

304 (A) Providing salary and/or increment increases for
305 professional educators and public employees;

306 (B) Providing adequate funding for the public employees
307 insurance agency; and

308 (C) Providing funding to help address the shortage of
309 qualified teachers and substitutes in areas of need, both in
310 number of teachers and in subject matters areas.

311 (2) The provisions of this subsection may not be construed
312 by any court to require any appropriation or any specific

313 appropriation or level of funding for the purposes set forth in
314 this subsection.

315 (j) The Legislature further directs the Governor to focus
316 resources on the creation of a prescription drug program for
317 senior citizens by pursuing a medicaid waiver to offer prescrip-
318 tion drug services to senior citizens; by investigating the
319 establishment of purchasing agreements with other entities to
320 reduce costs; by providing discount prices or rebate programs
321 for seniors; by coordinating programs offered by pharmaceuti-
322 cal manufacturers that provide reduced cost or free drugs; by
323 coordinating a collaborative effort among all state agencies to
324 ensure the most efficient and cost effective program possible
325 for the senior citizens of this state; and by working closely with
326 the state's congressional delegation to ensure that a national
327 program is implemented. The Legislature further directs that the
328 Governor report his progress back to the joint committee on
329 government and finance on an annual basis beginning in
330 November of the year two thousand one, until a comprehensive
331 program has been fully implemented.

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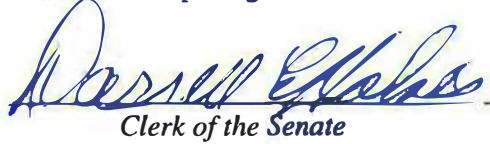
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

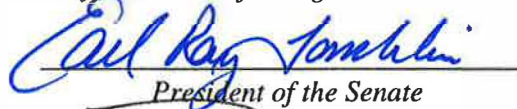

Chairman House Committee

Originating in the House.

In effect from passage.

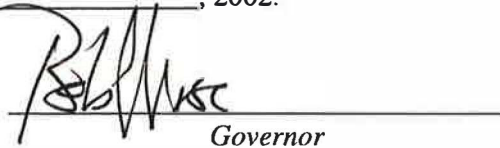

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2002.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/14/02

Time 2:35 pm